



## Staffing: Grievance Procedure

Date	Review Date	Coordinator	Responsible Body
<b>December 2018</b>	<b>December 2019</b>	<b>Headteacher</b>	<b>The Good Shepherd Trust</b>

The Trust and governing body (We) have chosen to adopt the following Grievance Procedure with all its legal implications in Employment Law. This policy should be used in conjunction with the Disciplinary and Capability procedure.

### Background

Under the Education Act 2002 and the School Staffing (England) Regulations 2003 governing bodies are responsible for establishing a procedure for staff seeking redress for a grievance arising from their work. This model procedure meets that requirement and provides a fair process for considering staff grievances. This procedure has been through a formal consultation process with recognised trade unions and professional associations.

The procedure incorporates the provisions of the 2002 Employment Act [Dispute Resolution] and the relevant ACAS Code of Practice.

### Introduction & Policy Objectives

- i. This policy will be applied fairly and consistently to all staff employed at the school regardless of gender (including gender reassignment), race, colour, marital or civil partnership status, national or ethnic origin, nationality, disability, sexuality, age, religion, status or number of hours worked.
- ii. A grievance can be defined as a problem or concern which an employee has about their work, work environment or working relationships. It can arise from various aspects of employment such as:
  - terms and conditions
  - pay and conditions (or deductions from pay)
  - health and safety
  - relationships at work
  - new working practices
  - organisational changes
  - equal opportunities
- iii. This procedure is not applicable for:
  - Issues that are outside the responsibility or control of the Trust.
  - Complaints regarding discrimination (unfair treatment or consideration based on a category other than merit), victimisation (an act that exploits or treats a person unfairly) and bullying (repeated less favourable treatment or to treat in an overbearing or intimidating manner) where the Trust has adopted a Fairness & Dignity at Work Policy. If the Trust not adopted such a policy then concerns under these categories should be raised under this grievance procedure.

- Collective disputes, which should be raised using the Trust and Trade Union agreed procedures (any individual grievance raised that relates, either in whole or in part, to a collective dispute that is currently under consideration or has recently been resolved or exhausted the procedure, will be treated as having been dealt with).
- Dismissal and disciplinary matters. Complaints by managers against employees they supervise relating to inappropriate conduct or unsatisfactory performance are covered by other procedures (e.g. Disciplinary or Capability Policy). Similarly, any matters that an employee may have relating to dismissal cannot be dealt with under the Grievance Policy but must be dealt with under the relevant Trust policy relating to that termination.
- Statutory requirements: for example, objections to paying income tax, national insurance, superannuation, or disagreements on aspects of statutory sick pay (other than disputed incapacity to work) cannot be the subject of a grievance.
- **The statutory right to request to work beyond the intended date of retirement:** this is explained within separate guidance and any concerns relating to this should be dealt with under the relevant statutory requirements. If a request to work beyond the intended date of retirement has been refused and the employee is unhappy with this then they should not raise this as a grievance but instead should exercise their right of appeal against the decision.
- **Appeals against job evaluation grading:** these are dealt with under the job evaluation appeals procedure.
- **The right to request flexible working:** this is explained in a separate policy and any concerns relating to this should be dealt with under the Right to Request Flexible Working policy. If a request for flexible working has been refused and the employee is unhappy with this then they should not raise this as a grievance but instead should use the right of appeal against the decision outlined within that policy.
- The review or appeal against a pay decision: the school's Pay Policy sets out the process for dealing with employees requests to have pay decisions reviewed or appealed.
- Situations where an employee has concerns about aspects of the Trust's work or about the conduct of their manager or another employee that they feel may warrant formal investigation but which are not matters that affect them personally. Such concerns should be raised through the public interest disclosure mechanism, as appropriate.
- Grievances raised by volunteers at the school, although the informal stage of the procedure may be used to resolve any such matters.
- Grievances or complaints raised by other non-employees of the school. e.g. Contractors, parents/carers, etc. The school's complaint procedure should be followed in such circumstances.

iv. The procedure is for the use of all employees, regardless of their status or whether they are full-time, part-time, temporary or permanent. Its objectives can be summarised as follows:-

- provide an efficient and fair means by which an employee with a grievance can raise the matter and receive a prompt response.
- settle grievances fairly and promptly.
- encourage managers and employees to do all that is reasonable and possible to create and maintain harmonious and effective working relationships in order to maintain services.
- make every attempt to resolve grievances informally.
- create a climate where employees feel confident that raising a grievance will not have an adverse impact on either their career or reputation.
- whilst encouraging employees to use the procedures responsibly, to take immediate action on those who use the system to make malicious or vexation complaints about their colleagues.
- all parties involved in a grievance case should observe a code of strict confidentiality, and other employees should only be informed of the grievance on a need to know basis.

## Resolving the Matter Informally

- i. Whenever possible, grievances should be resolved informally. This means that if the employee's grievance is with a colleague they should seek to raise and resolve their grievance directly with that individual wherever possible. Otherwise an employee should normally raise any concerns with their line manager in the first instance. An informal meeting should take place to discuss the employee's concern with a view to achieving a satisfactory outcome at this informal level.
- ii. Occasionally an employee has a concern which involves their line manager, or the grievance is of a sensitive nature and the employee does not feel comfortable to discuss it with their line manager. In such cases, the employee should take their concern to the next most senior member of staff above their line manager or the headteacher, who will either meet with the employee in order to resolve the matter, or identify another competent person to address the grievance. If the concern is about or in some way relates to the actions of the headteacher, then the employee should contact the Chair of the governing body who will nominate a member of the governing body to deal with the matter.
- iii. If the headteacher has a grievance then they should inform the chair of governors in the first instance. The chair of governors will normally be the designated person to seek to resolve the matter informally. In certain circumstances it may be more appropriate for another governor to seek to resolve the grievance. If the headteacher is dissatisfied with the outcome at this informal stage s/he may pursue the matter under the formal stages of this procedure by writing to the clerk to the governing body in the first instance. The Clerk will arrange for a governors' grievance panel to consider the matter further. The headteacher will also have a subsequent right of appeal to a governors' appeal panel.
- iv. Although it is expected and hoped that the majority of grievances will be resolved informally, every grievance must be taken seriously. Although at times a line manager may consider the matter to be of minor importance, concerns raised by employees must be treated seriously. Managers have a duty to allocate time and priority to such matters in order that they may be speedily resolved, hopefully to the satisfaction of both parties.
- v. When an employee who has a grievance approaches a line manager or senior member of the school, the manager should arrange to meet that employee to discuss their concern as soon as is practical.
- vi. At the meeting, the line manager or nominated person should clarify the exact nature of the grievance with the employee and what reasonable outcome(s) the employee is seeking to resolve the matter. The line manager or nominated person should then seek resolution of the grievance in the most appropriate manner given the circumstances of the case.
- vii. If at the meeting it transpires that a third party is involved, the line manager or nominated person should gather the relevant facts. It may be necessary to adjourn the meeting for further investigation and to interview other parties. It may be appropriate for the line manager or nominated person to mediate or for the school to use a third party mediation service in an attempt to resolve any ongoing differences. Alternatively the employee's trade union professional association representative and/or the Trust's personnel consultants could become involved to help to resolve the issue. Any use of mediation should be agreed by both parties at the outset.
- viii. The informal stage of the procedure provides an opportunity for the line manager or nominated person to advise the employee that their particular concern should be raised using other established procedures, and to provide copies of other procedures for the employee. It may also be appropriate, given the circumstances, for the line manager or nominated person to advise the employee to pursue the matter under the formal stages of the Grievance Procedures, to consider alternative action and/or seek advice from their trade union/professional association representative.

- ix. The line manager or nominated person should keep a brief written record of the grievance, the outcomes and agreed actions. Any record should be confidential, and should only be made available to the employee or to an appointed nominated school representative, if the matter is taken further into a formal grievance. This will be deemed to be the conclusion of the informal process and the employee should be notified of their right to proceed to the formal stage if they are unhappy with the outcome of the informal stage.
- x. Depending on the outcome and conclusions of the grievance consideration may need to be given to instituting other procedures, e.g. disciplinary, or capability procedures.
- xi. Grievance complaints should normally be made within 3 months of the act or decision the employee wishes to complain about. If the employee wishes to complain outside of this period, they must first show good reasons for the delay.
- xii. Careful consideration needs to be given of the timing and location of any meetings held under this procedure. Meetings should be held at a time and in a location when both parties can give their full and proper consideration of the issues, free from interruptions and other demands.

## **Formal Grievance Procedure**

### **Stage One – Raising the Grievance**

- i. Where informal attempts have not been successful in achieving an agreed solution or the school has not responded within a reasonable timescales, the employee may consider formalising their grievance by putting it in writing. This must be done within 10 working days following the conclusion of the informal process, failure to do so will result in the grievance not being considered, unless the employee can provide a satisfactory explanation for the delay.
- ii. Setting out a formal grievance in writing is not easy and employees wishing to take this action might find it helpful to use the template set out in Appendix 1 of these procedures.
- iii. The grievance should set out the full nature of the concern/complaint. It should also include a summary of the informal process, who dealt with it, why the outcome was not satisfactory, and what resolution is hoped for. It is helpful to attach any supporting documentation such as letters or e-mails, or additional evidence not put forward for consideration at the informal stage.
- iv. If an employee has difficulty in expressing their grievance in writing, e.g. if English is not the employee's first language or the employee has reading difficulties, the employee should seek assistance from either a work colleague or a trade union or professional association representative. An employee with a disability which affects their ability to express their grievance in writing should inform the headteacher, who will consider what reasonable adjustment could be made to assist them.
- v. The written grievance should be sent to the headteacher. If the grievance is about or concerns the headteacher, then it should be sent directly to the Chair of the Trust.

### **Stage Two – The Grievance Meeting**

- i. On receipt of a formal grievance letter, the headteacher or nominated governor should invite the employee to a meeting to discuss the matter. This meeting should normally take place within 10 working days of receiving the grievance letter. If for any reason a meeting cannot be reasonably arranged within this timescale then the headteacher or nominated governor should arrange the meeting as soon as possible

thereafter and provide the employee with an explanation for the delay within 10 working days of receipt of the grievance.

- ii. The meeting should normally take place during the employee's usual working day. However, where this is not practical the meeting could take place outside of the employee's usual working hours by agreement.
- iii. The invitation letter in addition to stating a time, date and location for the meeting, should also advise the employee of their right to be accompanied by either a work colleague or a trade union or professional association representative.
- iv. The employee is expected to make every effort to attend the meeting at the suggested time, however if that does present serious difficulties for them or their chosen work colleague or a trade union or professional association representative, they should suggest an alternative date which must be within 5 working days of the original date proposed. If the new date is not acceptable to the headteacher or nominated governor, they should contact the employee and attempt to come to a mutually acceptable date avoiding unreasonable delay. If an agreed date is not possible the headteacher or nominated governor should offer the employee another date, but make it clear that if they are unable or unwilling to attend on that date, their grievance will be decided on the written evidence and any further investigative work that may be deemed necessary.
- v. If the employee does not attend the grievance meeting but has no good reason for the non-attendance, or fail to respond to the invitation, the headteacher or nominated governor will attempt to reschedule another meeting. However should this second attempt result again in non-attendance without good reason or a failure to respond to the invitation, then the Trust at this point is no longer legally obliged to consider the grievance and may end the process at that point.
- vi. If the employee goes sick during the process, the headteacher or nominated governor should still aim to proceed, and continue the process of collecting relevant information or conducting interviews. In cases where the employee is not well enough to attend the meeting, the headteacher or nominated governor will take into account the nature of the illness and the possible duration of absence and, where appropriate, seek professional medical advice from Occupational Health. A decision will then be taken about whether:
  - a) the process will continue but the employee will not be interviewed;
  - b) the process will resume when the employee returns or when occupational health determine they are fit enough to attend such a meeting;
  - c) if the employee absence becomes extended and they are unlikely to be fit to attend a meeting in the reasonably foreseeable future, the headteacher or nominated governor may inform the employee that the grievance will not be pursued at this time due to the employee's unavailability.
- vii. The meeting will be held in a quiet location that is free from disruption. During the meeting, the employee will explain their grievance, and state their desired outcome. (See role of the companion in Section 6). If during the meeting the headteacher or nominated governor considers that the matter warrants further investigation, or that further advice should be sought, the headteacher or nominated governor should adjourn the meeting and seek advice. A letter should be sent to the employee immediately following the adjournment, setting out the reason and either offering a date to resume the meeting or informing the employee of the likely duration of the delay.
- viii. Within 10 days of the meeting taking place, the headteacher or nominated governor should write to the employee to inform them of the decision. The employee should be informed in the letter that if they remain dissatisfied, they may appeal against it by writing giving their reasons in full to clerk to the governing body within 10 of receipt of the letter giving the decision at the first stage.

## Stage Three – Appeals

- i. Upon receiving an appeal the clerk to the governing body will convene a meeting of the school's Staff Appeals Panel giving the employee at least 10 working days' notice in writing of the details for the arrangement of the hearing. The employee should also be advised of their right to be accompanied by either a work colleague or a trade union or professional association representative.
- ii. The employee is expected to make every effort to attend the appeal meeting at the suggested time, however if they or their chosen companion are unable to attend, then the same principals as specified in paragraphs viii to x above will apply.
- iii. All members of the school's Staff Appeals Panel should be provided with all appropriate documentation in advance of the appeal hearing.
- iv. Where either the headteacher/nominated governor or the employee wish to bring witnesses to the appeal hearing then all parties should be informed of the names of the witnesses at least 5 working days in advance.
- v. Within 10 working days of the meeting the employee should be notified of the outcome of the appeal, and that this decision is the final stage in the grievance procedure.

## Employees Right to be Accompanied

- i. Employees who raise a formal grievance have a statutory right to be accompanied at any of the formal meetings by a companion. The companion can either be a work colleague or a recognised trade union or professional association representative. There is no entitlement for an employee to be accompanied by a friend or relative who is not employed by the school, or a solicitor or legal representative.
- ii. If the employee chooses to be accompanied by a work colleague that person does not have to agree to accompany them and should not be pressurised into doing so. If they do agree to accompany the employee they should be allowed a reasonable amount of paid time off to fulfil their responsibilities, which would include attending any formal meetings, familiarising themselves with the case and conferring with the employee.
- iii. The employee is required to notify the school of the name and status of their intended companion prior to any formal meeting. If the employee chooses a work colleague whose presence could prejudice the hearing or cause a conflict of interests the school may refuse to allow them to attend. In such circumstances the employee should be given sufficient time to find a replacement.

## The Role of the Companion

- i. At the meeting, the companion may:-
  - Confer with the employee.
  - Present the employee's case
  - Sum up the employee's case
  - Ask questions of the school's representative
  - Respond on the employee's behalf to any view expressed at the hearing.
- ii. The companion does not have the right to:-
  - Answer questions on the employee's behalf.

- Address the hearing on issues where the employee does not wish them to.
- Prevent or attempt to obstruct the School's representative from explaining the case, or asking questions of the employee.

## Other Specific Considerations

### (A) Whistle-Blowing

- If an employee wishes to make a protected disclosure that they consider may reveal serious misconduct by the School, they should use the 'Speaking Out' whistleblowing policy and procedures if these have been adopted by the governing body.
- To qualify for a protected disclosure the employee must reasonably believe that one of the following acts has taken place or is likely to take place in the future:
  - criminal offence
  - failure to comply with a legal obligation
  - miscarriage of justice
  - danger of health and safety of any individual
  - danger to the environment; or
  - deliberate concealment of any of the above.

### (B) Grievance Raised During Disciplinary Proceedings

- Where disciplinary or capability action has prompted a related grievance complaint or where an employee raises multiple overlapping grievances, the Dispute Resolution Regulations (which set out the statutory minimum framework for dealing with disciplinary and grievance issues) provides for an organisation to hold a **multi-purpose meeting** to avoid unnecessary repetition and/or delay of the consideration of all of the issues. Using the guidance of these Regulations, the governing body may therefore use a multi-purpose meeting if a grievance related to disciplinary or capability action is raised before the disciplinary or capability appeal meeting takes place. No further/separate action under the grievance procedure will therefore be required. However, if the grievance is raised during or after the disciplinary or capability appeal hearing then it will be necessary to complete a separate grievance procedure in full. Should a grievance complaint receive consideration as part of a multi-purpose hearing then this will conclude the grievance process in full.
- Where it proves necessary to consider a related grievance by completing the grievance procedure separately and in full, depending on the circumstances it may be appropriate to suspend the disciplinary or capability procedure for a short time until the grievance can be considered. The manager should seek Trust Personnel advice in considering whether or not to suspend the disciplinary or capability procedure.
- In addition, a grievance that is the subject of, or related to, another issue or investigation already underway may also be considered at a multi-purpose meeting to avoid unnecessary repetition of procedures. This includes any new grievances arising from the conduct of the earlier steps of the grievance process. The manager or senior manager appointed to consider the grievance at the next step of the process will address such issues.
- However, under the Dispute Resolution Regulations, the governing body is not obliged to consider any grievance that relates to:
  - Action taken by the employer regarding dismissal. These matters do not fall under the grievance procedure but instead employees have the right of appeal against their dismissal under the Trust's policies relating to termination;

- b. Action the employer has taken or is contemplating taking regarding disciplinary or capability. The employee cannot raise a grievance about the fact of having this action taken against them (or against another employee) but instead can only raise a grievance about the action if they believe that it is either unlawfully discriminatory or is really being taken for a different reason than that given by the manager, e.g. the employee may believe that disciplinary action is being taken because of a personality clash with their manager rather than because of issues relating to their conduct.

### **(C) Post Termination Grievance**

- vii. Ex-employees are entitled to raise a grievance provided that:
  - a) The matter has not already been raised as a grievance before the employment with the school ended \*, and
  - b) The complaint is registered with the governing body within three months of the end of the employment.

\*If a grievance has been raised and the employee then leaves the school's employment then the governing body must still complete the grievance procedure in full.

- viii. There are 2 ways in which an ex-employee can raise a post-termination grievance:
  - a) Using the standard 3-step procedure – this is the procedure that will apply in the majority of cases
  - b) Using the modified (shorter) 2-step procedure – this procedure will apply rarely and only where the employee has ceased to be an employee and where the grievance has not been raised while the individual was an employee. All parties must agree in writing to use the modified procedure (otherwise the standard 3-step procedure will apply).

#### Standard 3-Step Post-Termination Grievance Procedure

##### **Step 1 – Explain the Complaint**

- ix. Where ex-employees wish to complain about any action that the school has taken, or has omitted taking, in respect of them in their employment, they must put in writing the subject matter of the grievance and send this to the headteacher.
- x. The grievance must be submitted in writing as soon as possible after the end of the employment. Where the written grievance is submitted more than three months after the employment has ended, the governing body may at its discretion decide not to consider the grievance.

##### **Step 2 – Meeting**

- xi. The headteacher, or nominated governor, will investigate the grievance and to seek to find a resolution to the complaint with the ex-employee.
- xii. The headteacher/nominated governor will invite the ex-employee to a meeting to take place within 10 working days of receiving the grievance to discuss the details of the grievance and to see if a resolution can be found.
- xiii. Where possible the headteacher/nominated governor will attempt to agree the date of a meeting with the employee and their companion, however it may be necessary to settle on a date without agreement. Where the chosen companion, for good and genuine reasons, cannot attend on the proposed date, the employee can suggest an alternative date (or time) so long as it is reasonable and is not more than 5 working days after the original date. If the alternative date offered is not suitable for the headteacher/nominated governor to attend,



for good and genuine reasons, the headteacher/nominated governor will ultimately decide on a date and time for the meeting, having regard to all the circumstances.

- xiv. The headteacher/nominated governor may adjourn the meeting to seek further information if necessary (e.g. to conduct an investigation). The headteacher/nominated governor may request the ex-employee to attend a further meeting(s) if necessary.
- xv. The ex-employee must take all reasonable steps to attend the meeting(s) and should bring with them any information in support of their grievance. If the ex-employee does not attend the meeting but has no good reason for the non-attendance, or fails to respond to the invitation, the school will attempt to reschedule another meeting, however should this second attempt result again in non-attendance (without good reason) or a failure to respond to the invitation, then the school is no longer legally obliged to consider the grievance and may end the process at that point.
- xvi. No later than 10 working days after the meeting, the headteacher/nominated governor will give the ex-employee a written response to the grievance.
- xvii. The response must confirm in writing the details of the outcome of the consideration of the grievance and specify the right of appeal of the ex-employee should they be dissatisfied with the outcome. This letter must explain that the ex-employee has the right of appeal to a governors appeal panel. If they wish to exercise this right, they should do so by writing to the clerk to the governing body within 10 days of receipt of the letter, clearly stating the grounds on which they wish to appeal.

### **Step 3 – Right of Appeal**

- xviii. Upon receiving an appeal the clerk to the governing body will convene a meeting of the school's Staff Appeals Panel giving the employee at least 10 working days' notice in writing of the details for the arrangement of the hearing. The employee should also be advised of their right to be accompanied by either a work colleague or a trade union or professional association representative.
- xix. The appeals process will be undertaken in line with appeals process set out under stage 3 of the formal grievance procedure above.

### **Modified 2-Step Post-Termination Grievance Procedure**

- xx. The modified (shortened) grievance procedure will be permitted in special circumstances. This will primarily be in circumstances where an employee wishes to bring a grievance after their employment has come to an end. S/he may request the grievance to be dealt with in writing without having to attend a meeting. The parties must agree in writing that the modified procedure will be used.

### **Step 1 – Statement of Grievance**

- xxi. The ex-employee must provide the chair of the governing body with a full written grievance setting out clearly details of the nature and extent of their complaint.
- xxii. If an ex-employee submits a written complaint, and it is not obvious that it is a grievance, the chair of the governing body should clarify the position with the employee as soon as possible.

### **Step 2 – The Management Response**

- xxiii. The chair of the governing body will investigate as appropriate before providing a written response to the grievance the ex-employee within 10 working days of receipt of the grievance letter.

## (D) Sickness

- xxiv. The governing body is to proceed with all grievance matters with the minimum of delay. The grievance process may therefore continue during an employee's sickness (if the illness does not prevent the governing body from starting or completing the process) including collecting relevant information or conducting interviews or meetings. The headteacher/nominated governor for that step must decide each such case on its merits with advice from the school's personnel adviser, taking into account the nature of the illness and the likely length of the absence. Where appropriate, professional medical advice will be sought from Occupational Health

## (E) Confidentiality

- xxv. It is expected that all parties involved in attempting to find a satisfactory resolution to a problem will maintain strict confidentiality throughout all stages of the grievance process by ensuring that only the people who need to know have access to details of the case (normally the only exception to this will be where there are legal obligations requiring action from the governing body, e.g. in health and safety matters).
- xxvi. Uninvolved staff should not normally be advised that a grievance is being dealt with unless there is an effect on day to day working relationships or they are required to give information as part of the process; such staff are thereafter bound by the same conditions of confidentiality of the process.
- xxvii. Confidentiality will not be breached by discussion with e.g. a professional body, trade union representative etc. where advice is sought. If in doubt about confidentiality, advice must be sought from the Trust's Personnel Consultants as a breach of confidentiality may lead to disciplinary action.

## (F) No Status Quo position during a Grievance

- xxviii. Where an employee registers a grievance in response to a decision, action or proposed action by management, the raising of the complaint will not necessarily halt the implementation of that decision or action.

## (G) Frivolous & Vexatious Grievances

- xxix. The governing body will treat all genuine complaints raised seriously however employees should be aware that they must not raise frivolous issues or use the policy to raise concerns in a vexatious or malicious manner and that inappropriate use of the policy may result in disciplinary action being taken.

<b>Headteacher:</b>	Ruth Worswick	<b>Date:</b>	December 2018
<b>Chair of Governing Body:</b>	Vicky Skidmore	<b>Date:</b>	December 2018