Grievance Policy

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# Version History

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| 0.1 | Feb 2022 | Senior HR Business Partner | First draft ICB Policy |
| 0.2 | April 2022 | Viv Barnes, Governance Lead | Review of compliance with ICB policy template |
| 0.1 | June 2022 | Senior HR Business Partner | Final draft for ICB approval |
| 1.0 | 9/8/2022 | Senior HR Business Partner | Final Review of Version 1.0 |
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## Introduction

The Integrated Care Board (ICB) encourages open communication between employees and their managers to ensure that questions and problems arising during the course of employment can be aired and, where possible, resolved quickly and to the satisfaction of all concerned. The aim of this policy is to settle grievances as near to the point of origin as possible. It is also preferable that both employees and managers should try to resolve issues informally first, and to use the formal route where the informal route has been explored but has been unsuccessful.

The ICB recognises that following a grievance procedure can be a stressful experience for all parties involved and any staff involved in this process are entitled to be treated with dignity and respect. The ICB will not tolerate abusive or insulting behaviour from anyone taking part in or conducting grievance procedures and will treat any such behaviour as misconduct under the ICB’s [Disciplinary policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).

## Purpose

The aim of this policy is to settle grievances as near to the point of origin as possible. It is also preferable that both employees and managers should try to resolve issues informally first, and to use the formal route where the informal route has been explored but has been unsuccessful.

## Scope

This policy applies to all directly employed staff working within the ICB. It does not apply to temporary, bank, agency staff or work experience students or volunteers.

## Definitions

* **Grievance** - a complaint, criticism, or objection. Grievances can be collective or individual.
* **Collective Grievance** – Where a number of people have the same grievance or grievances of a similar nature. The same process will be followed for a singular grievance although a spokesperson(s) will usually be identified from the collective group.
* **Status Quo** – The working and management arrangement that applied before the grievance/collective grievance, which will prevail at all stages of this policy other than in exceptional circumstances where operational needs determine that this cannot be the case, and at management’s discretion. Neither side will take any action that could prejudice the outcome, excluding lawful Trade Union activity, until the outcome is reached.

## Roles and Responsibilities

### Integrated Care Board

* + 1. The ICB Board is accountable and responsible for ensuring that the ICB has effective processes for the management of grievances in accordance with relevant legislation and best practice guidance.

### Chief Executive

* + 1. The Chief Executive is accountable for the policy and procedure being in place to ensure fair and equitable approach to grievances raised by employees.

### Policy Authors

* + 1. Policy authors are responsible for ensuring that this document is updated when any changes are made to legislation or the ACAS Code of Practice.

### Executive Chief People Officer

* + 1. The Executive Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

### Line Managers

* + 1. The management of grievances is a management function. Each manager is responsible for ensuring that any grievance raised by an employee, either verbally or in writing, is dealt with under this policy.
    2. Managers are accountable for treating employees who raise grievances in a sensitive, fair and consistent manner.
    3. Managers are responsible for:
* Notifying Human Resources of any grievance raised with them for the purpose of statistical returns.
* Maintaining confidentiality during the application of this Policy and its outcomes.

### Employees

* + 1. All employees are responsible for:
* Bringing concerns and grievances to the immediate attention of their line manager or another appropriate person.
* Working with their manager to try and resolve grievances informally where possible.
* Take responsibility for making their own suggestions in finding a resolution.
* Treating those involved in this process with respect and fairness.
* Attending meetings as requested under this Policy.
* Arranging the attendance of their chosen companion at meetings
* Notifying the manager conducting the interview who their companion will be prior to the meeting.
* Maintaining confidentiality during the application of this Policy and its outcomes.

## Key Principles

Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

* + 1. Support in the form of the Employee Assistance Programme, other psychological support or referral to Occupational Health is available for both the employee who raises a concern or the employee who is the subject of the concern raised. The Investigating Officer will ensure that options available are offered/discussed both in person and in writing. Advice can be sought from the Human Resources team regarding availability of support for employees.
    2. Where an employee has identified as having a disability, those managing the process or meetings will make every effort to accommodate requests for ‘reasonable adjustments’. Advice can be sought from the Human Resources team regarding availability of support for employees.
    3. Mediation /facilitated discussion can be offered at any stage of the process.

Employers and employees should act consistently.

Employers should carry out any necessary investigations, to establish the facts of the case.

Following an investigation, employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

Employees who raise a grievance are entitled to be accompanied throughout the formal stages of the grievance process by either a Trade Union representative or current work colleague. Legal representation is not permitted at any stage. The employee is responsible for making their own arrangements for any representation required.

Employees have the right to appeal if they do not feel their grievance has been satisfactorily resolved.

Where a grievance has been raised during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## Policy Application

### Inclusions

* + 1. Grievances apply to complaints connected with employment where the concerns raised are not covered by any other ICB policies and the problem cannot be resolved through alternative means (i.e. informal discussion, mediation).
    2. Grievances may be raised about:
* The nature of duties
* Conditions of service
* Working relationships (not covered by the [Dignity at Work Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2))
* Bias or unfair discrimination in employment decisions.

### Exclusions

* 1. The policy will not apply to complaints where there is provision under another ICB policy. These include:
* Complaints about patient care.
* Dismissal – ~~t~~his is dealt with under the appropriate appeal process dependant on reason for dismissal, e.g. probation, disciplinary, performance management.
* Performance (capability) issues – this is dealt with under the appeals process within the [Managing Performance Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).
* Redundancy – this is dealt with under the appeals section of the ICB’s [Organisational Change Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).
* Bullying and Harassment – this is dealt with under the [Dignity at Work Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).
* Statutory matters over which the ICB has no control e.g. income tax, national insurance, legislation passed by government.
* Any issue being investigated by the Counter Fraud Service. Please refer to the [Anti-Fraud and Bribery Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).
* The outcome of a Job Evaluation panel – this is dealt with under the [Job Evaluation Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).
* Whistleblowing or Freedom to Speak Up – this is dealt with under the [Raising Concerns (Whistleblowing) Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).

## Process

### Guidance

* + 1. Managers must treat the procedure seriously and should deal with all grievances promptly. Unnecessary delay may cause complaints to become magnified and distorted, and at worse, could lead to industrial disputes.
    2. Employees should raise their grievance as soon after the event(s) as possible. It is inappropriate to investigate grievances which are more than three months old. It is recognised however that it may be appropriate to investigate incidents that have taken place over a period of time or that are on- going.
    3. The various stages of the procedure should be held within reasonable time scales. The relevant manager will need to balance the aim of providing a speedy response against the need to reach a fair decision.
    4. In normal circumstances, where an employee has registered a grievance but then leaves the employment of the ICB, the grievance proceedings will be concluded as soon as possible, and will not automatically cease upon the employee leaving the employment of the ICB. Grievances may be raised after the employee has left the employment of the ICB and in this case should be done so in a timely manner, meeting the timescales given in this policy. Where an individual has left the employment of the ICB, a ‘modified’ process may be agreed whereby the individual can provide their grievance in writing and the employer can respond in writing (eliminating the requirement for a meeting to be held).
    5. Where an employee registers a grievance in response to a decision, action or proposed action by management, the status quo will normally continue until the grievance process is concluded, except in exceptional circumstances, for example, where health and safety is a risk.
    6. If part way through a grievance investigation it becomes apparent that the matter may be one where disciplinary action is appropriate, then a recommendation to this effect should be made to a senior member of the HR team. The point at which the disciplinary process commences will depend on how far through the grievance investigation is.
    7. If an employee withdraws a grievance at any stage, the manager dealing with the grievance should ensure that full reasons for the withdrawal are recorded and that the ceasing of the grievance process is confirmed to the employee in writing. However, it may be decided that further action/investigation is required under an alternative policy e.g. Disciplinary.
    8. All staff involved/included in any stage of this process are reminded to maintain confidentiality at all times. Failure to do so may result in disciplinary action being taken.
    9. Both parties should attend all meetings in the spirit of dispute resolution. Every effort should be made to discuss the issues in an open and constructive manner to enable a solution to be found which is acceptable to both parties. This may mean compromises on both sides.

### Stage 1 – Informal Resolution

* + 1. Employees must aim, wherever possible, to resolve grievances informally with their line manager and any other relevant parties. If an employee has a complaint or a grievance that they wish to discuss with their manager, they should raise this during any informal meetings with their manager, such as their supervision or 1:1. If a staff member feels unable to approach their line manager directly they should speak to the next line of management (the line manager’s manager) or a member of the HR team who can discuss ways of dealing with the matter.
    2. At the informal stage further meetings between the manager, other relevant parties, trade unions and HR can take place if this is considered to be helpful and can sometimes be useful to facilitate a resolution, without resulting in a formal process being invoked.
    3. Employees and managers should be able to clearly demonstrate that every effort has been made to resolve their issue(s) informally, before the formal process is commenced. HR can provide managers and employees with help or guidance in informal resolution and mediation.
    4. As a result of informal discussions, it may be appropriate for the line manager in conjunction with the employee to draw up an action plan, outline objectives, timescales for completion and any follow-up action and a copy kept on the personal files of those parties involved.
    5. If it is not possible to resolve the issues informally, or if it is agreed that the issues are of significant seriousness and it is not feel that the informal route is appropriate, the matter should proceed to the formal stage of the policy.

### Stage 2 – Formal Resolution

* + 1. Should the matter not be resolved informally at Stage 1 or where the issue is felt to be more serious, then the employee has the right to raise the matter formally. To do this, it is important that the employee clearly sets out the details of the grievance and desired outcome in writing by either using the ICB’s Confidential Grievance form (which can be found on the Intranet [HR Forms](https://nhs.sharepoint.com/sites/99F_Connect/SitePages/HR-Forms-&-Documents.aspx)) and is the preferred method or any other appropriate written format. If an employee’s grievance is unclear, they may be asked to clarify the complaint before any meeting takes place.
    2. The written complaint should then be sent to their line manager or if the complaint is concerning the line manager it should be sent to the next line of management and/or directly to the HR Team.
    3. In cases where two or more employees raise a grievance on the same issue, this will be known as a “Collective Grievance”. In such cases, an appropriate representative may set out details of the grievance in writing on behalf of the employees. An appropriate representative shall be defined as Trade Union Representative or a nominated employee representative.
    4. Any manager receiving a formal grievance must act upon the matter promptly and must also notify a member of the HR team.
    5. The manager dealing with the grievance needs to invite the employee to a formal meeting, to allow the employee to discuss their grievance in greater detail. Depending on the nature of the grievance, it may be appropriate to include a senior specialist (i.e. Nursing or Finance specialist) at the meeting to provide clarity around any issues raised.
    6. This meeting should be held as soon as possible, and no later than ten working days after receipt of the grievance. All parties must take all reasonable steps to attend this meeting. The employee has the right to be accompanied to this meeting by a work colleague or union representative. If this cannot be achieved, the reasons for delay should be recorded. The timing and location of the meetings must be reasonable to all parties.
    7. Wherever possible it is expected that resolutions will be presented at the meeting by the manager hearing the grievance. However, it may be necessary to adjourn the meeting to further investigate the issues.
    8. If having received the grievance the manager believes formal investigation is required prior to or as a result of the meeting to resolve the dispute, they will inform the employee. Any investigation will meet the process and timescales outlined within the Managing Investigations Guidelines.
    9. The outcome of any grievance meeting will be confirmed in writing to the employee within five working days, and it may also be necessary to hold a further meeting to discuss the outcome of any investigation. Details of their right of appeal will also be given.
    10. The presence of representative from HR may be appropriate at the Grievance meeting. Where required, this will be arranged, and the employee will be informed in advance of the meeting.

## Counter Grievances

In the event of a counter grievance being submitted, the grievance should be presented to the employee’s line manager, (or ~~appropriate recipient~~ senior manager if the complaint is about the line manager) and the usual process followed i.e. from informal to formal.

If, having considered the allegations, it is the manager’s decision to commission an investigation, serious consideration should be given to the most appropriate investigator to complete this.

If it is decided that the investigating officer commissioned to complete the original investigation is also instructed to investigate the counter claim, the rationale and decision for this should be shared with both complainants i.e. extend the scope of the original investigation.

## Vexatious or Malicious Grievances

An employee may raise a grievance that, through investigation, proves to be vexatious or malicious. In these circumstances the employee raising the grievance may find themselves subject to disciplinary action.

## Appeals

If an employee does not feel their grievance has been satisfactorily resolved, then they have the right to appeal.

Any appeal should:

* Be in writing (Part 1C of the Confidential Grievance Form or other written correspondence).
* Enclose a copy of the original Grievance and outcome of the Grievance meeting.
* Specify which aspects they remain aggrieved about and the redress being sought.
* Be submitted within five working days of the receipt of the outcome from the Grievance meeting.

The appeal should be acknowledged within five working days of receipt.

The appeal should be made to the next line of management (i.e. the manager of the person who held the original grievance), or where this is not possible, to the Director or ultimately the Accountable Officer, with a copy to the Director of Human Resources.

An appeal meeting should be arranged within twenty working days of receipt of the appeal.

The employee must be given at least five working days’ notice of the date of the appeal hearing.

The employee will have the right to be accompanied at the Appeal Hearing by either a Trade Union representative or current workplace colleague.

The next line manager or other senior nominated manager will review the findings of the original meeting(s) (including any formal investigation that may have taken place) and consider whether the conclusion reached was appropriate. The appeal panel will be required to consider whether due process was correctly followed.

Depending on the nature of the grievance it may be appropriate to include a senior specialist (i.e. Nursing specialist, Finance specialist) at the appeal meeting to provide clarity around any issues raised and to ensure a full understanding of the issues raised.

The appeal hearing will include the Director of Human Resources on the hearing panel.

The appeal hearing is not a rehearing of the original grievance but an opportunity for consideration of specific areas where the employee remains aggrieved or is dissatisfied with from the outcome of the original meeting.

Where the appeal panel feels that any elements of the original grievance have been missed/omitted, and the employee submits clear evidence which proves this, the areas of concern will be addressed at this meeting (with any necessary information submitted by the employee ratified, as required).

The outcome of the appeal hearing will be confirmed in writing within five working days of the Appeal Hearing.

The decision of the Appeal panel is final. There is no further internal redress following the appeal outcome.

## Monitoring Compliance

The HR Team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published and reported as appropriate.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

• training for line managers

• A risk assessment

• It is also anticipated that any issues in respect of the implementation of the policy may be identified as a result of staff exercising their right of appeal.

## Staff Training

No essential (including mandatory) learning and development requirements have been identified for any staff groups in order to fulfil the requirements stated within this policy.

Guidance can be sought from Human Resources team.

## Arrangements for Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance and Documents

* [Disciplinary Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2)
* Raising Concerns (Whistleblowing) Policy
* Managing Investigations Guidelines

## References

* ACAS Code of Practice on Disciplinary and Grievance Procedures.

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as **Appendix A**.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy:**  Grievance  **Version number (if relevant): 1.0** | **Directorate/Service**:  People Services |
| **Assessor’s Name and Job Title:**  Carolyn Druce, HR Business Partner | **Date:**  29 April 2022 |

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| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff* |
| The aim of this policy is to settle grievances as near to the point of origin as possible. It is also preferable that both employees and managers should try to resolve issues informally first, and to use the formal route where the informal route has been explored but has been unsuccessful. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?* |
| Relevant Trade Unions have been consulted on the policy and any comments will be taken into consideration. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| Protected  Group | Positive  outcome | Negative  outcome | Neutral  outcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | x |  |
| Disability  (Physical and Mental/Learning) | x |  |  | Reasonable adjustments may be requested |
| Religion or belief |  |  | x |  |
| Sex (Gender) |  |  | x |  |
| Sexual  Orientation |  |  | x |  |
| Transgender / Gender Reassignment |  |  | x |  |
| Race and ethnicity |  |  | x |  |
| Pregnancy and maternity (including breastfeeding mothers) |  |  | x |  |
| Marriage or Civil Partnership |  |  | x |  |

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| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the implementation of the policy will be identified as a result of staff exercising their right of appeal. |

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| **REVIEW** |
| *How often will you review this policy / service?* |
| This policy will be reviewed in one year or earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

## Appendix B – Union Representative or Work Colleague

Employees are entitled to be accompanied by a union representative or workplace colleague, at any/all formal meetings held under this Policy. It is the employee’s responsibility to make arrangements to be accompanied.

The employee must be informed of this right at the commencement and all subsequent stages of this procedure.

A workplace colleague must always be an employee of the ICB.

Reasonable time off should be afforded to the workplace colleague, in

discussion with their Line Manager.

The representative or workplace colleague may address the meeting and confer with the employee, during the meeting, put forward the employee’s case, summarise the employee’s case and/or respond on the employee’s behalf to any view expressed at the hearing.

The representative or workplace colleague may not answer questions on behalf of the employee or prevent the employee from explaining their case.

Any union representative or workplace colleague must maintain confidentiality during and after the application of this policy.

If the reason given for failing to attend a meeting is due to the non-availability of a trade union representative or workplace colleague and there have been no earlier adjournments in the process for this reason, on only one occasion the meeting will be postponed and a new meeting will be arranged within reasonable time, normally 5 working days. Exceptional circumstances will always be considered.