

## GRIEVANCE AND DISPUTES RESOLUTION POLICY

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<b>Version / Amendment History</b>	<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Reason</b>
	1	November 2004	Director of HR	Original Policy
	2	September 2010	Head of Human Resources	Updated in line with ACAS Code of Practice and aligns Disputes Policy.
	2.1	August 2012	Head of Workforce - Resources	Minor amendments made
	3	October 2016	Deputy Director of Workforce	General review and minor amendments
<b>Intended Recipients:</b> All Trust Employees including Medical Staff				
<b>Training and Dissemination:</b> Launched through Trust Intranet (FLO), e-mail circulation list. Briefing sessions for managers through the Employee Relations Team.				
<b>To be read in conjunction with:</b> Disciplinary policy (excluding medical and dental staff), Freedom to Speak Up (Raising Concerns at Work) Policy, Dignity at Work (Handling Bullying, Harassment and Discrimination in the Workplace) Policy, Mediation Guidelines, Equality, Diversity and Human Rights Policy				
<b>In consultation with and Date:</b> Workforce Policy Review Group (WPRG) (Aug/Nov 2016, Jan 2017), Trust Joint Partnership Forum (TJPF) (Jan 2017), Joint Local Negotiating Committee (JLNC) (Jan 2017), Workforce Review Committee (WRC) (Feb 2017), People				

Committee (PC) (April 2017)	
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<b>Approving Body and Date Approved</b>	Workforce Review Committee
<b>Date of Issue</b>	February 2017
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<b>Contact for Review</b>	Deputy Director of Workforce
<b>Executive Lead Signature</b>	Executive Director of Workforce
<b>Approving Executive Signature</b>	Executive Director of Workforce

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## **1. Introduction**

University Hospitals of Derby and Burton NHS Foundation Trust recognises that from time to time individual employees or groups of employees may have issues or concerns about their work, working environments or acts or omissions of the Trust, for instance in relation to health and safety or terms and conditions.

This policy, therefore, outlines the procedure for these issues to be dealt with fairly and speedily before they develop into major problems.

The Trust will seek to treat all people equally and fairly. No employee will receive less favourable treatment on the grounds of sex, disability, marital status, creed, colour, race, ethnic or national origin, sexual orientation, age, social status, their trade union activities or religion, or be disadvantaged by conditions or requirements which cannot be shown to be justifiable.

## **2. Purpose and Outcomes**

The Trust is committed to ensuring that all employees feel able to raise any issues or concerns, which should be settled as near as possible to the issue arising and at the earliest opportunity. The Trust will seek to resolve and investigate where necessary, issues raised by its employees.

For ease of reading this document, the term complaint has been used to refer to an issue or concern which an individual, or group of individuals, wish to raise as a grievance.

Matters/concerns relating to employment that fall within the scope of this policy include:-

- Interpretation of terms and conditions of employment
- Interpretation and application of Trust Policies and Procedures
- Health and Safety Work Environment including working practices

Some concerns relating to employment fall within the scope of other Trust policies as they are dealt with under separate arrangements. These include:

- Allegations of bullying, harassment or discrimination (Dignity at Work policy)
- Disciplinary outcomes (Disciplinary policy – Appeals procedure)
- Allegations of fraud, bribery and corruption or financial malpractice (Counter Fraud, Bribery & Corruption Policy)
- Applications for banding, re-banding and related appeals (Job Evaluation procedure)
- Capability/Performance issues (Capability policy)
- Redundancy/Organisational Change (Organisational Change Policy)

- Managing attendance (Health and Attendance policy)
- Recruitment (Recruitment and Selection policy)

Where an employee is dissatisfied about decisions taken under a policy referred to in the above paragraph, they should raise a complaint in accordance with those procedural arrangements. The matter will not be permitted to be raised as a separate complaint.

Where an individual has a complaint relating to the application or interpretation of any of the policies referred to in the above paragraph, this should be raised under the Grievance Resolution Policy.

If an employee raises a complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the complaint. However, where the complaint and disciplinary cases are related these will be dealt with concurrently, as part of the disciplinary process.

The procedure consists of an informal resolution phase plus two formal resolution stages. The second formal stage provides the right of appeal in the event the employee is dissatisfied with the outcome decision reached at the first formal stage.

It is expected that all complaint resolution issues will be dealt with promptly for reaching a resolution outcome, and in line with the timeline of 42 calendar days unless there is a valid reason for delay. The Employee Relations Team will monitor the process, and, where any undue delays occur, will investigate and report back to Divisional General Managers for further action to be considered. It is recognised that in exceptional circumstances, timescales may need to be adjusted slightly.

Once the timescale to lodge a request to proceed to the next stage of the procedure has lapsed (if not previously agreed to extend), the employee's issues will be considered resolved and no further action can be taken.

The Trust is confident that the majority of issues and concerns are not vexatious and would not prevent any individual from raising a concern that is genuine and made in good faith. However, where the manager establishes, following appropriate investigation, that an employee is seeking to use the Grievance Resolution procedure to make deliberately false allegations, or as a form of bullying against a colleague or manager, this may be treated as misconduct in line with the Trusts' Disciplinary policy.

If the complaint is found to be clearly vexatious or frivolous, the Trust will inform the employee that it will not be dealt with in accordance with the Grievance Resolution procedure, unless the employee can show that it is based on a legitimate concern.

### **3. Definitions**

#### **3.1 Grievance**

A grievance is a concern, problem or complaint that an employee raises with their employer.

### **3.2 Individual Complaint**

An individual complaint relates to any matter which is ground for a complaint between an individual employee and the Trust in its capacity as the employer. Some of the issues that may give rise to a complaint include: health and safety; new working practices and equal opportunities (save for those dealt with under the Dignity at Work Policy)

### **3.3 Collective Complaint**

Where a complaint is of a collective nature (where a same issue complaint is raised by more than one employee), or where an individual complaint becomes a collective issue affecting other employees.

### **3.4 Disputes**

A 'dispute' exists where concerns are raised by a recognised trade union on behalf of all or a group of employees about any decision or matters within the Trust's control and which are covered by the scope of the Grievance and Disputes Resolution policy.

### **3.5 Vexatious Complaint**

A vexatious complaint is one that is raised without sufficient grounds for the employee to consider that the complaint is likely to be true or with primary purpose of delaying other procedures.

A vexations complaint can also be a complaint that continues to be presented having exhausted internal procedures. This does nothing to undermine an employee's statutory rights.

### **3.6 Mediation**

Mediation is a confidential service which is entered into voluntarily by 2 or more persons, in order to seek an informal and speedy resolution to workplace difficulties. The mediator acts as an impartial third party, and takes charge of the process, to help the parties involved, to communicate and resolve workplace difficulties for themselves and to reach an agreement that both sides feel is fair and positive.

The use of mediation may be considered at any stage, providing all parties agree. However, before engaging the mediation route, the manager should contact the Employee Relations Team for advice to consider if sufficient fact-finding or other non-adversarial discussions have taken place to try to resolve the issue(s).

### **3.7 Status Quo**

Upon submission of a complaint all parties are entitled to request that the status quo applies until the successful resolution of the issue or conclusion of the appeal stage of this procedure.

The Executive Director of Workforce may, however, override the right to the status quo in the event that its application is considered to present a health and safety concern or it may have a detrimental effect upon service needs.

### **3.8 Companion**

A companion can be either, an accredited trade union/professional association representative, or a fellow Trust employee. Legal representation is not permitted within Trust internal procedures.

## **4. Key Responsibilities/Duties**

**4.1** The Executive Director of Workforce will oversee the introduction, operation and monitoring of this policy and report to the Trust Board as required

**4.2** The Employee Relations Team will provide support, advice and guidance on all matters relating to the application of this policy

**4.3** Managers are expected to:

- ensure that the correct policy has been applied under the circumstances raised
- ensure that all employment matters are dealt with in a fair and consistent manner and are appropriately documented
- ensure that this policy and procedure is implemented fairly and effectively for all employees
- to ensure that all employees are aware of the requirements and purposes of this policy and procedure and their individual responsibilities in this respect
- to ensure that any work related problems or concerns raised under the scope of this procedure are treated seriously and with sensitivity
- to ensure that there is no victimisation of employees who have raised a complaint or who have provided information about such issues.

**4.4** Employees are expected to:

- adhere to the requirements and purpose of this Policy and Procedure
- draw to the attention of managers suspected complaint issues to enable early informal resolution wherever possible
- to enter into reasonable discussion concerning the introduction of any workplace measures to seek a resolution

- to co-operate with measures introduced to ensure that working standards are maintained
- to refrain from victimising fellow employees who have raised a complaint or who have provided information about such issues
- to seek appropriate advice and support from a trade union/professional association representative and/or the Employee Relations Team if the matter cannot be resolved through discussion/informal resolution.

**4.5** Trade Union/Professional Association representatives will provide advice and support to individuals who have any queries with this policy.

#### **4.6 The Workforce Policy Review & Approval Process**

The recognised formal committees and forums in place at the time are responsible for the review, approval and monitoring of this policy.

### **5 The Grievance Resolution Procedure**

#### **5.1 Timescales for raising and resolving a concern/complaint**

All complaints should be raised **within three months** of the incident or action giving rise to it. Complaints raised outside of this time period must be discussed with the Employee Relations Team, who will consider whether there are exceptional circumstances to warrant a delay.

#### **5.2 Format of grievance resolution meetings**

Where meetings are arranged to discuss a concern/complaint the intention is to use the meeting to resolve the concern/complaint, not as an opportunity for a manager to 'sit in judgement'.

At the meeting employees will be given every opportunity to explain the nature of the concern/complain, and the manager should fully explore possible solutions and areas for compromise where appropriate.

#### **5.3 Grievance Resolution Process**

##### **5.3.1 Informal Approaches**

##### **5.3.1.1 Early Resolution**

Employees should raise and seek to resolve issues with their manager quickly and informally through discussion as part of their normal working relationship. They should use their discretion to determine whether day-to-day discussion is leading to a successful resolution of the issue.

In the event that the complaint is against the line manager and the employee feels it is not appropriate in that particular case to discuss the issue with that manager, then the next level of manager who would normally be approached to resolve the matter at the first formal stage, will seek to resolve the matter at the Informal Resolution phase.

This will only be appropriate where there are sufficient levels of management to resolve the issue at the Informal Resolution phase. Failing that, it may be appropriate to omit the Informal Resolution phase and proceed to the First Formal Stage.

### **5.3.1.2 Local Resolution phase**

If the employee has attempted to discuss the matter as part of day to day discussion with their manager and believes it remains unresolved they should refer to the Informal Resolution process as follows:

- Complete the 'Requesting a Resolution - Grievance' Form (Appendix 1) and submit this to their line manager. In the matter of a Dispute, the referring Union(s) will complete the 'Requesting a Resolution - Dispute' Form (Appendix 2) on behalf of the employees concerned. The manager should send a copy of the form to the Employee Relations Team for monitoring purposes only.
- Managers are expected to arrange a meeting within 7 calendar days to discuss an employee's concerns in confidence with him/her, undertake fact-finding, as appropriate, and address concerns fairly and promptly. Guidance on undertaking fact-finding is available from the Employee Relations Team. The outcome of these discussions/fact-finding should be provided in writing to the employee within 7 calendar days of the meeting; however, this timeframe can be extended if agreed by all parties, although in order to keep to the overall 42 calendar day resolution timeframe it is expected that the Informal Resolution phase of the procedure will be completed within 14 calendar days.
- To promote the spirit of informal and local resolution, it is generally expected that an HR and/or a Trade Union representative/Trust Companion would not ordinarily be in attendance at meetings during the Informal Resolution phase of the process; only the manager and the employee would usually be present. However, managers are encouraged to request advice from the Employee Relations Team in preparation for the meeting, and employees may be accompanied at meetings during any formal stage of the process.
- Only in cases where it is thought by the manager arranging the resolution meeting and by the Employee Relations Team, that the absence of an HR Advisor would hinder the swift and effective resolution of the case, would consideration be given to an HR Advisor being in attendance at the Informal Resolution phase. In such circumstances, the employee must be informed that an HR Advisor will be in attendance. Similarly, where it is considered and agreed by all parties that the presence of trade union representative or work colleague would assist the resolution of an issue, a representative may be present.
- A written record of all discussions, and any fact findings, should be made by the manager. At the conclusion of the Informal Resolution

phase all records, together with the outcome letter, must be sent to the employee and copies of these documents should be retained on the employee's personal file. A copy of outcome letter should be forwarded to the Employee Relations Team, for monitoring purposes only.

- It is expected that an employee will seek to resolve his/her complaint with their line manager through Informal Resolution and will only progress to the first formal stage if the issue cannot be resolved.

### **5.3.2 Formal Stages**

#### **5.3.2.1 First Formal Stage – Referral to Next Level Manager**

If the employee is dissatisfied with the outcome of the Informal Resolution phase, they have redress to escalate the matter to the First Formal Stage of the procedure. To do so, the employee should outline their grounds for escalation in writing within 7 calendar days of the outcome letter being received and forward this to the next level of management. This written request should also include a copy of the original 'Requesting a Resolution' – Grievance form.

The next level manager receiving the referred issue is entitled to request further details or explanation in order to progress matters. HR representation will be present to advise the manager at the First Formal Stage of the process. They may ask for an investigation using the Trust's Managing Investigations guidance.

Where the matter is of a particular technical nature, then the manager arranging the formal resolution meeting may involve an independent advisor with specialist knowledge. This is to provide assistance only by way of technical advice on the specific issues. This person may or may not be an employee of UHDB but in any event he or she should not have had any prior significant involvement in the complaint, in the case of either party.

The manager should also forward a copy of the form to the Employee Relations Team, and obtain advice and support.

The next level manager should write to the complainant to confirm receipt of their referred Grievance Form to the First Formal Stage and convene a formal resolution meeting with the employee and management representative(s) to seek to resolve the matter. If deemed appropriate, the next level manager may nominate an alternative manager to attend the resolution meeting.

The meeting should be held within 14 calendar days of receipt of the written referral request. At this level, due consideration should be given to the membership of the meeting. This would usually comprise the manager and an HR Advisor being present at the meeting. In circumstances where a professional opinion/advice is needed during a case, the professional advisor would also be present. In addition to anyone identified by the employee, it is

the responsibility of the next level manager to determine any other relevant parties who may be required to be in attendance.

If the employee is unable to attend the meeting and provides a valid reason an alternative date/time may be proposed, providing the proposal is reasonable. There is an obligation to rearrange the meeting only once.

The next level manager attending the meeting will consider the actions taken so far to resolve the matter. The panel members at the meeting will have an opportunity to discuss the concern in more detail with the employee and their representative and to ask further question with a view to seeking agreement.

Where agreement on a solution is not possible, the manager will provide an outcome to the meeting which may be:

A resolution is agreed;

Further investigation into the concerns is required;

The matter can be concluded without further investigation, although the employee does not agree to the resolution;

The concern is not substantiated

The manager will confirm the outcome of this meeting in writing to the employee, normally within 7 calendar days of the meeting. Where further investigation is necessary, the meeting will be adjourned to allow for this to take place and another meeting convened for a future agreed date, or the response given in writing without the need for a meeting (if agreed by all parties). In confirming their decision, the manager of the meeting must inform the employee(s) of their right to appeal to the Second Formal Stage of the procedure.

A written record of all discussions, and any investigations, should be made by the manager. At the conclusion of the First Formal Stage all records, together with the outcome letter, should be retained on the employee's personal file.

### Exemptions

Employees directly accountable to the Chief Executive have the right to pursue a complaint through the Trust Chair Person in the first instance, who will determine the circumstances of the matter and determine an appropriate route to take.

### **5.3.2.2 Second Formal Stage – Appeal**

The purpose of an appeal hearing is to ensure that the case is fully heard. The hearing should be conducted in accordance with the steps detailed in Appendix 4: Appeal Hearing Process

If the employee(s) remains dissatisfied with the outcome at the First Formal Stage, then they can appeal to the Executive Director of Workforce (Second Formal Stage of Grievance Resolution Procedure).

To exercise the right to appeal, employee(s) or their representative must set out in writing the grounds upon which the employee is appealing, otherwise the appeal may not be considered.

The written appeal should be made in within 7 calendar days of the date of written confirmation of the First Formal Stage decision using the Appeal Form (Appendix 3).

The Executive Director of Workforce should convene a hearing, nominating a Chairperson where appropriate, and supported by an HR Advisor, to consider evidence from the parties concerned with the appeal, within 14 calendar days of receipt of the appeal.

Where the complaint is of a particular technical nature, then the manager hearing the complaint may ask an independent advisor with specialist knowledge. This is to provide assistance only by way of technical advice on the specific issues. This person may or may not be an employee of UHDB but in any event he or she should not have had any prior significant involvement in the complaint, in the case of either party.

A written statement of case should be exchanged by all parties no later than 7 calendar days prior to the hearing. Only information shared and discussed at the Informal Resolution phase and the First Formal Stage, which will have influenced the management decisions reached to date, should be included in the statement of case. No new evidence shall be accepted, unless there are exceptional circumstances.

Where possible, the panel should seek to agree a solution that is acceptable to all parties.

The decision of the appeal hearing will be final and confirmed in writing within 7 calendar days to all parties. This will conclude the internal process available to the employee for achieving an acceptable resolution. This represents the highest level within the Trust to which the employee can appeal.

#### **5.4 Mediation**

At any stage in the policy/procedure, subject to the agreement of all parties concerned, and advice sought from the Employee Relations Team, there may be a suspension in proceedings to facilitate Mediation, fact-finding, or other non-adversarial discussions with the aim of promoting a resolution of the issue(s).

#### **5.5 Collective Complaint**

Where a complaint is of a collective nature (where a same issue complaint is raised by more than one employee), or where an individual complaint becomes a collective issue affecting other employees, the matter will be dealt with under this policy, and handled in same manner as individual complaints. In such cases, a nominated representative may set out details of the concerns

in writing of behalf of the employees. In order that the complaint may be resolved swiftly, the group in question should be represented at meetings and/or hearing by no more than 3 staff from the group. The Requesting a Resolution - Grievance' Form (Appendix 1) should be used and should be signed by all parties to the collective complaint.

## 5.6 Disputes

The Resolution of a Disputes Form should be completed by the nominated Trade Union Representative. The procedure for resolving a dispute should mirror that outlined for an individual complaint and both parties will establish the nature and extent of the dispute before it progresses.

By joint agreement between the union, employees and the Executive Director of Workforce, stages of the procedure may be bypassed, where this may lead to earlier resolution of the dispute or avert it.

## 5.7 Support for Employees

Support is available to all employees from the Trust's Employee Assistance Programme (EAP), which employees can contact in confidence, to discuss their situation.

## 6. Monitoring, Compliance and Effectiveness

The key requirements will be monitored in a composite report presented on the Trusts Monitoring Report Template:

Monitoring Requirement :	<p>Monitoring compliance with the requirements of:</p> <ul style="list-style-type: none"> <li>• Process for raising a grievance / dispute and how the process is followed once a grievance / dispute has been raised.</li> </ul> <p>Monitoring trends / incidents of discrimination, grievances / disputes</p>
Monitoring Method:	<ul style="list-style-type: none"> <li>• Retrospective review of incidents and cases to determine compliance with the process with raising and dealing with the concerns</li> <li>• Analysis of number of complaints raised by race, gender, sexual orientation, disability, age and religious belief of the complainant, the level of the employees affected and the outcome.</li> <li>• Recommendations and action plans will be developed from the analysis and will be part of the six monthly reporting mechanism.</li> </ul>

Report Prepared by:	Deputy Director of Workforce
Monitoring Report presented to:	The recognised formal committees and forums in place at the time.
Frequency of Report	Six monthly

## 7. **References**

Acas Guidelines – Discipline & Grievance at Work 2015 [www.acas.org.uk](http://www.acas.org.uk)

The Employment Act 2002 [www.opsi.gov.uk](http://www.opsi.gov.uk)

The Employment Act 2002 (Dispute Resolution Regulations 2004) [www.opsi.gov.uk](http://www.opsi.gov.uk)

NHS Agenda for Change Terms and Conditions

REQUESTING A RESOLUTION - GRIEVANCE FORM

<b>Name(s)</b>	
<b>Post Title(s)</b>	
<b>Band(s)</b>	
<b>Department/Division</b>	
<b>Companion (Trade Union Representative or Trust Colleague)</b>	
<b>Complaint: please state grounds, details and dates (attach a letter if required)</b>	
<b>Remedies already pursued / considered and dates e.g. Discussion, Mediation</b>	
<b>Desired resolution:</b>	
<b>* Signature(s) and date (* in the case of a collective complaint, <u>all</u> parties involved must sign the form)</b>	<p>-----</p> <p>-----</p> <p>-----</p>
<b>Agreed action/ outcome</b>	
<b>Print Name(s), Signature(s) and date</b>	<p>-----</p> <p>-----</p> <p>-----</p>

REQUESTING A RESOLUTION – DISPUTE FORM

<b>Referring Union</b>	
<b>Staff affected</b>	
<b>Numbers, roles and bands of staff</b>	
<b>Department/Division</b>	
<b>Dispute: state nature, details and dates (attach letter if required)</b>	
<b>Remedies already pursued/ considered and dates eg: ACAS, NCAS advice</b>	
<b>Status quo or interim solution – details</b>	
<b>Desired Resolution</b>	
<b>Union: Print name, date and signature</b>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>
<b>Staff being represented: Print name, date, and signatures</b>	<p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p> <p>-----</p>
<b>Agreed action/ outcome</b>	

GRIEVANCE/DISPUTE APPEAL FORM

<b>Name(s)</b>	
<b>Post Title(s)</b>	
<b>Band(s)</b>	
<b>Department/Division</b>	
<b>Companion:</b>	
<b>Grievance Appeal: from 1<sup>st</sup> to 2<sup>nd</sup> Formal Stage</b>	
<b>Complaint: state grounds of appeal including all relevant details, (attach letter if required)</b>	
<b>Desired outcome</b>	
<b>Signature(s) and date</b>	<p>-----                  -----                  -----                  -----</p>
<b>Print Name(s), Signature(s) and date</b>	<p>-----                  -----                  -----                  -----</p>

## APPEAL HEARING PROCEDURE – FORMAL STAGE 2

### Process

Both sides will submit a statement of case to the Chair of the panel within 7 days of the appeal being acknowledged, naming any witnesses they may wish to call. A joint statement pack will then be prepared and shared in advance of the appeal hearing. Failure to do this may result in the appeal hearing not proceeding.

### Panel Membership

At this level, due consideration must be given to the membership of the panel, and whether or not it is necessary to have 2 senior level managers plus HR/Employee Relations support.

In circumstances where a professional opinion/advice is needed during a case, the panel will be convened with the Chair, the professional advisor and the HR/Employee Relations support. No panel members should have had previous involvement in the complaint. The Chair and HR/Employee Relations support will make all necessary arrangements for the hearing.

### Order of Play

The chair will make introductions and outline the process.

The employee or his/her companion will state their case first and accept questions of fact from the manager and HR/Employee Relations Advisor, as well as the Chair, professional advisor and HR/Employee Relations Advisor.

The manager will state their case and accept questions of fact or detail from the employee and his/her companion, as well as from the Chair, professional advisor and HR/Employee Relations Advisor hearing the appeal.

Either side may call witnesses and questions may be asked of witnesses from both sides of the hearing, including re-examination if necessary.

The management side will be asked to sum-up first, followed by the employee and their companion bringing the appeal, who will have the final say.

The Chair and panel hearing the appeal will consider all of the evidence heard and will only recall both parties to clarify points of uncertainty on evidence already presented.

Please note: In the case of a collective complaint, the union and/or nominated employee representatives in attendance will state their case at the hearing. This will be followed by questions and then the management response.

### Adjournments

Whenever either side feels that brief adjournments might be necessary, these will be allowed at the discretion of the manager hearing the appeal.

New information should not normally be introduced at this stage. However, in exceptional circumstances, if new and relevant information is accepted by the Chair

hearing the appeal, then either side may seek an adjournment to consider this, if it has not been submitted with the statement of the case.

**Decision**

The appeal panel decision will be conveyed verbally to all parties and confirmed in writing within 7 calendar days of the appeal hearing.

The decision at Stage 2 will complete the process under this Procedure for all complaints.