

GRIEVANCE POLICY (20)

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Amendment History

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			Review and Update to align SDHCFT & TSDHCT policies	
V1.1		12 Jan 2015	Delete appeal is final from paragraph 9.5.	HR Manager
V1.2		15 Sept 2015	Ref Whistleblowing policy as per Audit recommendations paragraph 1.3	HR Manager
V1.3	Approved	December 2015	Amendment to Appeal Panel – Exec no longer required to chair and min panel 2 senior managers	Cost Improvement
V1.4		December 2016	Updated with ICO logo	HR Manager
1.5	Approved	March 2019	General audit and review	HR Advisor

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1 Policy Statement

- 1.1 This policy is designed to assist employees and managers resolve individual or work-related concerns, problems or complaints as quickly and as fairly as possible.
- 1.2 It details appropriate steps to be taken by an employee or group of employees wishing to seek redress in respect of any issue which gives rise to a grievance.
- 1.3 If an individual has concerns around patient care, fraud, misconduct or wrongdoing by employees of the Trust they should raise this through the Whistleblowing Policy.

2 Purpose & Scope

- 2.1 The purpose of this policy is to ensure all grievances are resolved as quickly as possible.
- 2.2 This policy applies to all employees of Torbay and South Devon NHS Foundation Trust employed previously by South Devon Healthcare NHS Foundation Trust and all staff employed since the 1st October 2015.
- 2.3 **Former Employees** – where an individual has left the Trust either before submitting a grievance or prior to the grievance being resolved the Trust will respond in writing to the points raised. There will be no further recourse under this process.
- 2.4 **Time Limits** – a grievance that refers to a matter that occurred three months or more before the grievance was raised shall be considered to be time expired.
- 2.6 Subject to the agreement of management and only in exceptional circumstances the practice or agreement in force at the time the grievance is registered may be agreed to continue to operate pending a resolution i.e. the status quo will apply.

3 Equality and Diversity Statement

- 31. The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these

nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

3.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy.

4. **Roles and Responsibilities**

4.1 **Managers are responsible for:**

- Attempting to resolve issues informally and as quickly as possible.
- Communicating with employees in an open manner to ensure that misunderstandings are avoided.
- Avoiding unnecessary delay, in the interests of both the employee and the Trust.
- Ensuring that decisions taken are fair and reasonable.
- Providing the employee with an outcome to their grievance.
- Taking forward good practice and lessons learned from grievances raised.

4.2 **Employees are responsible for:**

- Participating in and co-operating with the Grievance process.
- Making themselves available for meetings.
- Where appropriate making use of available employee support mechanisms e.g. counselling and occupational health.
- Co-operating with good practice and lessons learned from grievances raised.

4.3 **Trade Union Representatives/Work Place Colleagues are responsible for:**

- Making themselves available for meetings, as far as is practicable.
- Providing support to members as far as is practicable.

4.4 **Human Resources are responsible for:**

- Ensuring that appropriate advice and guidance about the interpretation and implementation of the policy is provided to Managers, Employees and their representatives to enable them to fulfil their role within the Grievance procedure.

5 Flexibility in HR Procedures

- 5.1 Normally this procedure will apply as set out. However, in some circumstances, two or more policies may apply to a situation, e.g. where a member of staff is taken through the disciplinary procedure and a grievance is raised. In these circumstances the most appropriate procedures will be determined by HR using the principles of ACAS best practice and employment law. The aim should be to incorporate the essential elements from each procedure but minimise the number of meetings and correspondence to the benefit of all parties to resolve and manage issues promptly.
- 5.2 In general this policy will not apply to grievances raised in relation to the disciplinary process. Insofar as a grievance has any bearing on disciplinary proceedings this should be raised as part of the disciplinary meeting.

6 Resolving a Grievance Informally

- 6.1 An employee who wishes to raise their concerns a grievance should first discuss the issue with their immediate line manager (where appropriate) on an informal basis. This provides an opportunity for the issues to be resolved without recourse to the formal Grievance procedure
- 6.2 Under normal circumstances there is no right to be accompanied by a work colleague or union representative at the informal stage, neither is it appropriate for a manager to be accompanied by a HR representative.
- 6.3 Where it has either not been possible or not appropriate to resolve the grievance at an informal level the grievance maybe raised formally.

7 Mediation

- 7.1 It may be appropriate depending on the nature of the grievance for the matter to be dealt with by way of mediation. This involves the appointment of a third-party mediator, who will seek to discuss the issues raised by the grievance with all of those involved and seek to facilitate a resolution. Mediation will be conducted either internally or externally by an appropriately credited individual.
- 7.2 Mediation is a voluntary process and may be considered at any stage of this procedure to help resolve issues between individuals. Mediation can only be used where all parties involved in the grievance agree.

8 Raising a Grievance Formally

8.1 The employee will be expected to provide the details of their grievance in writing. Appendix 1 can be used for this purpose if required. This written statement will form the basis of the subsequent meeting and any investigations so it is important that it clearly identifies:

- The nature of the grievance
- The discussions/actions to date to resolve the matter
- The outcome of those discussions/actions
- The resolution that is being sought.

8.2 Where the Grievance is being raised by a group of staff or by a Trade Union on their behalf, these staff must sign up to the grievance being submitted. A staff member should also be identified as a lead to take the grievance forward [in conjunction with the trade union] on the others behalf.

8.3 The grievance letter should be sent to the employee's line manager. If the employee's complaint relates to the way in which their line manager is treating them, the grievance may be sent to the next level of management.

8.4 Further attempts may be made to resolve the matter informally, depending on the nature of the grievance.

8.5 An appropriate manager will acknowledge receipt of the Grievance and make arrangements for the employee to attend a meeting to discuss the grievance.

8.6 The Grievance Meeting

8.6.1 The Grievance meeting will be held as soon as is reasonably practicable and subject to any needs to carry out prior investigations. The meeting will be conducted by either the line manager or an alternative manager identified to hear the grievance. The manager will be supported by a Human Resources representative. The employee may be accompanied by a trade union representative or work place colleague.

8.6.2 At the Grievance meeting the employee will be given every opportunity to explain the nature of their grievance and the resolution they are seeking. If any additional information is gathered in the course of the investigation into the grievance this will be discussed as part of the grievance meeting. Where confidentiality is necessary this will be explained and an appropriate summary provided.

- 8.6.3 If further investigation is required the meeting will be adjourned for these investigations to take place.
- 8.6.4 The employee must take all reasonable steps to attend this meeting. If an employee is unable to attend due to circumstances beyond their control, they should inform the manager hearing the grievance as soon as possible. If an employee's representative/workplace colleague is unable to attend the date originally proposed, the employee must contact the manager and agree another date for the meeting to convene provided that it is reasonable and where possible within five days of the original meeting. This five day limit will only be extended in exceptional circumstances. This may mean the employee needs to consider being accompanied by an alternative representative/workplace colleague.
- 8.6.5 Following the meeting the manager hearing the grievance should provide a detailed written response to the employee advising them of the outcome. This may include:
- The reason for upholding or dismissing the grievance
 - Any agreement reached/actions to be taken
 - Details of the appeal procedure

9 Grievance Appeal

- 9.1 An employee who wishes to lodge an appeal against the outcome of a Grievance must do so in writing to the designated manager within 14 calendar days' of the date of the letter confirming the outcome and clearly state the grounds for the appeal.
- 9.2 The employee must provide details under the grounds for their appeal as follows:
- **New evidence comes to light**
The grounds of the appeal must detail the nature of new evidence.
 - **They believe the procedure was not followed correctly**
Summary of why the process was not followed correctly.
 - **They believe the manager was incorrect in reaching their findings**
Details concerning the reason why there is a belief the finding was incorrect.
- 9.3 Failure to provide details of the grounds for appeal as described above may lead the Trust to decline the appeal.

- 9.4 Unless agreed otherwise, a request for an appeal hearing which is received later than the 14 calendar days' timeframe allowed will not be arranged, and the employee written to explaining that this is because they were out of time with their request. This will include circumstances where, following a meeting where a sanction or warning was issued, the employee takes leave from the Trust. For clarity this will include annual leave, sick leave, maternity or a career break/sabbatical.
- 9.5 The Appeal Process will be conducted by a manager not previously involved in the Grievance.
- 9.6 The employee must take all reasonable steps to attend this meeting. If an employee is unable to attend due to circumstances beyond their control, they should inform the appeal manager hearing the grievance as soon as possible. If an employee's representative/workplace colleague is unable to attend the date originally proposed, the employee must contact the manager and agree another date for the meeting to convene provided that it is reasonable and where possible within five days of the original meeting. This five day limit will only be extended in exceptional circumstances. This may mean the employee needs to consider being accompanied by an alternative representative/workplace colleague. If the employee fails to attend the Appeal meeting without explanation the hearing may take place in their absence and a decision as to whether the appeal is upheld or dismissed made.

10 Second Level Appeal

- 10.1 A second level appeal may be made if the employee has evidence to support that:
- **New evidence comes to light**
The grounds of the appeal must detail the nature of new evidence.
 - **They believe the procedure was not followed correctly**
Summary of why the process was not followed correctly.
 - **They believe the manager was incorrect in reaching their findings**
Details concerning the reason why there is a belief the finding was incorrect.
- 10.2 An employee who wishes to lodge a Second level appeal against the outcome of a Grievance must do so in writing to the designated manager within 14 calendar days' of the date of the letter confirming the outcome of the original Appeal. The letter must clearly state the grounds for the second level appeal.
- 10.3 Failure to provide details of the grounds for the appeal as described above may lead the Trust to decline the appeal.

10.4 The purpose of the second level appeal meeting is to consider whether the action taken by management to resolve the grievance was fair and reasonable taking into consideration all the relevant facts and circumstances. The appeal is not a rehearing of the original grievance, but rather a consideration of the specific areas with which the employee is dissatisfied in relation to the original grievance

10.5 The decision of the second level appeal panel is final.

10.6 If the employee fails to attend the appeal meeting without explanation the hearing may take place in their absence and a decision as to whether the appeal is upheld or dismissed made.

10.7 Second level Appeal panels may be drawn from:

- Chief Executive
- Executive Directors
- Other Directors
- Clinical Directors
- Divisional General Managers/Zone Managers
- Heads of Service
- Associate Directors
- Deputy Directors
- Assistant Directors
- Chief Pharmacist

10.8 The appeal panel may comprise of a minimum of two senior managers from the list above and a HR representative providing professional support to the panel.

10.9 The Second Level Appeal meeting will be conducted in accordance with Appendix B.

11 Training and Awareness

11.1 Advice and support will be provided by the HR team to support staff and managers in adhering to this policy and their understanding of dealing with Grievance issues.

11.2 The HR team will raise awareness of this policy through manager briefing sessions, the publication of information on iCare and Contact and to advise staff of changes to the policy through the staff bulletin and ratification processes.

11.3 Guidance documents are available to both Staff and Managers regarding the application of this policy.

12 References

- 12.1 ACAS Code of Practice on Disciplinary and Grievance Procedures

13 Contact Details

- 13.1 Any queries regarding this policy should be directed to the HR team of the Directorate of Workforce and Organizational Development.

HR advice line – 01803 655754 (ext. 55754)
HR department – 01803 654506

14 Monitoring, Audit and Review Procedures

- 14.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of Workforce and Organisational Development unless legislative changes determine otherwise.

15 Appendix A – Registering a Grievance

Employees and/or their staff representatives may wish to use this form to raise a grievance under the Grievance Policy. Please use additional sheets as necessary.

1. PARTIES TO THE GRIEVANCE

Please state the name(s) of those involved in raising this grievance and also of any representative(s).

<p>Representative:</p>

2. COMMUNICATIONS

Please state the name, address, e-mail address and contact telephone number for further communication.

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Please identify any dates when you or your representative are not available to meet to discuss the grievance.

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3. THE GRIEVANCE

Please describe the nature of the grievance in as much detail as necessary to assist the manager in reaching a resolution.

4. ACTION ALREADY TAKEN BY YOU OR YOUR MANAGER TO RESOLVE THE GRIEVANCE

Please detail any action that has already been taken to resolve the concerns that you are raising. Please detail why this has not been successful.

5. RESOLUTION SOUGHT

Please detail the resolution that you are seeking to address the concerns you are raising.

Name:

Job Title:

Signature:

Date:

16 Appendix B – Framework for a Second Level Grievance Appeal Meeting

1. Prior to an appeal panel meeting

- 1.1 Where possible the employee will be given a minimum 14 calendar days written notice of the date, time and venue of the appeal meeting.
- 1.2 The employee has the right to appear personally before the panel, either alone or accompanied by a trade union representative or workplace colleague.
- 1.3 Both parties will be required to submit written statements of the case, together with any supporting evidence a minimum of 7 calendar days before the appeal meeting is due to take place, unless otherwise agreed.
- 1.4 The management statement should set out the reasons for the action taken/conclusion reached. It should be sufficiently detailed to enable the employee to understand on what basis the decision was reached, and to prepare their own case.
- 1.5 The employee's statement should set out clearly the grounds on which they are contesting the outcome. It should be sufficiently detailed to enable the manager and panel to understand on what basis the appeal was lodged.

The employee must provide details under the grounds for their appeal as follows:

- **New evidence comes to light**
The grounds of the appeal must detail the nature of new evidence.
 - **They believe the procedure was not followed correctly**
Summary of why the process was not followed correctly.
 - **They believe the panel was unjust in reaching its conclusion**
Details concerning the reason why there is a belief the conclusion was incorrect.
- 1.6 Both parties should provide details of any witnesses they intend to call. It will be the responsibility of management and staff side to call and brief their own witnesses.

1.7 Witnesses will not normally be required to be in attendance for the whole of the appeal meeting. Each witness will be called to give evidence and will then leave the room. Wherever possible the witness will be told at this point whether they are free to leave or are likely to be recalled.

1.8 As soon as both statements have been received they should be simultaneously circulated to:

- Panel members hearing the appeal
- Manager representing the case
- Employee
- Employee's representative

2. Composition of the panel for appeal meetings

2.1 Manager/Chairperson

The person chairing the appeal meeting should be of a higher level than the manager who made the original decision.

2.2 Servicing Officer

The servicing officer will be a Human Resources representative.

The servicing officer will be responsible for; advising the panel on the procedure to be followed and reviewing the decision with the panel; ensuring that both parties are advised in writing of the panel's decision.

2.3 Professional Advisor

In cases which concern a professional matter, at least one panel member should have specialist knowledge of the employee's field of work. Where this is not so, a professional advisor acceptable to both parties should be appointed. The professional advisor should advise the panel only on matters relating to the employee's professional conduct or competence.

Any objections to the professional advisor proposed must be based on reasonable grounds.

2.4 Observers

Observers may be present only with the permission of the Chairperson and both parties. They must withdraw immediately at the direction of the Chairperson.

3. CONDUCTING AN APPEAL MEETING

3.1 The Chair of the panel will:

- Introduce those present.
- Explain the purpose of the meeting.
- Advise all present of the order of the procedure, which will be followed at the meeting, and to ensure that it is understood by the employee and where appropriate their representative:

3.2 The following procedure should be adopted:

The employee or their representative will present their case.

The employee or their representative will call any witnesses during the presentation of their case.

The manager may ask questions of the employee and any witnesses, as may the panel.

The employee or their representative will have a final opportunity to question the witnesses.

The manager will present their case and call any witnesses.

The employee or their representative may ask questions of the manager and any witnesses, as may the panel.

The manager will have a final opportunity to question the witnesses.

The employee or their representative will sum up their case. The summing up shall not introduce any new matter.

The manager will sum up their case. The summing up shall not introduce any new matter.

Following summing up both parties, the employee and the presenting manager, will leave the room.

3.3 It should be noted that the panel members may:

- Ask for clarification of any statements made during the course of the proceedings.
- Decide to adjourn at any stage, or at the request of either party. The duration of the adjournment will be made clear and a decision reached on the time the meeting is to be reconvened.

- 3.4 When all the evidence has been presented the meeting should be adjourned for the panel, with Human Resources support in attendance, to reach a decision on the case. Both parties may be recalled if points of uncertainty need to be clarified.
- 3.5 Once a decision has been reached the employee, their representative and the manager should be recalled and informed of the manager's/Chairperson's decision.
- 3.6 One of three decisions will be made:
- To not uphold the appeal and endorse the action taken.
 - To uphold the appeal.
 - To uphold the appeal but provide other recommendation(s) and/or in disciplinary cases substitute a less serious sanction.
- 3.7 The decision will be confirmed in writing within 7 calendar days.
- 3.8 The decision of the appeal panel is final.