

GRIEVANCE POLICY AND PROCEDURE

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This document can be made available **in an alternative format or language**. For further details please contact Human Resources (as above).

1 Equal opportunities statement

- 1.1 Scottish Borders Council (the Council) is committed to treating all employees fairly. Managers and staff will not discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, gender, gender reassignment, sexual orientation, marital status, disability, age, or trade union membership and activity.
- 1.2 This policy will allow flexibility by way of reasonable adjustments for employees with a disability. Examples include allowing more time at grievance hearings or any adjustments to the arrangements for the hearing which may be reasonably required.. Offering this and other reasonable adjustments will ensure that access to the procedure is fair and equitable. HR should be contacted for further advice.
- 1.3 Employees have a right to be accompanied in formal investigations and at grievance hearings and appeals for advice and support. This will normally be by either a workplace colleague or an accredited trade union representative. The choice of workplace colleague is subject to approval by the commissioning manager but all reasonable requests will be approved. If the employee's nominated trade union representative is unable to attend an investigatory meeting, grievance hearing or appeal within a reasonable period, the commissioning manager may, after taking advice from HR, instruct that the meeting, hearing or appeal take place with an alternative accredited trade union representative.
- 1.4 In addition to the above, where appropriate, young employees (those aged 16 to 21) may also be accompanied by their parent or legal guardian. Likewise disabled employees may also be accompanied by their advocate, personal assistant or carer where appropriate.
- 1.5 On request this policy and any associated paperwork can be made available in a different format or language. When required please contact HR for further advice.

2 Policy Statement

- 2.1 Scottish Borders Council (the Council) recognises that from time to time an employee may have a problem or concern about their work, working environment or working relationships. The Council acknowledges that where such issues are unresolved this is likely to adversely affect the employee and potentially their manager and other colleagues. This may in turn impact on the achievement and maintenance of satisfactory performance.
- 2.2 Employees are encouraged to raise any potential grievance at the earliest possible opportunity as in general the earlier an issue is aired the more likely it is that a satisfactory resolution can be achieved.
- 2.3 Managers have a responsibility to consider fully any issues raised by employees and explore possible solutions, with a view to reaching a satisfactory outcome. Similarly employees have a responsibility to be realistic about expectations and be willing to consider options put forward.
- 2.4 There may be occasions when a potential grievance cannot be resolved informally, the Council therefore endorses a grievance procedure to ensure that all managers adopt a uniform approach. The procedure provides a framework to ensure that any

grievance is dealt with in a fair and consistent manner, whilst recognising that each case must be treated on its merits taking account of individual circumstances.

2.5 The Grievance Procedure also provides a process which aims to;

- Resolve problems as quickly as possible
- Resolve grievances as closely as possible to where they arise
- Bring issues out into the open so that they can be properly considered by the relevant manager
- Maintain trust and confidence between employees and managers.

Any employee raising a grievance will have the right of appeal against the outcome of a grievance meeting, ultimately to the Staffing Appeals Committee.

2.6 The Grievance Procedure takes account of legislative requirements, the Advisory, Conciliatory and Arbitration Service (ACAS) Code of Practice on Grievance Procedures and any national agreements or guidance issued by the Convention of Scottish Local Authorities (COSLA).

3 Scope

3.1 This procedure applies to all employees of the Council except for the Chief Executive, who is covered by a separate procedure.

4 Aim

4.1 The aim of the procedure is to ensure that employees of the Council are given the opportunity to express their views and to have any issues resolved in a fair and speedy manner.

4.2 The procedure seeks to achieve solutions through appropriate informal methods prior to the use of the formal processes, and is concerned to achieve a mutually acceptable resolution where possible.

5 Purpose

5.1 This procedure is to be used where an employee has a problem or concern about their work, working environment or working relationships that they have been unable to resolve informally with their line manager.

5.2 The main issues which may give rise to a grievance include:

- terms and conditions
- health and safety
- working relationships
- bullying and harassment (see Dignity and Respect Policy)
- new working practices
- working environment
- organisational change
- equal opportunities (see Equality, Diversity and Human Rights Policy)

5.3 The procedure does not cover:

- an appeal against disciplinary action proposed or taken against an employee, as this right of appeal is included in the disciplinary procedure
- concerns about the grade of a job for which there is a separate procedure

- any issue which is already the subject of consultation or negotiation with a recognised Trade Union

6. Employer/Employee Responsibilities

- 6.1 The Council recognises that unresolved grievances are likely to adversely affect work standards, morale and working relationships. The Council acknowledges its responsibilities as an employer to deal promptly and fairly with concerns raised by employees to stop them developing into major problems.
- 6.2 All managers and employees have a responsibility to try to resolve issues informally if at all possible. Where this is inappropriate or the issues remains unresolved the Council has established this procedure to enable the grievance to be addressed formally.

7 Principles

- 7.1 Where possible employees are encouraged to use informal mechanisms to secure a resolution to any potential grievance.
- A formal grievance must be raised in writing.
 - A grievance may be raised by an individual employee or collectively by two or more employees who share a common grievance.
 - A meeting must be offered to the employee(s) to discuss the grievance and try to resolve it.
 - The employee(s) must take all reasonable steps to attend the meeting.
 - At any grievance meeting the employee(s) will have the right to be represented by a Trade Union representative or a colleague.
- 7.2 The employee(s) and/or the manager may call witnesses to attend meetings at any of the formal stages. Line managers of witnesses called must take all reasonable steps to grant the required time off, which will be with pay, to enable any witnesses to attend.
- 7.3 The employee(s) will be advised of the outcome of any grievance meeting, normally orally at the conclusion of the meeting, but in any event, in writing within 5 working days.
- 7.4 The employee(s) will have the right of appeal against any decision, ultimately to the Staffing Appeals Committee. (In addition Teachers may have a right of appeal to the Scottish Negotiating Committee for Teachers)
- 7.5 There are four stages in the formal grievance procedure. Decisions relating to a grievance should be taken at the lowest appropriate level, but depending on circumstances and the level of the employee in the management structure it may be appropriate that a grievance is first heard at any of the first three levels.
- 7.6 All grievances should be dealt with quickly, fairly and within agreed time limits.

8 Informal Resolution

- 8.1 Where the employee has a concern they should normally raise the issue directly with their line manager, or ask their Trade Union representative to make an informal

approach on their behalf. In the majority of cases it will be possible to resolve potential grievances informally through discussion with the line manager.

- 8.2 Where discussion with the line manager is not appropriate, for example if the line manager is the subject of the concern, the potential grievance may be raised with the next level of management. If the potential grievance is of a particularly sensitive or complex nature the employee may seek advice from HR.
- 8.3 Where an informal approach does not resolve the problem, then the Grievance Procedure should be used by raising a grievance in writing.

9 Formal Grievance

- 9.1 If it has not been possible to resolve a potential grievance informally the employee(s) may proceed to Stage 1 of the formal procedure.
- 9.2 It may be appropriate, however, to raise the grievance at Stage 2 or 3, depending on the manager's position in the Council structure.

For example:

- where the employee reports to a Service Director the grievance would commence at Stage 2.
 - where the employee reports to an Executive Director or to the Chief Executive the grievance would commence at Stage 3.
 - where the grievance relates to the employee's line manager the grievance should be raised with the next more senior manager,.
- 9.3 Whatever stage the grievance commences at, the formal Grievance Procedure will be started by the employee(s) completing a Grievance Notification Form (GNF).
- 9.4 The employee(s) will have the right to be represented at all stages by a Trade Union representative or a colleague.
- 9.5 The manager may be accompanied at any meeting by an appropriate adviser(s) and/or a note-taker.

Stage 1

The employee(s) must complete a Grievance Notification Form (GNF) (See Section 14), including clear details of the reason for the grievance, the resolution sought and who will represent them if appropriate. This should then be given/sent it to their line manager, or another manager if appropriate.

The line manager will arrange to meet with the employee(s) to discuss the grievance within 10 working days (or otherwise by mutual agreement) of receipt of the GNF, advising who, if anyone, will accompany them at the meeting. Before the meeting the manager may need to undertake some investigation to clarify issues raised in the grievance.

At the meeting the manager will discuss the grievance and possible resolutions with the employee(s), with a view to reaching a mutually agreeable resolution. If possible the manager will give their decision at the end of the meeting, following an adjournment if necessary. However, depending on the complexity of the issues a decision may be delayed to allow the manager to further investigate and/or consult other managers or advisers. In any case the decision, including the reason for it, will be given to the employee(s) in writing within 5 working days (or otherwise by mutual agreement). The letter must also indicate who

the employee should contact if they are dissatisfied with the decision (the nominated manager) and the time limit for doing so.

Stage 2

If the employee(s) is not satisfied with the decision given at Stage 1 they must write to the nominated manager, within 10 working days of receiving the decision, requesting a Stage 2 meeting. The letter must explain why they are dissatisfied with the decision and what resolution they are seeking. A copy of the GNF and the Stage 1 response must be attached.

The manager will arrange to meet the employee(s) to discuss the grievance within 10 working days (or otherwise by mutual agreement) of receipt of the request for a Stage 2 meeting. The manager who took the Stage 1 decision will normally attend this meeting to clarify the reason for their decision and assist in the discussion.

Thereafter the process is the same as set out in Stage 1.

Stage 3

If the employee(s) is not satisfied with the decision given at Stage 2 they must write to the nominated manager, within 10 working days of receiving the decision, requesting a Stage 3 meeting. The letter must explain why they are dissatisfied with the decision and what resolution they are seeking. A copy of the GNF, the Stage 1 response, the request for a Stage 2 meeting and the Stage 2 response must be attached.

The manager will arrange to meet the employee(s) to discuss the grievance within 10 working days (or otherwise by mutual agreement) of receipt of the request for a Stage 3 meeting. The manager who took the Stage 2 decision will normally attend this meeting to clarify the reason for their decision and assist in the discussion. A representative from HR will also normally attend to advise the manager chairing the meeting. The manager who took the Stage 1 decision may also be asked to attend.

Thereafter the process is the same as set out in Stage 1.

Stage 4

If the employee(s) is not satisfied with the decision given at Stage 3 they must write to the Service Director HR & Communications, within 10 working days of receiving the decision, requesting an Appeal meeting under Stage 4. The employee(s) must attach a copy of the GNF and all subsequent correspondence relating to the grievance.

The employee and the manager who chaired the Stage 3 meeting will be advised by the Service Director HR & Communications to prepare a written statement of case to be submitted to the Staffing Appeals Committee. The employee's(s') statement must explain why they are dissatisfied with the decision, what resolution they are seeking and give details of any other relevant information and/or copies of any papers to which they wish to refer at the Appeal. The manager's statement must explain why they could not agree to the employee's proposed resolution, why they reached their decision and give details of any other relevant information and/or copies of any paper to which they wish to refer at the Appeal. The statements must be submitted to the Clerk to the Council to be received at least 8 working days before the date of the Appeal.

The Appeal meeting with the Staffing Appeals Committee will be arranged to take place normally within 20 working days of receipt by Service Director HR & Communications of the request for the Appeal meeting. The employee(s) and the manager who chaired the Stage 3 meeting will be given at least 10 working days' notice of the date of the Appeal.

The Service Director HR & Communications will attend the Appeal meeting to advise the Committee. The employee will attend the meeting, along with a Trade Union or other representative of their choice if they wish. The manager who chaired the Stage 3 meeting will also attend, supported by another manager and/or HR representative. If either party wishes to call witnesses they must notify the Clerk to the Council of their names at least 3 working days before the meeting.

The conduct of the Appeal meeting is set out in Appendix 1 (Section 13).

If possible the Chair of the Committee will give the decision at the end of the meeting, following an adjournment. However, depending on the complexity of the issues a decision may be delayed to allow further investigation and consideration. In any case the decision will be given to the employee(s) in writing within 10 working days (or otherwise by mutual agreement).

10 Appeals to National Level

- 10.1 In respect of SJC staff the Grievance Procedure ends at Stage 4, unless it is mutually agreed between Scottish Borders Council and a recognised Trade Union that the grievance be referred to national level to be considered as appropriate by the Scottish Joint Council for Local Government Employees, Scottish Joint Negotiating Committee for Local Authorities' Services or the Joint Negotiating Committee for Chief Officials.
- 10.2 In respect of Teaching staff the Grievance Procedure ends at Stage 4 unless the teacher considers that they have a dispute with Scottish Borders Council regarding the application and/or interpretation of the national agreement on salaries and terms and conditions of service. They may then ask for the case to be considered by the Joint Secretaries representing the Employers' Side and the Teachers' Side of the Scottish Negotiating Committee for Teachers.

11 General Provisions

- 11.1 Subject to the employee(s) and the manager agreeing, the time limits may be extended (e.g. to take account of matters such as sickness absence on the part of the employee, employee's representative, manager or a critical witness, the degree of investigation required or the number of witnesses to be called.) Neither party shall unreasonably refuse an extension to time limits.
- 11.2 Where two agreed meetings have been postponed at the request of the employee(s) or the employee's representative for reasons other than sickness or enforced absence (such as Jury Service or attendance at an Employment Tribunal), the manager, in consultation with HR, has the discretion to determine the grievance concluded.
- 11.3 If a manager does not respond to a grievance within the specified time limits, or mutually agreed revised time limits, the employee may proceed to the next stage of the procedure.
- 11.4 If an employee does not progress the grievance within the specified time limits, or mutually agreed revised time limits, the employee will lose the right to progress the grievance and the grievance will be considered to be concluded.

- 11.5 Where a collective grievance is raised by a Trade Union Representative, attendance at meetings will normally be restricted to not more than three employees out of the group together with the Trade Union Representative.
- 11.6 Where a collective grievance is raised without Trade Union representation, employees will be requested to limit the number of the group attending any meetings to not more than three, although all employees in the group have a right to attend.
- 11.7 The aggrieved employee may at any stage withdraw from the procedure by giving notification in writing. In these circumstances the grievance will be considered to be concluded, however, any investigation instigated as a result of the grievance may still continue.
- 11.8 Where a grievance is lodged with the support of a recognised Trade Union in response to a proposed change to terms and conditions of employment, no change shall be made to the relevant terms and conditions of employment until this procedure has been exhausted.
- 11.9 Where a grievance has been lodged with the support of a recognised Trade Union in response to changes to working practices or organisational structures, where practicable no change shall be made until this procedure has been exhausted.
- 11.10 If any grievance is believed to be potentially malicious or frivolous a disciplinary investigation may be instigated against the employee(s) who raised the grievance, which may result in disciplinary action.
- 11.11 Where the procedure refers to the Service Director HR & Communications and the Clerk to the Council, an alternative appropriate officer may represent them.

12 POLICY REVIEW

- 12.1 The outcomes of this Policy will be reviewed at least every two years. If any trends emerge these will be analysed and appropriate steps taken, potentially including a full review of the policy.
- 12.2 Additionally, as a minimum an Integrated Impact Assessment of the policy will be carried out every two years in accordance with the Council's HR Policy Review programme or as required by legislative requirements in order that the Policy remains relevant and fit for purpose.

APPENDIX 1 CONDUCT OF APPEAL BY COMMITTEE

1 Introduction

- 1.1 The Chairman should introduce those present, and explain that the purpose of the Hearing is to consider an appeal against a decision taken under the Grievance Procedure and outline how the hearing will be conducted.

2 Statement of Case by Employee(s) (or Representative)

- 2.1 The employee(s) (or representative) is given the opportunity to state his or her grievance, explain why they are dissatisfied with the decision, and what resolution they are seeking. This may include calling witnesses if appropriate and ensuring that those present are aware of the contents of any relevant documents.

3 Questions on Employee Case

- 3.1 The manager(s) is given the opportunity to ask questions to clarify the statement of case, including questioning any witnesses.
- 3.2 The employee (or representative) shall be given a further opportunity to question any witnesses on issues raised during the manager's questioning.
- 3.3 The Appeals Committee and their advisers are given the opportunity to ask questions at any stage to clarify the case.

4 Statement of Case by Management

- 4.1 The manager(s) shall state the reasons for the decision they have taken and outline why they were unable to agree to the resolution sought by the employee. This may include calling witnesses if appropriate and ensuring that those present are aware of the contents of any relevant documents.

5 Questions on Management Case

- 5.1 The employee (or representative) is given an opportunity to ask questions to clarify the statement of case, including questioning any witnesses.
- 5.2 The manager shall be given a further opportunity to question any witnesses on issues raised during the employee's (or representative's) questioning.
- 5.3 The Appeals Committee and their advisers are given the opportunity to ask questions at any stage to clarify the case.

6 Further Questioning and Clarification

- 6.1 The Appeals Committee and their advisers may use this stage to clarify any issues and to check that what has been said is understood. Where either party is asked to clarify any point, the other party must also be given the opportunity to comment.

7 Summing - up

- 7.1 The employee (or representative) shall have the opportunity to sum-up if they so wish, introducing no new material.
- 7.3 The manager(s) shall have the opportunity to sum-up if they so wish, introducing no new material.

8 Adjourment

- 8.1 Any party may request an adjournment at any time during the hearing. It is essential however, that the Chairman calls an adjournment before a decision is reached.
- 8.2 The Appeals Committee, together with any advisers shall deliberate in private. They may recall the employee (or representative) and the manager(s) to clarify points of uncertainty on the evidence already given, in which case both parties are to return. The Appeals Committee may also recall each party individually to explore/negotiate potential solutions to the grievance.
- 8.3 Where the facts are unclear the Appeals Committee may require further information to be provided and in these circumstances the Hearing may need to be reconvened at a later date to hear and consider the additional information. Any additional written information will be copied by the Clerk to the Committee to all parties. The hearing must be reconvened as soon as possible.
- 8.4 If practicable, the Chairman shall recall the parties and announce the decision at the conclusion of the meeting.
- 8.5 In any event the Clerk to the Committee shall confirm the decision in writing to the employee (or representative) within 10 working days of the Hearing.

GRIEVANCE NOTIFICATION FORM

To raise a grievance following attempts to resolve the matter informally, the employee(s) must complete this form and give/send it to their line manager, or other appropriate manager as detailed in the Council's Grievance Procedure.

Name: _____ Post Title: _____

Department: _____ Tel No/ext.: _____

STATEMENT OF GRIEVANCE

1. Please outline your grievance below, including details of any relevant dates, witnesses and documents as appropriate (continue on a separate sheet if required).

2. Please outline what you would like to happen to resolve your grievance.

3. Please indicate the name of your representative (Trade Union or colleague) if you wish to have one.

Signature: _____ Date: _____

To be completed by the manager receiving the grievance, who must then send a copy of the form to the Senior HR Adviser in Council HQ

Name: _____ Post Title: _____

Signature: _____ Date of Receipt: _____