

Grievance Policy & Procedures

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1. Introduction

Grievances are concerns, problems or complaints that employees raise with their employer concerning work related matters or if it is about a councillor with the Principal Authority. This Policy informs staff how to resolve grievances and ensures that grievances are dealt with fairly, promptly, consistently and in a transparent manner.

The policy complies with the Advisory, Conciliation and Arbitration Service (ACAS)¹ Code of Practice on disciplinary and grievance procedures and in accordance with the Equality Act 2010 and Employment legislation.

2. Scope

This Policy and Procedure apply to all staff. Employees might raise issues about matters not entirely within the control of the organisation, such as client or customer relationships (for instance where an employee is working on another employer's site). These should be treated in the same way as grievances within the organisation, with the employer/manager investigating as far as possible and taking action if required. The organisation should make it very clear to any third party that grievances are taken seriously, and action will be taken to protect their employees.

3. Aims.

This Policy's aims and objectives are to encourage and maintain good relationships between the BWPC and its employees by treating grievances seriously. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment.

As far as possible staff are encouraged to resolve issues informally. If a member of staff feels that their complaint is not resolved informally then they should raise a formal grievance.

4. Duty of Care

Employers have a duty of care to their employees and requires the employer to take reasonable steps to ensure employees health, safety and wellbeing. This duty is wide ranging and employers should consider how they can provide support to their employees, throughout their employment to minimise the risk of this happening. The ongoing duty of care is not always associated with grievances.

If a grievance is referred to the principal authority's monitoring officer, BWPC duty of care to the member of staff does not cease once the grievance process is formalised.

Examples of duty of care provisions include:

- Clearly defining jobs and undertaking risk assessments
- Ensuring a safe work environment
- Providing adequate training and feedback on performance

¹ <https://www.acas.org.uk/disciplinary-and-grievance-procedures>

- Ensuring that staff do not work excessive hours
- Providing areas for rest and relaxation
- Protecting staff from bullying or harassment, either from colleagues or third parties
- Protecting staff from discrimination
- Providing communication channels for employees to raise concerns
- Consulting employees on issues which concern them
- Offering short term counselling

An employer can be deemed to have breached the duty of care by failing to do everything that was reasonable in the circumstances to keep employees safe from harm. Employees also have responsibilities for their health and wellbeing at work. For example, although employees must obey their employer's lawful instructions, they can refuse to undertake work that is not safe. This includes work damaging to their health.

5. Mediation/Independent third party

Mediation is a process of conflict resolution between two individuals facilitated by a neutral third party or independent trained mediator. The purpose of mediation is to allow the individuals concerned an opportunity to explore issues of conflict with the aim of reaching a mutually agreeable solution. There needs to be willingness on the part of all parties concerned to enter into mediation on a voluntary basis. No-one can be forced into the mediation process, and the outcome will be non-binding. It can be used at any stage during the Grievance process.

Electing mediation does not prevent you from progressing the complaint more formally if the matter remains unresolved.

6. Records

In the interest of fairness, a written record will be kept by BWPC of all Grievances reported, which will be agreed and signed by all parties concerned. Records will include but not limited to

- The nature of the grievance
- What was decided and actions taken
- The reason for the actions
- Whether an appeal was lodged
- The outcome of the appeal
- Any subsequent developments

Records will be treated as confidential and be kept no longer than necessary in accordance with the data protection principles set out in the Data Protection Act 2018. This Act also gives individuals the right to request and have access to certain personal data stored about them.

Grievance procedure

7. Application of Procedure

The Grievance procedure does not apply to the following situations:

- i) Where the issue involved is the subject of, or is more appropriately dealt with under a collective procedure with a trade union;
- ii) Where BWPC has no control over the matter, although they will provide information and advice where possible, to help an employee resolve the issue;
- iii) The procedure has been invoked within six months of the completion of any action under the grievance procedure of the same or similar issue unless the original action agreed to redress the grievance has not been implemented.

The Ledbury decision in 2018 (Harvey v Ledbury TC), changed the way in which councils must deal with an employee's grievance if the complaint is about a breach of the Code of Conduct by a Councillor.

- If BWPC cannot resolve the matter informally (which can include mediation) the complaint can only be dealt with by the employee submitting their complaint to the principal authority's monitoring officer. BWPC has no power to deal with it.
- If the complaint is not a Code of Conduct matter, it can be dealt with under the formal stages of the Grievance procedure.

Regardless of the procedural route decided, there is an expectation that all parties concerned will respect the confidentiality of the situation and always behave in a professional manner.

If the employee is already the subject of disciplinary action and raises a grievance, the grievance will normally be heard after the completion of the disciplinary process.

8. Notifications

Within 7 working days of BWPC receiving the employee's grievance, written acknowledgement of receipt will be sent. The employee will be asked in writing, to attend a grievance hearing. This may be longer if there is an investigation. The written notification will include the following:

- The names of the Grievance Panel and its Chair
- The date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will be within 7 working days of receipt of the grievance

- The employee's right to be accompanied by an accredited trade union representative, colleague or friend, not acting in a legal capacity.
- A copy of the BWPC Grievance Policy and Procedure
- The employee will provide any supporting evidence at least 3 days in advance of the meeting.
- Confirmation that, if necessary, witnesses may attend (or submit witness statements) on the employee's behalf and the employee should provide the names of their witnesses as soon as possible before the meeting.
- Findings of the investigation if applicable
- An invitation for the employee to request any adjustments to be made for the hearing (for example where a person has a health condition)

9. Grievance meetings

A grievance hearing is not the same as a disciplinary hearing and is an occasion when discussion and dialogue may lead to an amicable solution. The initial meeting ideally will be held within 7 days of receiving the complaint.

Allow the member of staff to be accompanied by a companion or a certified trade union representative not acting in a legal capacity in all stages of the Grievance process. The employee must inform the panel who they have chosen as a companion.

If the employee or companion cannot attend the meeting within the required timescale, this can be extended by mutual agreement. The meeting should be held as soon as possible.

The companion must be allowed to address the meeting in order to:

- Put the worker's case
- Sum up the worker's case
- Respond on the worker's behalf to any view expressed at the hearing
- Confer with the worker during the meeting.

The companion cannot

- Answer questions put to the employee,
- Address the meeting without employees consent or
- Prevent employee from explaining their case.

The meeting must be held in private with no interruptions and can be recorded (providing all parties consent) or a person appointed to take notes. The lead will

- Make introductions as necessary.
- Always remain impartial and objective.
- Invite the employee to re-state their grievance and how they would like to see it resolved.
- Put care and thought into resolving grievances. They are not normally issues calling for immediate decisions.

- Consider adjourning the meeting if it is necessary to investigate any statements made or new facts which arise.
- Summarise and confirm the main points.
- Advise when a response will be made in writing.
- If a decision is made the employees right to appeal.

After each meeting the Manager/Chair will give a decision in writing within 7 working days. If it is necessary to gather further information prior to deciding what actions to take, if any, the employee will be informed of the likely timescale which will be no more than 14 days.

If the grievance is not upheld, no disciplinary action will be taken against the employee if the grievance was raised in good faith.

9.1 Informal Stage

Grievances should be raised as soon as possible following the incident with no unreasonable (without) delay. In the first instance the problem should be discussed in a meeting within 7 working days with their Manager/Councillor to see if an informal solution is possible. All should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with the manager (for example, because it concerns the manager) the employee should contact the Chair/Vice Chair of Council. If the employee's complaint is about a Councillor, it may be appropriate to involve that Councillor at the informal stage. This will require both the employee's and the Councillor's consent.

9.2 Formal Stage

The employee can raise a formal grievance if they feel:

- It was not resolved at the informal stage.
- They do not want it dealt with informally.
- It's a serious issue, for example whistleblowing.

If the complainant feels it is necessary to progress the matter more formally, the complaint must be made in writing either to the Clerk/Chair/Vice Chair of Council

- The name of the alleged perpetrator(s),
- The nature of the grievance,
- The dates and times the act(s) occurred,
- The names of any witnesses
- Any action taken to resolve the matter informally.
- Explanation of why it is not practicable for an informal approach.

The Council will appoint a Grievance Panel of three members to hear the grievance. The Grievance Panel will appoint a Chair from one of its members. No Councillor with direct involvement in the matter can be appointed to the panel.

9.3 Investigation Stage

If the Grievance panel decides that it is appropriate, (eg if the grievance is complex), it may appoint an investigator to investigate the complaint and establish the facts of the case.

- It will be an expeditious investigation and is expected to be concluded within 7 working days.
- May include recorded interviews eg the employee submitting the grievance, other employees, councillors or members of the public.
- The appointed investigator will present their findings within a written report to the Grievance Panel.
- The employee will be notified in writing of the conclusion of the investigation.

9.4 The Grievance Hearing

At the grievance hearing:

- The Chair will introduce the members of the Grievance Panel to the employee
- The employee (or companion) will set out the grievance and present their evidence.
- The Chair will ask the employee questions about the information presented and will want to understand what action they want BWPC to take, or how they would like the matter to be resolved.
- Any member of the Grievance Panel and the employee (or the companion) may question any witness.
- The employee (or companion) will have the opportunity to sum up the case.
- A grievance meeting may be adjourned to allow matters that were raised during the meeting to be further investigated.

The Chair of the Grievance Panel will issue the decision in writing, within 5 working days of the meeting. The letter will notify the employee of the action, if any, and timetable of actions that BWPC will undertake and of the employee's right to appeal.

9.5 Right of Appeal

If an employee decides that their grievance has not been satisfactorily resolved, they may submit a written appeal to the Council. An appeal must be received within 7 working days of the employee receiving the decision and must specify the grounds of appeal.

Appeals may be raised on several grounds for example:

- A failure by BWPC to follow its Grievance Policy
- The decision was not supported by the evidence.
- The action proposed by the was inadequate/inappropriate/unreasonable.
- New evidence has come to light since the grievance hearing.

The appeal will be heard by an Appeals Panel. The Appeals Panel will be a Panel of three Council members not previously involved in the case. The Appeal Panel will appoint a Chair from one of its members.

The employee will be notified, in writing, within 10 working days of receipt of the appeal of the time, date and place of the appeal hearing. The hearing will normally take place within 20 working days of receipt of the appeal.

At the appeal meeting, the Chair will

- Introduce the panel members to the employee.
- Explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the Grievance Panel
- Explain the action that the appeal panel may take.
- The employee or companion will be asked to explain the grounds of appeal.
- The Chair will inform the employee that they will receive the decision and the panel's reasons, in writing, within 5 working days of the appeal meeting.

The Appeal Panel may decide to uphold the decision of the Grievance Panel or substitute its own decision.

The decision of the Appeal Panel regarding the grievance is final.

10. Post Employment Grievances

Wherever possible a grievance should be dealt with before an employee leaves their employment with BWPC. However, where an employee has already left and the procedure has not been commenced or completed, they are encouraged to attend any meetings in accordance with this procedure so a final decision can be made. If an employee refuses to attend any meetings, BWPC will proceed with the meeting in their absence and make a decision based on all the information and evidence available at the time.

Appendix A

Grievance Procedure

