

## Grievance Procedure

The current version of the Grievance Procedure was approved by the Council of the University, July 2019.

In response to the Coronavirus health pandemic, to enable the University to focus on critical organisational priorities whilst safeguarding the health, safety and wellbeing of students and staff, the University has agreed some temporary modifications to the Grievance Procedure. These changes, which are intended to be for the overall benefit and wellbeing of employees, are subject to the following principles: (a) there should be no long-term detriment to employees; (b) the University will ensure variations to standard practice are reasonable; and (c) the University's practice should remain compliant with legislation.

These temporary provisions will expire on **30 October 2020** unless otherwise agreed between the University and trade unions.

The following principles and definitions apply:

1. **Review:** all existing cases will be reviewed by the Director of Human Resources in conjunction with the HR Casework Manager & Solicitor and assessed on a case by case basis using criteria such as employee wellbeing, organisational reputation, employee detriment, employment law and potential for dismissal. Following such review, existing cases may be paused in accordance with (4) below or progressed in accordance with (6) below.
2. **Existing Cases:** are cases where the formal stages of the applicable procedure (Disciplinary, Capability/Performance Procedure, Grievance and non-confirmation of probation) had commenced (including an investigation having been commissioned where applicable) prior to 23 March 2020.
3. **New Cases:** are cases which are referred to the HR casework team for progression under the formal stage of the applicable procedure (Disciplinary, Capability/Performance Procedure, Grievance and non-confirmation of probation) on or after 23 March 2020.
4. **Pause:** based on the Review at (3) above, existing cases may be paused, the status quo maintained and the 'clock stopped'. The employee will be notified when the clock will restart (This period is currently undetermined due to uncertainty around the global health crisis; however this is likely to be when normal working practices/business as usual for the University are resumed.)
5. **Delay:** any new cases may, at the discretion of the Director of Human Resources, be delayed, unless it is considered essential that the matter be addressed as soon as possible in accordance with (6) below - e.g. for employee wellbeing, potential cases of gross misconduct, gross professional negligence etc.
6. **Reasonable:** where the decision is taken that the matter should be progressed and that formal action needs to be taken, there will be reasonable extensions to timescales under the University's procedures and reasonable changes to membership of hearing (including appeal) panels, to enable a wider pool of management and HR representatives. Greater use of technology will be made in conducting hearings where possible, including use of Microsoft Teams, which enables all participants to 'meet' online. All University staff with access to a computer should be able to download Teams, see <http://www.exeter.ac.uk/it/teams/>
7. **Modified Procedure:** Greater use of technology will be made in conducting hearings where possible, including use of Microsoft Teams, which enables all participants to 'meet' online. All University staff with access to a computer should be able to download Teams, see <http://www.exeter.ac.uk/it/teams/> Where it is not possible to proceed with a meeting on teams, for example where the staff member does not have access to teams or where it is recommended that a meeting take place face to face due to a medical condition, then from 1 July 2020 a modified procedure will be followed with a hearing to take place 'partially in person' in a building on campus which has been risk assessed and open with sufficient space for social distancing

requirements to be met. The chair and staff member will attend in person. The second panel member (where applicable) and companion may attend in person or via Teams (to be assessed on a case by case basis). All other parties, including supporting HR Representative, note taker and witnesses will attend via Teams.

## **Temporary Amendments**

The relevant temporary amendments to the Grievance Procedure are outlined in the below sections of this document:

### **6.0 Informal Resolution**

### **7.0 Formal Procedure**

### **8.1 Mediation**

### **11.0 Appeal**

References to the Director of Human Resources include their designate.

For avoidance of doubt, references to notification in writing include e-mail.

Date of this document: 6 July 2020

## **Grievance Procedure**

### **1. Principles and Standards**

- 1.1 It is our policy to ensure that all employees have access to a procedure to help deal with any grievances relating to their employment fairly and without unreasonable delay. It is the intention of the procedure that complaints are resolved as quickly and at as early a stage as possible.
- 1.2 This procedure takes into account the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures (as amended).
- 1.3 This procedure applies to all members of staff (regardless of length of service) except those engaged on a claims basis (including casual workers and workers on the temporary staff bank)
- 1.4 Where there is an issue as to the meaning of 'academic freedom' in any proceedings under these Ordinances, regard shall be had to the agreement with the University and College Union regarding the definition of academic freedom dated 31 July 2009.
- 1.5 An employee can use this procedure to complain if they consider they are being bullied or harassed.
- 1.6 This procedure is intended to be used as a guide and does not form part of the contract of employment. The application of this procedure may be modified by the Director of Human Resources or their designate at their discretion if appropriate in specific cases (for example where a member of staff employed by the University works in, or is managed by employees of, a third party organisation, including in cases of secondment or where the employee's employment has terminated).
- 1.7 A grievance should be submitted within three months of the incident or event which has caused the complaint, or within three months of an employee's attempt to resolve a problem informally (see clause 6 below). Although there is a three month period, a grievance should be raised promptly or as soon as reasonably possible. Where a grievance is not submitted within this three month period then it will not normally be considered other than in exceptional circumstances. Where an employee is unable to submit their grievance within three months they should set out the reasons for this in writing (with supporting evidence if applicable) in their grievance letter. This will be referred to the Director of Human Resources for a decision on whether to permit the appeal or to dismiss it. The decision of the Director of Human Resources is final.

- 1.8 Many grievances can be resolved quickly and informally through discussion between the employee and their line manager or colleagues. Where an employee is concerned about a matter relating to relationships at work, matters of personal privacy, or considers that there may have been a misunderstanding, they may wish to raise the matter directly with the person involved. This type of direct and informal approach is encouraged and the University expects employees who are approached responsibly to respond in a similar manner. This approach may be particularly appropriate to dealing with matters of speech and expression, where individuals may not be aware that their behaviour is causing distress
- 1.9 Employees who have any concerns about matters concerning work, or who have raised a grievance (formally or informally) may wish to seek support and guidance from a trade union representative, the HR representative for their work area or, for issues covered by the Dignity and Respect Policy, a Dignity & Respect Advisor or Speak Out Guardian.
- 1.10 Time limits (other than those for prior notification of Hearings or under 1.6 above) are indicative – there may be circumstances, particularly in the case of complex cases, where these are not realistic. If it is not possible to respond or take action within the time limits referred to in this Procedure, the employee should be given an explanation for the delay as soon as possible and advised when a response can be expected. The time limits may be varied by mutual agreement in individual cases.
- 1.11 An employee will not be penalised for having raised a genuine grievance, even if it subsequently turns out they were mistaken. However it will be a disciplinary offence for an employee to raise a malicious grievance, vexatious grievance, or one which they know to be false, and/or to encourage any employee to give a misleading statement or to withhold evidence in the course of a hearing or investigation.
- 1.12 Complaints and/or evidence from an anonymous source will not be considered.

## 2. Scope

2.1 A grievance may be raised about matters concerning work, for example:

- terms and conditions of employment (except pay, see below);
- health and safety;
- work relations;
- bullying, harassment or abuse;
- new working practices;
- working environment;
- discrimination.

2.2 This procedure does not apply in the following circumstances:

- Where the complaint is about actions or decisions taken under the disciplinary, capability/performance, probation, redundancy, ill health/incapacity, fixed term contract or other dismissal procedures or the initiation of those procedures. Complaints about these matters should be considered at hearings under the applicable procedure, and the outcome of the appeal stage of that procedure is final.
- Where the complaint is about pay/grading decisions, which will be managed through the appropriate grading appeal procedure.
- Collective disputes, which will be managed through the collective disputes procedure.
- Where a grievance is raised by an employee after termination of their employment, or where the employee ceases to be employed during the course of the procedure. In such circumstances, the University shall notify the former employee of the appropriate procedure, if any, to be followed.

2.3 The University operates a separate Public Interest Disclosure Policy (Whistleblowing) to enable employees to report illegal activities, wrongdoing or malpractice. However, where an employee considers they have been victimised for an act of whistleblowing, they may raise the matter under this Procedure.

### 3. Right to be accompanied at hearings

3.1 An employee may bring a companion to any hearing under the formal stages of this procedure. The companion may be either a trade union representative or a work colleague. For issues covered by the Dignity and Respect Policy, the work colleague may be a Dignity & Respect Advisor or Speak Out Guardian. The employee must tell the HR Casework Team who their chosen companion is, in good time before the hearing.

3.2 The companion may make representations, ask questions, and sum up the employee's case, but will not be allowed to answer questions on their behalf. The employee may confer privately with their companion at any time during the hearing.

3.3 If the companion is unavailable at the time the hearing is scheduled then the employee can ask for the hearing to be postponed for up to one week, on one occasion only. Following such a postponement, the University reserves the right to proceed with the hearing in the employee's absence.

3.4 Whilst there is no right to be accompanied to meetings under clauses 6 or 9, the University will not object to any reasonable request to be accompanied by a work colleague or trade union representative to an informal meeting, but the university will not postpone/delay the informal procedure due to unavailability.

### 4. Relationship with other procedures

4.1 At any stage of this Grievance Procedure, the Director of Human Resources or HR Casework Manager may, if other proceedings (for example, disciplinary procedures, capability/performance procedures or a redundancy procedure) concerning the employee and relevant to the subject matter of the grievance are pending or in progress, or for any other good reason, at their discretion:

- direct that both cases are dealt with concurrently under a single investigation; and/or
- direct that the grievance should be considered at a formal hearing under any other procedure; or
- defer consideration of the grievance (in whole or in part).

The employee will be given the reason(s) for the decision; however the decision of the Director of Human Resources or HR Casework Manager on this shall be final.

4.2 There is no obligation on the University to suspend the other proceedings in order to address the grievance.

4.3 Investigations that have been undertaken under this grievance procedure may be used as and where appropriate to inform another procedure.

### 5. Confidentiality

5.1 Our aim is to deal with grievances sensitively and with due respect for the privacy of all individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this procedure. This is not intended to prevent the employee from discussing the matter with their companion (see clause 3) in confidence.

5.2 The University does not make audio/visual recordings of hearings and employees and anyone accompanying them (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure. The University will arrange for notes to be taken of all meetings or hearings, and a copy of notes of investigation meetings will be sent to the employee and witnesses and agreed where possible. Where not agreed,

the employee or witness can add an addendum to the notes. Notes of hearings under the formal procedure will be sent to the employee on request.

- 5.3 The employee will be informed of the outcome of their grievance; however where the complaint is about another person then the employee is not entitled to be informed of the actions (if any) taken against that person.

## 6. Informal Resolution

- 6.1 The grievance procedure is not an alternative to dealing with a matter informally. As far as is reasonably possible, before beginning this procedure the employee is first expected to attempt, to resolve the grievance informally through discussions with their line manager (or other appropriate manager where their concern relates to their immediate supervisor/line manager) or with the person to whose conduct the grievance relates.

*Temporary Amendment:* Employees are still expected to raise concerns informally although it is accepted that it may take longer for them to do so. If the employee's manager or person to whose conduct the grievance relates is unavailable, then the employee should seek advice from another manager or a member of the HR team.

- 6.2 Where an employee is uncomfortable raising the matter directly with the person to whose conduct the grievance relates (for example because the employee feels they have been bullied or harassed), they should seek advice from their line Manager, a member of the HR team, or, for issues covered by the Dignity and Respect Policy, a Dignity & Respect Advisor or Speak Out Guardian and may ask them to intervene informally on their behalf. Having agreed to assist in resolving the issues, a typical approach by the line manager/HR would involve separate initial meetings with the parties, followed by a meeting at which all the parties meet and seek to reach a resolution.

- 6.3 In some circumstances, it may not be appropriate for the grievance to be resolved informally. In these cases, the Director of Human Resources or HR Casework Manager may agree that it should proceed directly to the formal procedure.

## 7. Formal Procedure

- 7.1 If the grievance cannot be resolved informally, or where informal steps are not appropriate (following guidance from People Services) then the employee should write to their College Pro-Vice-Chancellor/Head of Service (or other appropriate manager) indicating that they wish the matter to be considered under the formal Grievance Procedure.

*Temporary Amendment:* The Director of Human Resources will determine whether to proceed with the formal stages of the procedure, or whether to delay enacting the formal procedure, including any investigation and/or hearing. In taking this decision consideration will be given to how far the proceedings have already progressed (e.g. whether an investigation has been commenced or completed), the impact on the employee of any delay and whether alternative means of conducting a hearing can reasonably be followed, i.e. by Microsoft Teams or partially in person. In practice this means that new formal cases may be delayed, or existing cases could be paused. Where it is considered appropriate to continue with the formal procedure then the employee (and their representative) will be informed of this in writing, and the method of 'hearing the case' (i.e. by teams or partially in person) agreed. A temporary variation may be made to the level of HR support for the panel. Timescales for the meeting to be held by, paperwork to be received by and outcomes to be agreed by will be agreed as reasonable. This will not affect an employee's right of appeal and the period for raising an appeal will be set out in the outcome letter

- 7.2 The written grievance should contain a brief description of the nature of the complaint, including any relevant facts, dates, and names of individuals involved. The employee may be asked to provide further details, either in writing or at an informal meeting.

- 7.3 Where the grievance is outside the scope of this procedure (see clause 2) then it will be referred into the appropriate procedure (see clauses 2.2, 2.3 and 4.1).

## 8. Mediation

- 8.1. Upon receipt of a formal grievance, the College Pro-Vice-Chancellor/Head of Service will refer the grievance to the Director of Human Resources who, where mediation is considered appropriate, will contact the employee (and others who may be the subject of the grievance) with a view to resolving the grievance through mediation, in accordance with the University's Mediation Procedure. In some circumstances, it will not be appropriate for the Mediation Procedure to be applied to the grievance: where this is agreed by the Director of Human Resources or HR Casework Manager, it will proceed directly to the formal procedure.

*Temporary Amendment:* Mediation will be encouraged if informal resolution has not been successful in resolving the problem. There may be a delay in this taking place or consideration will be given as to whether mediation would be conducted via Microsoft Teams.

## 9. Investigation

- 9.1 The Director of Human Resources or the HR Casework Manager may in certain circumstances commission an appropriate person to investigate the grievance. The purpose of the investigation is to gather evidence and to enable a decision to be taken on whether the matter should proceed to a formal hearing under this procedure.

- 9.2 Where an investigation is to be carried out the employee will be informed of this in writing. And the following principles will apply:

- As part of the investigation, the employee may be interviewed and asked to clarify the nature of their complaint and/or provide further information, for example names of relevant witnesses and relevant documents.
- If there are witnesses to an incident or the employee has made an allegation against someone else, written statements from such persons will be obtained and/or where appropriate these persons will be interviewed and a note or statement from each interview will be prepared. Other persons who may have relevant knowledge of the matter complained of may also be interviewed or asked to give a statement.
- Employees should co-operate fully and promptly in the investigation and attend interviews as requested.
- Only in exceptional circumstances will statements or interview notes be permitted to be anonymised, for example if there is a genuine concern for personal safety. This should be agreed with the HR Casework Manager.

- 9.3 Following any investigation, the College Pro-Vice-Chancellor/Head of Service in conjunction with the Director of Human Resources may:

- arrange for a Grievance Hearing to take place in accordance with clause 10; or,
- direct that the grievance should be considered under any other procedure in accordance with paragraph 4.1; or,
- refer the matter for mediation in accordance with clause 8.1; or,
- dismiss the grievance where it is found to be vexatious, trivial, false, malicious or mistaken and/or where the investigation finds insufficient evidence to substantiate the complaint. Where the grievance is dismissed then the employee will be informed of the reason and may appeal this decision (see clause 12).

- 9.4 If appropriate, where sufficient evidence is found to substantiate the complaint, or where there is evidence that the grievance is false, vexatious or malicious then the matter may be referred into the Disciplinary Procedure.

## 10. Stage 1 - Grievance Hearing

- 10.1 Where informal action or mediation has been considered inappropriate or has not resolved the concerns (or in accordance with clause 9.3), the University will arrange for a Grievance Hearing to take place. The Grievance Hearing should normally be held within two weeks of receipt of the formal complaint, or where applicable, within two weeks of the outcome of mediation or any investigation.
- 10.2 At least one week before the date of the grievance hearing, the HR Casework Manager (or his or her designate) will write to the employee:
- advising of the date, time and venue of the grievance hearing;
  - advising of the right of the employee to attend the hearing in person and to be accompanied (clause 3.1);
  - advising of the right of the employee to call witnesses;
  - enclosing a copy of the outcome of any investigation, including statements from any witnesses and other relevant evidence;
- 10.3 The employee and their companion (if any) should make every effort to attend the Grievance Hearing. If the employee or their companion cannot attend at the time specified, they should inform the Casework Team immediately.
- 10.4 At the Grievance Hearing:
- the employee may put their case in person or through their companion prior to witnesses being called or other evidence taken;
  - the manager responsible for the Grievance Hearing (the “Chair”) may hear evidence from witnesses and the employee may arrange for witnesses to attend and give evidence;
  - the Chair may question any witnesses;
  - the employee or their companion may also question witnesses, although the Chair may determine that all questions are directed through them.
- No additional written evidence may be introduced at this stage.
- 10.5 Following the Grievance Hearing the Chair may carry out further investigation before reaching their decision. Where this is considered appropriate then the employee will be informed of this at the end of the Grievance Hearing, or as soon as possible thereafter.
- 10.6 Within one week of the Grievance Hearing, the Chair should write to the employee advising of their decision, or where this is not possible the employee will be notified of this in accordance with clause 1.10.

## 11. Stage 2 – Appeal

*Temporary Amendment.* Employees continue to have a right to appeal. There may be a delay in the University being able to hear an appeal, and the employee will be informed of the likely timeframe in writing as soon as possible following receipt of their appeal.

- 11.1 If the employee continues to be aggrieved following notification of the outcome of the Grievance Hearing, they may appeal in writing to the Director of Human Resources within two weeks of the date of the written outcome of the Grievance Hearing, setting out the grounds of appeal in full.
- 11.2 An appeal will be heard by a panel comprising two senior managers who have had no previous involvement in the case.
- 11.3 The appeal will be a review of the decision taken at Stage 1. No new evidence may be presented to the Grievance Appeal Hearing, nor any witnesses called, unless the person Chairing the Grievance Appeal Hearing (the “Chair”) is satisfied that there are exceptional reasons why such evidence or witnesses were not produced at the Stage 1 Grievance Hearing and that it is necessary in the interests of fairness, in reviewing the decision taken

at Stage 1, for the Grievance Appeal Hearing to consider this evidence or hear from the witnesses concerned.

- 11.4 The Grievance Appeal Hearing should normally be held within four weeks of the receipt of the employee's appeal.
- 11.5 At least one week before the date of the Grievance Appeal Hearing, the HR Casework Manager (or his or her designate) will write to the employee
- advising of the date, time and venue of the Grievance Hearing;
  - advising of the right of the employee to attend the Hearing in person and to be accompanied by a fellow worker or trade union representative;
  - enclosing a copy of any relevant documentation, including statements from any witnesses and other relevant evidence.
- 11.6 The manager who chaired the stage 1 Grievance Hearing will attend the Grievance Appeal Hearing as the University's Representative.
- 11.7 At the grievance Appeal Hearing
- the employee may present their appeal in person or through their companion;
  - the Appeal Panel may question the employee;
  - the University's Representative will respond to the appeal;
  - the employee or their companion and the Appeal Panel may question the University's Representative.
- 11.8 Following the Grievance Appeal Hearing the Chair may carry out further investigation before reaching their decision. Where this is considered appropriate then the employee will be informed of this at the end of the Grievance Appeal Hearing, or as soon as possible thereafter.
- 11.9 Within one week of the Grievance Appeal Hearing, the Chair should write to the employee advising of their decision, or where this is not possible the employee will be notified of this in accordance with clause 1.10.
- 11.10 The decision of the Grievance Appeal Hearing is final within the procedures of the University.
12. Appeal against Dismissal of a Grievance under Clause 9.3
- 12.1 If the employee wishes to appeal the decision of the College Pro-Vice-Chancellor/Head of Service/Head of People Services to dismiss their grievance then they may appeal in writing to the Director of Human Resources within two weeks of being notified of the decision to dismiss their grievance, setting out the grounds of appeal in full.
- 12.2 An appeal will be heard by a panel comprising two senior managers who have had no prior involvement in the case.
- 12.3 The Grievance Appeal Hearing should normally be held within four weeks of the receipt of the employee's appeal.
- 12.4 The Grievance Appeal Hearing will ordinarily be a review of the decision under 9.3 unless the manager chairing the appeal considers it is necessary in the interests of fairness for it to take the form of a full hearing of the grievance (following the process under clause 10.4).
- 12.5 At least one week before the date of the Grievance Appeal Hearing, the HR Casework Manager (or his or her designate) will write to the employee
- advising of the date, time and venue of the Grievance Hearing;
  - advising of the right of the employee to attend the Hearing in person and to be accompanied by a fellow worker or trade union representative;
  - advising of the right of the employee to call witnesses;

- enclosing a copy of the outcome of any investigation, including statements from any witnesses and other relevant evidence.
- 12.6 The Investigating Officer or the College Pro-Vice-Chancellor/Head of Service may attend the Grievance Appeal Hearing as the University's Representative.
- 12.7 At the grievance Appeal Hearing
- the employee may present their appeal in person or through their companion;
  - the Appeal Panel may question the employee;
  - the University's Representative will respond to the appeal;
  - the employee or their companion and the Appeal Panel may question the University's Representative.
- 12.8 Following the Grievance Appeal Hearing the Chair may carry out further investigation before reaching their decision. Where this is considered appropriate then the employee will be informed of this at the end of the Grievance Appeal Hearing, or as soon as possible thereafter.
- 12.9 Within one week of the Grievance Appeal Hearing, the Chair should write to the employee advising of their decision, or where this is not possible the employee will be notified of this in accordance with clause 1.10.
- 12.10 The decision of the Grievance Appeal Hearing is final within the procedures of the University.
- 12.11 The Grievance Procedure does not allow a further grievance to be brought against the College Pro-Vice-Chancellor/Head of Service (or the Director of Human Resources) in respect of their decision to dismiss a grievance under clause 9.3.