



University  
of Exeter

## **GUIDANCE NOTES: GRIEVANCE**

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## 1. Purpose of Guidance Notes

- 1.1 The purpose of these Guidance Notes are to provide practical advice to managers who are involved in either the informal or formal stages of the Grievance Procedure, including a grievance hearing; and others who may be involved in investigations or appeals. They are not intended to repeat the Grievance Procedure but to provide supplementary guidance and therefore should be read in conjunction with the Grievance Procedure.
- 1.2 It is a requirement of the University's Grievance Procedure that the Director of Human Resources or his/her designate and where applicable, the HR Casework Manager, be consulted at key stages in the Procedure and before the formal stages of the procedure are commenced, including an investigation and/or a Grievance hearing. An HR Representative will also be involved at all stages to support the Procedure and process. Managers should therefore seek advice from their HR Representative at the earliest opportunity in every case.

## 2. Purpose of the Grievance Procedure

- 2.1 The purpose of this procedure is to resolve individual grievances promptly and fairly and as near to their source as possible.
- 2.2 Employees should raise a grievance as soon as possible, and there is a time limit of three months from the incident or event which caused the complaint, or three months from an employee's attempt to resolve a problem informally. Grievances raised after this time will not normally be considered other than in exceptional circumstances. This will be considered by the Director of Human Resources on a case by case basis, but may for example include circumstances where the employee has been on sickness absence and was unfit to participate in a grievance procedure, or where new facts came to light that an employee could not reasonably have been aware of at the time. In any event a grievance should be raised as soon as reasonably practicable. An employee can be asked to provide evidence to show why they were unable to submit their grievance in time.
- 2.3 The procedure for staff working on a claims basis or via the Temporary Staff Bank is set out in the Terms and Conditions for Individuals Paid by Claim.
- 2.4 The procedure can be used where a group of employees have a common complaint. In these circumstances the group will be asked to nominate a spokesperson to act on behalf of the group and to attend hearings on behalf of the group. At the formal stage, each member of the group must sign the written grievance under clause 7.2 of the Grievance procedure for it to be considered as a valid group complaint.
- 2.5 All employees involved in a grievance process, including the employee(s) raising a grievance (the complainant(s)), the subject of the grievance and anyone involved in an investigation should be reminded of the confidential nature of Grievance proceedings and the need to keep the matter confidential and not to discuss it with colleagues or third parties. This is to protect the employees concerned and to prevent any prejudice to any subsequent investigation and hearing(s). This does not prevent the Complainant(s) or subject from discussing the matter in confidence with their immediate family, trade union representative or legal adviser.

## 3. Modification of the Grievance Procedure

- 3.1 Whilst it is not possible to specify every circumstance where the Director of Human Resources or his/her designate may feel it appropriate to modify the Grievance Procedure, circumstances where this would be likely to apply are:
- 3.1.1 Where the member of staff works in or is managed by employees of a third party organisation, including in cases of secondment, where the Director of Human Resources or his/her designate may authorise managers employed by the third party organisation to investigate a grievance and/or to take action under the Grievance Procedure in conjunction with or in substitute for appropriate University managers.
- 3.1.2 Where a grievance involves an employee of a third party organisation then the Director of Human Resources or his/her designate may contact the third party organisation and ask that they investigate the complaint and address it under their

procedures.

3.1.3 Where reasonable adjustments may be required due to an employee's disability.

3.2 Where it is proposed that the Procedure be modified then the employee should be informed of the changes and the reasons for them. The employee should be given an opportunity to raise any concerns about the changes, however the final decision on procedure lies with the Director of Human Resources or his/her designate.

#### 4 Relationship with other Policies and Procedures

4.1 If an employee raises a grievance during another HR process (whether that process is proposed and/or in the informal or formal stage), for example a disciplinary process, capability/performance process, non-confirmation of probation or ill health/incapacity process) then the other process may, if appropriate, be suspended however there is no legal requirement to do so. The following factors may be considered:

4.1.1 Is the grievance related to the issues/allegations in the other process? If so, depending on the circumstances, it may be appropriate to deal with both cases concurrently under a single investigation and/or hearing.

4.1.2 Is the grievance so bound up with the issues/allegations in the other process that they cannot sensibly be considered separately and/or is the grievance effectively the employee's defence to the issues/allegations in the other process? If so no discussion of one can sensibly be carried without a rehearsal of the other, so in this case a separate grievance may be declined and both matters dealt with at the same time under the other process (for example as part of the employee's case or as mitigation).

4.1.3 Is the grievance wholly unrelated to the issues/allegations in the other process? If so they may be run concurrently with separate panels/hearings, or depending upon the circumstances, it may be safe to continue the other process and address the grievance at a later date.

4.1.4 Does the grievance cast doubt on the motive for the other proceedings, and/or allege the decision to commence the other proceedings is discriminatory? If so it may be appropriate to suspend the other procedure until the grievance has been heard.

4.2 Investigations that have been undertaken under the Grievance Procedure may be used to inform another procedure, where that other procedure is a direct and immediate consequence of the investigation. for example (this list is not intended to be exhaustive):

4.2.1 Where an investigation into a grievance finds evidence to support the grievance, the investigation report may be used to inform an appropriate procedure, for example a disciplinary procedure or capability/performance procedure against the subject of the grievance.

4.2.2 Where an investigation into a grievance finds evidence that the grievance was vexatious, false or malicious the investigation report may be used to inform a disciplinary procedure against the complainant.

Where this clause 4.2 applies the appropriate procedure will immediately follow the investigation, it will not be used at some stage in the future to inform another and unrelated procedure. This does not preclude the University from carrying out any further investigation it considers reasonable in the circumstances, including further interviews with witnesses where appropriate.

#### 5. Informal procedure

5.1 Most grievances can be resolved quickly and informally through discussion between the employee and their line manager or with the person to whose conduct the grievance relates. The University recognises that some employees may find this difficult and advice can be obtained from the employee's line manager (or another appropriate manager) or a member of the Human Resources team. The employee may also ask the manager/Human Resources to

intervene on their behalf to try and help them resolve the issues informally with the other person.

## 6. Formal procedure

- 6.1 The employee should provide sufficient detail for the nature of their complaint to be clearly understood, and provide details including any relevant facts, dates, and names of individuals involved. Where this is not provided, the employee should be asked to provide further details.

## 7. Mediation

- 7.1 Before a formal procedure is commenced the Director of Human Resources will consider whether mediation is appropriate. Mediation will be carried out in accordance with the University's mediation procedure:

<http://www.exeter.ac.uk/staff/employment/procedures/mediationprocedure/>

- 7.2 Employees are encouraged to participate in mediation as this is less stressful than a formal procedure and can help resolve the issues so that the parties can move on. Any agreement is on terms agreed between the parties rather than being imposed by someone else.

## 8. Investigations

- 8.1 When a grievance is received the Director of Human Resources or HR Casework Manager will consider whether an investigation is necessary. This will not be necessary or appropriate for every grievance, but will be decided on a case by case basis.

- 8.2 Where an investigation is considered appropriate, the Director of Human Resources, the HR Casework Manager or their designate will appoint an Investigating officer ("IO") to carry out the investigation. The IO will be someone who has not been involved in the incidents/matters being investigated nor have any personal involvement with the individuals concerned.

- 8.3 The purpose of an investigation is to establish the facts of a case, and the IO will look for evidence that both tends to prove or disprove the grievance. The extent of the investigation need not be forensic but should be whatever is reasonable in the circumstances to establish the facts of the case.

- 8.4 The HR Casework Manager will agree the purpose and scope of the investigation in advance of the investigation commencing, including the summary of issues and complaints to be investigated, relevant witnesses and timescale for completion. If new witnesses are identified during the investigation then the IO should update the Casework Team of this and any impact on the timescale of the investigation. Where new matters come to light during the investigation then the IO should contact the HR Casework Manager to discuss these and it may be necessary to change the scope of the investigation and inform the complainant and/or subject of the complaint of this. This may necessitate re-interviewing witnesses including the Complainant and/or subject.

- 8.5 The IO will gather relevant evidence, including documentary evidence such as documents, e-mails, CCTV footage etc. They will also obtain statements from witnesses to the incident or events complained of, or witnesses who may otherwise have information relevant to the matter being investigated. It is a reasonable expectation of the University that its employees will co-operate with the IO and participate in the investigation. Witnesses should be informed of the fact that their evidence may be used in subsequent proceedings (including where the evidence may be used to inform a different procedure under 4.2 above). Witnesses should be reminded of their duty of confidentiality and the need to keep the investigation confidential, and not to discuss the case with colleagues or third parties. The IO will usually interview both the Complainant(s) and subject of the complaint as part of their investigation.

- 8.6 There is no right to be accompanied to an investigation meeting however, the employee can, if they wish, be accompanied by a fellow worker or trade union representative provided this does not unreasonably delay the meeting. The IO may at their absolute discretion agree a request to postpone the meeting by up to 5 working days where the employee's preferred companion is unavailable, but no further extension will be granted. In these circumstances the employee may choose a different companion or attend unaccompanied.

- 8.7 A note taker will be present during investigation meetings. Notes will be a summary of the meeting and not a verbatim record. A copy of the notes (which may be typed or handwritten) should be sent to the witness and they should be asked to confirm they are an accurate record of the meeting. The witness should be made aware that the notes and/or any witness statement they make, could be used in subsequent Grievance proceedings.
- 8.8 A witness may disagree with the contents of the notes and request changes. If the amendment is factual (such as an incorrect date) then the IO may agree that the notes should be changed. If however the amendments are substantial, for example adding additional information or potentially changing the context of what was said, then the witness should be asked to provide their comments/concerns about the notes on a separate document and both the original notes and the witness's comments included in the IO's report. Where a witness fails to confirm the notes then this fact should be recorded in the report. It should not delay the finalisation of the investigation or the report.
- 8.9 A witness may ask that their notes/statement be anonymised. Wherever possible this should be agreed in advance with the HR Casework Manager. The IO should ask the witness why they want the notes anonymised and consider the reason for the request. This will only be permitted in exceptional circumstances where the witness has a genuine fear over reprisals and/or for their personal safety. Where this is agreed the notes should be taken as normal and redacted afterwards to remove names/identifying details.
- 8.10 When the IO has gathered the evidence they will prepare a report of their investigation to include:
- An introduction
  - A summary of the grievance
  - The investigation – how it was carried out, witness statements and evidence gathered.
  - Statement of case – sequence of events
  - Summary and any recommendations

The IO will only determine whether there is sufficient evidence to support the grievance or not.

- 8.11 On receipt of the Investigation report a decision will be taken on next steps in accordance with clause 9.3 of the Grievance procedure. Where the investigation finds evidence that the grievance is vexatious, false or malicious then the matter may be referred into the disciplinary procedure in accordance with clause 9.4. This does not affect the employee's right of appeal under clause 12.

## 9. The Grievance Hearing

- 9.1 Where a decision is taken to proceed to a formal Grievance hearing the Casework Team will commission a Grievance chair and make arrangements for the hearing, including arrangements for meeting rooms, relevant paperwork and for details to be sent to the employee in accordance with paragraph 10.2 of the Grievance Procedure.
- 9.2 Only those who have a role in the Grievance process should attend. This may include:
- the manager conducting the Grievance hearing (the chair);
  - the complainant employee;
  - the trade union representative or work colleague ('fellow worker') accompanying the employee, if any.
  - the investigating officer (IO) (if an investigation was carried out);
  - the HR Representative advising the chair;
  - the note taker;
  - witnesses called on behalf of the University (if applicable);

- witnesses called on behalf of the employee.

- 9.3 A guide to the procedure to be followed at the Grievance hearing is at Annex A.
- 9.4 Where an investigation was carried out then the IO may attend the grievance hearing to present a summary of their investigation, and may call witnesses.
- 9.5 During the hearing, the employee may request an adjournment, for example to consult with their companion. Such requests should not be unreasonably refused. The Chair or HR Representative may also request an adjournment for example to look into a query/new information that has arisen during the hearing, review a document provided by the employee and/or to check a point of law and/or procedure. Where a hearing is adjourned, everyone present should withdraw, with the exception of the HR Representative whose role is to advise the chair on the Grievance procedure, process and points of law.
- 9.6 Once the evidence has been heard (see Annex A) the Chair will usually adjourn the hearing pending the outcome, and advise the employee that they will be notified of the decision in writing. In exceptional cases the Chair may adjourn the hearing to consider the decision and inform the employee of the decision the same day.
10. Right to be accompanied
- 10.1 Workers have a statutory right to be accompanied to a grievance hearing by a work colleague, trade union representative or official employed by a trade union.
- 10.2 If the chosen companion is a trade union representative then they should be certified by their trade union as competent to accompany a worker. The Chair may ask to see evidence of this at the outset of the hearing.
- 10.3 There is no right to be accompanied by a friend or family member who is not a fellow worker, or to be accompanied by a legal representative or another professional support body. Where the employee has a disability an alternative companion may be agreed as a reasonable adjustment.
- 10.4 The request to be accompanied should be reasonable, for example someone based at the same site/campus rather than a geographically remote location (e.g. it might be reasonable for someone based at St Luke's to request a companion from Streatham, however it may not be reasonable for them to request to be accompanied by someone based at Penryn if there is someone suitable and available at the same site or a closer location). It would not normally be reasonable for an employee to be accompanied by a companion whose presence would prejudice the hearing or who might have a conflict of interest
- 10.5 The employee should tell the University who they have chosen as their companion in advance of the hearing. Where applicable the university will make arrangements for the companion to be made available if they need to be given time off work to attend the hearing.
11. The Outcome and Notification
- 11.1 Before reaching a decision the Chair should consider all of the evidence, including evidence from the investigation (if applicable) and the hearing. In some circumstances it may be appropriate for the Chair to make further enquiry/investigation before deciding the outcome, e.g. to check or clarify something raised by the IO, the employee or their companion during the hearing.
- 11.2 Following any such further investigation the Chair can either reconvene the grievance hearing, if for example the Chair wishes to ask the IO or the employee further questions, or provide them with the opportunity to comment on any additional information/evidence obtained before deciding the outcome; or the Chair can write to the employee with their decision.
- 11.3 The role of the HR Representative is to advise and assist the Chair in relation to questions of law, procedure and process. The decision is a matter for the Chair.
12. Right of Appeal
- 12.1 The employee has the right to appeal the outcome of their Grievance Hearing.

- 12.2 Where an employee submits an appeal, the Casework Team will commission an appeal chair/panel and make arrangements for the appeal hearing, including arrangements for meeting rooms and relevant paperwork.
- 12.3 The appeal will normally comprise a review of the original decision and will be conducted in accordance with clause 11.7 of the Grievance Procedure.
- 12.4 The manager who chaired the stage 1 Grievance Hearing will attend the Grievance Appeal Hearing as the University's Representative to respond to the grounds of appeal.
- 12.5 Exceptionally, the appeal chair may consider that new evidence should be presented, for example where the employee could not reasonably have been aware of a new fact/evidence at the time of the original hearing, or if it is otherwise considered necessary in the interests of fairness; in which case arrangements may be made for new evidence to be presented and/or for witnesses to attend.
- 12.6 Once the appeal has been heard, the Chair will usually adjourn the hearing pending the outcome, and advise the employee that they will be notified of the decision in writing. In some circumstances it may be appropriate for the panel to make further enquiry/investigation before deciding the outcome, e.g. to check or clarify something raised by the University's Representative, the employee or their companion during the appeal hearing.
13. Appeal against Dismissal of a Grievance
  - 13.1 The employee has the right to appeal a decision of the Faculty Deputy Pro-Vice-Chancellor/Divisional Director/Director of Human Resources to dismiss their grievance.
  - 13.2 Where an employee submits an appeal, the Casework Team will commission an appeal chair/panel and make arrangements for the appeal hearing, including arrangements for meeting rooms and relevant paperwork.
  - 13.3 The Investigating Officer or the Faculty Deputy Pro- Vice Chancellor/Divisional Director/Director of Human Resources will attend the Grievance Appeal Hearing as the University's Representative to respond to the grounds of appeal. Where the Faculty Deputy Director/Divisional Director attends as the University's Representative then they can elect to be accompanied by the Investigating Officer. In these circumstances the employee, their representative, the appeal panel and supporting HR Representative will have an opportunity to ask questions of both the University's Representative and the Investigating officer.
  - 13.3 Where a grievance has been dismissed under Clause 9.3 of the Grievance procedure, the appeal will normally be a review of the decision to dismiss unless the appeal chair considers it is necessary in the interests of fairness for it to take the form of a full hearing of the grievance; in which case the procedure under clause 10.4 of the grievance procedure will be followed.
  - 13.4 Once the appeal has been heard, the Chair will usually adjourn the hearing pending the outcome, and advise the employee that they will be notified of the decision in writing. In some circumstances it may be appropriate for the panel to make further enquiry/investigation before deciding the outcome, e.g. to check or clarify something with the Deputy Pro-Vice-Chancellor/Divisional Director/Director of Human Resources, and/or a point raised by the University's Representative, the employee or their companion during the appeal hearing.
14. Recording Meetings/Hearings
  - 14.1 Other than in exceptional circumstances, the University does not agree to meetings being recorded. The employee and anyone accompanying them (including witnesses), should not make electronic recordings of any meetings or hearings conducted under this procedure.
  - 14.2 Where it is subsequently found that an employee (or anyone accompanying them) has secretly recorded any meeting or hearing conducted under this procedure, this will constitute misconduct, and could result in disciplinary action.

- 14.3 At the start of any investigation meeting, grievance hearing or appeal hearing the IO or Chair should inform the employee that they must not record the meeting and ask them to confirm that they are not doing so.

## **Annex A**

### **Procedure to be followed at Grievance Hearings**

1. At the commencement of the hearing, the chair of the Grievance Hearing should:
  - introduce those present and explain why they are there;
  - explain the purpose of the hearing
  - explain how the hearing will be conducted.
2. The employee should be given a reasonable opportunity to explain their grievance. Generally, the Grievance hearing will follow the following format:
  - (i) the Chair will invite the employee (or their companion if the employee wishes) to present their case;
  - (ii) the Chair and/or supporting HR Representative may ask questions of the employee (who must answer themselves – their companion is not permitted to answer questions on their behalf);
  - (iii) the employee may call witnesses to support their case and ask questions of them;
  - (iv) the Chair and/or supporting HR Representative may ask questions of the witnesses;
  - (v) the Chair should check that employee or their companion has no further questions of each witness before asking the witness to leave;

#### **Where there was an investigation and the Investigating Officer attends the grievance hearing:**

- (vi) If the Chair considers it appropriate (if for example the witness was not interviewed as part of the investigation), the Investigating Officer may ask questions of the employees witnesses (after the chair and supporting HR Representative at iv above);
  - (vii) the Chair will invite the Investigating Officer to present a summary of their investigation;
  - (viii) the employee and their companion may ask questions of the Investigating Officer;
  - (ix) the panel and/or the HR Representative may ask questions of the Investigating Officer;
  - (x) the Investigating Officer may call witnesses and ask questions of them;
  - (xi) the employee and their companion may ask questions of the witnesses
  - (xii) the panel and/or the HR Representative may ask questions of the witnesses;
  - (xiii) the Chair should give employee or their companion the opportunity to provide any further information.
  - (xiv) the Chair should inform the employee of the next steps, e.g. if they wish to carry out further investigation, timeframe for the decision etc.
- (No new written evidence should be introduced during the grievance hearing.)

Original Version: July 2019

Updated Oct 22 to reflect new structures/leadership roles