

Health Education & Improvement Wales

Grievance Policy

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C O N T E N T S

1. Introduction
2. Scope
3. Purpose
4. Rights to be Accompanied
5. Grievance Procedure
6. Collective Agreement
7. Overlapping Grievance and Disciplinary Cases
8. Process for Dealing with Ex-Employees
9. Employment Monitoring

Appendix 1 Suggested Note of Initial Informal Grievance Discussion

Appendix 2 Individual and Collective Grievance Registration Form

Appendix 3 Grievance Hearing

Appendix 4 Request for Appeal Hearing for Individual/Collective Grievance

Appendix 5 Appeal

Appendix 6 Equality Act 2010

1. Introduction

The National Health Service (NHS) in Wales is committed to promoting good employment relations between its employers and its employees, which includes the appropriate management of employee grievances.

2. Scope

- 2.1** The NHS in Wales encourages grievances to be resolved informally by the employee through discussion with their line manager, or through a process of mediation. However, where an issue cannot be resolved informally the following procedures are established with the intention of ensuring that grievances are dealt with promptly, fairly and consistently.
- 2.2** A grievance exists when an employee feels that they need to raise and resolve an issue, concern or complaint. This would include an issue regarding some aspect of their employment; for example concerns regarding their duties, an interpretation of their conditions of service, working conditions, working procedures, or other matters directly affecting their ability to perform their duties.
- 2.3** Issues where specific provision is made under another policy will not be dealt with under this procedure; this would include grievances involving alleged unfair treatment that amount to discrimination, victimisation, or harassment, which will be dealt with under the All-Wales Dignity at Work process.
- 2.4** Where the employee has concerns that the interests of others, or their organisation may be at risk, and particularly where concerns relate to potential unlawful conduct, malpractice, or dangers to the public or environment, the employee should raise these concerns through the organisation's procedure for NHS staff to raise concerns.
- 2.5** This policy will be followed in respect of both individual and collective grievances. A collective grievance is where more than one employee feels that they have reason to complain about the same issue.
- 2.6** The Status Quo will normally continue until the grievance has been resolved or the grievance procedure has been exhausted. There may very rarely be exceptional circumstances such as a breach of legal requirements or clinical safety issues which may impact upon the Status Quo. In such exceptional circumstances early dialogue with the employee/s and/or representative/s must take place.
- 2.7** This policy may be invoked by any NHS employee and those who work for the organisation's staff bank.

3. Purpose

The purpose of this policy is to ensure:

- That individuals have the right to have their grievance heard. However, any individual found to be making malicious or vexatious grievances may be dealt with through the Disciplinary Policy and Procedure.
- That the grievance procedures comply fully with the Employment Rights Act (2008) and the ACAS Code of Practice, 'Discipline and Grievances at Work';
- That employees can raise a grievance without fear of victimisation by management or colleagues;
- That where possible all potential conflicts are resolved informally by the employee and their manager through discussion, which may take more than one meeting;
- All grievances are dealt with promptly, fairly and consistently, using the following procedure;
- There are no unreasonable delays in respect of holding grievance meetings or hearings and communicating verbal and written decisions;
- That managers act to resolve grievances, without unreasonable delay;
- The timing and location of meetings is reasonable and accessible;
- When a disabled employee is involved in this process, HEIW and the individual will work together to identify any reasonable adjustments to ensure the employee is not disadvantaged in any way;
- Other access issues, including the need for linguistic support will be addressed to ensure that all employees are able to fully participate in the process;
- Employees are given the opportunity to lodge an appeal against any decision made following a formal grievance hearing.

4. R Rights to be Accompanied

Initial Informal Grievance Discussion

The purpose of the initial informal grievance discussion is to enable the employee and manager to explore and resolve informally the reasons behind the grievance. As such it is not considered necessary for the individual to be accompanied by a trade union representative or, alternatively, by a workplace colleague. If, however, the individual wishes to be accompanied, this should not be unreasonably refused.

Formal Grievance Hearing and Appeal

Employees attending a formal grievance hearing will have the right to be accompanied by a trade union representative or accompanied by a workplace colleague, if they so wish. However, as long as a suitable alternative representative is available, unavailability of a preferred representative or workplace colleague should not delay the hearing taking place.

5. **G Grievance and Procedure**

The following 3 stage procedure will usually be applied; however stage one may be omitted by the employee.

Stage 1	Initial Informal Grievance Discussion	Within 7 Calendar days
Stage 2	Formal Grievance Hearing	Within a further 14 Calendar days
Stage 3	Grievance Appeal	Within a further 21 Calendar days

There should be no unreasonable delays in holding grievance meetings/hearings and therefore the timescales above should be adhered to unless the parties mutually agree an alternative timescale.

Set out below are the stages of the Grievance Procedure. It may be helpful to consider mediation ¹ at any point in procedure, particularly in the early stages.

5.1 **Stage One - Initial Informal Grievance Discussion**

An employee should, where reasonable and practicable, raise their grievance informally with their manager, where they believe that the matter can be dealt with and resolved using this mechanism.

At this stage of the procedure, the grievance will be managed via a process of informal discussion between the manager and the employee and this should take place within 7 calendar days of the matter being raised. Where the employee's manager is the subject of the grievance, the matter should be discussed at the next appropriate level of management. A written record should be made on the suggested form at appendix 1.

The employee may omit this stage of the procedure, should they wish their grievance to be dealt with formally.

¹ Mediation is a voluntary structured, non-judgemental process, in which an impartial third party works with parties in dispute to help them explore and understand their differences and (where possible), find solutions to settle them. Mediation is not a solution in itself, but a methodology for achieving resolution by avoiding the traditional win-lose approach to resolving conflict. It seeks to enable all parties to find their own meaningful solutions to conflict by emphasising the importance of communication, understanding and promoting shared interest.

5.2 Stage two - Formal Grievance Hearing

Where an employee wishes to proceed directly to the formal stage of the procedure or they have attempted to raise the matter with their manager informally, without success, they should raise their grievance, formally in writing by completing the grievance registration form at Appendix 2, and enclosing any written evidence available at the time.

The employee is required to set out the basis of their grievance and send a copy of the grievance registration form to their manager. If their manager is the subject of the grievance, or has unsuccessfully attempted to resolve the matter informally, the form should be sent to the next appropriate level of management.

5.2.1 Invitation to a Formal Grievance Hearing

The manager receiving the grievance form should write to the employee acknowledging receipt and inviting them to attend a grievance hearing. This correspondence should also confirm the employee's right to be represented by a local trade union representative / trade union official or by a workplace colleague.

A grievance hearing should normally be held within 14 calendar days of receipt of the written grievance, unless all parties have agreed an alternative timescale.

5.2.2 The Grievance Hearing

The employee will be entitled to be represented by a trade union representative or accompanied by a workplace colleague.

Any documentation relating to the formal grievance hearing should be sent out at least 7 calendar days before the hearing.

At this stage of the procedure, the grievance will be managed via a process of formal discussion between the senior manager nominated to hear the grievance and the employee.

The hearing will:

- Give the person with the grievance, or their representative, an opportunity to expand the details contained on the grievance registration form.
- Give the manager hearing the grievance an opportunity to ask those questions necessary to determine exactly the cause of the grievance. The manager may wish to be supported by a HR and/or professional advisor as appropriate.
- Allow the employee to make a statement, present evidence or call witness (es), who in turn can be questioned by the manager hearing the grievance.

- Allow for the manager who heard the grievance at the previous stage, (where the matter has been discussed at Stage 1) to make a statement, present evidence and be questioned as necessary, by the manager hearing the grievance.
- Give the person raising the grievance, or their representative, an opportunity to sum up their grievance and the resolution they are seeking.

5.2.3 Witnesses

Due consideration should be given to the planning of the grievance to allow for the attendance of witnesses. Where the employee or manager who heard the grievance at the previous stage wishes to call witnesses to the hearing, they will be requested to notify the manager nominated to hear the grievance 7 calendar days in advance, and be responsible for ensuring that they are in attendance.

Witnesses who have provided statements should be advised of the fact that a hearing may take place and of their being obliged to attend.

Every effort will be made to roster witnesses so that they may be in work when required to attend the hearing. No witness should lose pay as a consequence of being required to attend a hearing.

5.2.4 Written Grievance Decision

Where possible the manager nominated to hear the grievance should try and reach a decision on the day. However, he/she may request clarification, or further information to inform the decision, before a decision can be reached and communicated.

The manager nominated to hear the grievance is required to communicate the decision to the employee in writing, without unreasonable delay. The written grievance decision will normally be provided within 7 calendar days of the grievance hearing. This timescale may be extended by mutual agreement between the nominated manager and the employee, should additional time be requested by the manager to reflect on and consider the facts.

The written grievance decision should be in writing (suggested form attached at appendix 3), whether or not the employee's grievance has been upheld, the reasons for the decision, and their right of appeal, and to whom they should appeal should they be dissatisfied with the outcome.

Where a grievance is upheld, the written decision should confirm what action will be taken to resolve the matter.

5.3 Stage 3 - Formal Grievance Appeal

Should an employee be dissatisfied with the outcome of the Stage 2 Hearing, they have a right of appeal. The employee must submit their written appeal on

the form at Appendix 4, to the manager as soon as possible but within 14 calendar days of receipt of the written grievance hearing decision. The grounds for the appeal should be clearly set out.

A grievance appeal hearing will be arranged, which will be heard by an appropriate senior manager, not previously involved in the grievance and nominated by the Director of Workforce & OD. The senior manager may wish to be supported by an HR and/or professional advisor as appropriate. The employee should be advised of their right to be accompanied by a Trade Union representative or a workplace colleague.

The appeal hearing will normally be held within 21 calendar days of receipt of the letter of appeal, unless all parties have agreed an alternative timescale.

The appeal hearing will:

- Give the employee, or their representative, an opportunity to expand the details contained on the grievance appeal form (Appendix 4).
- Give the manager hearing the appeal an opportunity to ask those questions necessary to determine exactly the nature of the appeal.
- Allow the employee to make a statement, present evidence or call witness (es), who, in turn, can be questioned by the manager hearing the appeal.
- Allow for the manager who heard the grievance at the previous stage to make a statement, present evidence, call witnesses and to be questioned as necessary.
- Give the person making the appeal, or their representative, an opportunity to sum up the grounds for their appeal and the outcome they are seeking.

5.3.1 The Appeal Decision

Where the senior manager nominated to hear the appeal communicates their decision verbally, they are still required to provide a detailed written appeal decision, on the form, attached at Appendix 5.

5.3.2 Written Appeal Decision

The written appeal decision, which will be final, should be sent to the employee within 7 calendar days of the appeal hearing. This timescale may be extended by mutual agreement to allow the manager additional time for further reflection and consideration of the facts.

The written appeal decision should clearly set out whether or not the employee's appeal has been upheld and ensure that the reasons for this decision are fully explained.

Where a grievance is upheld, the written appeal decision should confirm what action will be taken to resolve the matter. This decision will be copied to the appropriate manager, to ensure that the agreed actions are implemented, monitored and reviewed by them, as appropriate, to ensure the matter(s) raised are dealt with effectively and to the satisfaction of the employee.

6. Collective Agreement

If a grievance is being raised on a collective basis then at the outset the stages of this policy to be followed will be agreed by all parties. All parties to the grievance will need to be identified on submission of the complaint either by name or in the case of a large department, by exception, if some individual employees do not wish to be party to the grievance.

The number of staff attending the grievance to represent the collective group will be agreed at the outset (but should not normally exceed three members of staff plus the TU representative).

Where this process fails to determine a solution to the collective grievance, either side may refer the matter to the Advisory Conciliation & Arbitration Service (ACAS) for advice or conciliation. Where the matter cannot be resolved by conciliation, both parties may agree to refer the matter to ACAS for arbitration. Where arbitration is used, both parties should agree in advance to abide by the Arbitrator's decision.

7. Overlapping Grievance and Disciplinary Cases

Where an employee raises a grievance during a disciplinary process, the manager will discuss with the employee and their representative before a decision is made on whether the disciplinary process should 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.

8. Process for Dealing with Ex-Employees

Where an ex-employee raises a grievance relating to their employment, this should be put in writing to their previous line manager within one month of leaving employment.

The line manager should acknowledge the grievance letter and provide a written response to the employee as soon as possible but no later than 14 calendar days from receipt of the employee's grievance. This response will conclude the matter.

Where an employee has commenced the grievance process prior to leaving employment, the usual grievance procedure will be followed.

9. Employment Monitoring

An accurate record of all grievance events should be maintained on the Electronic Staff Record (ESR), to ensure that any necessary follow up action is taken, and to

enable the organisation to detect any potential trends or patterns of behaviour. This information must be disaggregated by equality strand and routinely collected, analysed and reported on to ensure that grievance processes are fair and equitable for all individuals and groups, and to demonstrate that HEIW are meeting their employment equality monitoring duties.

NHS organisations should monitor grievances against the protected characteristics outlined in the Equality Act 2010 (see appendix 6).

**Appendix 1 - Suggested Note of Initial Informal Grievance Discussion
(Stage 1)**

This form should be completed by the manager who considered the grievance under stage 1

Date grievance received:	
Date grievance discussion	
Date outcome notification sent to employee:	
Please record the nature of the grievance:	
Please indicate below the action taken under stage 1	
Grievance upheld Summary of action taken to resolve grievance	
Grievance rejected Summary of grounds for rejection	
Please indicate below if the employee has lodged a request for a grievance hearing (Stage 2) against this decision, attaching the request letter.	
Date request for Stage 2 received	
Manager who considered stage 1 grievance	
Name:	
Job Title/Department:	

Workplace Address:	
Contact Telephone Number:	
Signed:	
Date:	

A Appendix 2 - Individual and Collective Grievance

Ini Initial Grievance Registration Form (stage 2)

Name*:			
Job Title:			
Department:			
Workplace Address:			
Contact Telephone Number:		Contact Email Address:	

Line Manager			
Name:			
Job Title:			
Department:			
Workplace Address:			
Contact Telephone Number:		Contact Email Address:	

Staff Representative/Work Colleague			
I If you are being accompanied by a staff side representative or colleague please complete the section below so that they can be included in any correspondence.			
Name:			
Department:			
Workplace Address:			
Contact Telephone Number:		Contact Email Address:	

* In the event of a collective grievance, please identify the names of all parties to the grievance.

Grievance details

I In the section below please explain the nature of the grievance you wish to raise. Please include details of any colleagues involved. You may add further details on a separate document (in which case please tick the box at the bottom of the section and provide a brief overview in the space provided). Please make sure any additional details are firmly attached to this form.

Resolution being sought – Please indicate how you would like to see the matter resolved

I I have provided further details in a separate document which is attached ☐

Signed*:	
Date:	

*** For collective grievances, all members of staff must sign the form**

Please send this form along with any supporting documentation to your immediate line manager. If your grievance concerns your immediate line manager then the form should be passed to the next in line manager.

Appendix 3 - Grievance Hearing (Stage 2)

This form must be completed by the manager who hears the grievance.

Date Grievance Received:	
Date Grievance Hearing :	
Date formal outcome notification sent to the individual:	
Please indicate below the action taken under Stage 2	
Grievance upheld – Summary of action taken to resolve grievance	
Grievance rejected - Summary of grounds for rejection	

Please indicate below if the employee has lodged request for an appeal hearing (Stage 3) against the decision of this hearing, attaching the request letter.	
Date Appeal Request Lodged:	
Hearing Officer	
Name:	
Job Title/Department:	
Workplace Address:	
Contact Telephone Number:	
Signed:	
Date:	

Appendix 4 - Request for Appeal Hearing (Stage 3)

If you are dissatisfied with the written response you have received in relation to your Stage 2 grievance, please complete the details below and submit this form to:-

.....
Within 14 days of receipt of this form and enclosed letter.

NAME:

In the section below please outline the basis of your appeal, giving as full an explanation as possible to why you are not satisfied with the decision taken
SIGNED: DATE: Now send the form to the person indicated in the letter, confirming the outcome of your Grievance Hearing within 14 days of receipt of the letter.

Appendix 5 - Appeal

This next section should be completed by the senior manager who hears the appeal.

Date appeal received:	
Date of appeal hearing :	
Date formal outcome notification sent to the individual:	
Appeal Upheld?	YES / NO
Summary of final appeal outcome	

Final Appeal Panel:		
Name:		
Job Title/Department:		
Workplace Address:		
Contact Telephone Number:		

Signed:		
Date:		

Appendix 6 – Equality Act 2010

The Equality Act 2010 came into force on 1 October 2010. The Act brings together a number of existing anti discrimination laws and introduces changes that give employees greater protection from unfair discrimination. It sets out the characteristics that are protected by law and the behaviour that is unlawful. The protected characteristics under the Act are (in alphabetical order):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

Under the Act people are not allowed to discriminate, harass or victimise another person because they have any of the protected characteristics. There is also protection against discrimination where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic. The Act recognises 6 forms of discrimination: direct; indirect, discrimination by perception; discrimination by association; harassment and victimisation. The Act changes and extends certain concepts and definitions and introduces new forms of unlawful discrimination including:

Association Discrimination

This means that employers cannot directly discriminate against someone because they are associated with another person who possesses a protected characteristic.

Employers need to be mindful of this extension to the law when dealing with employees who are carers of elderly relatives or disabled children as they will be protected against discrimination or harassment in relation to the person they care for.

Consideration is particularly relevant when dealing with flexible working applications from carers, or when subjecting an employee to a disciplinary procedure because of their persistent lateness where the employee may have a caring responsibility.

The Equality and Human Rights Commission has prepared Codes of Practice on employment, services, public functions and associations and equal pay. The purpose of these Codes is to explain the new statutory provisions of the Act. The Codes were laid before Parliament on 12 October 2010 and will remain in draft form until the Government makes the Order bringing them into force. The Codes

will be available to download from the Equality and Human Rights Commission at www.equalityhumanrights.com

2. The Duty to Make Reasonable Adjustments

Equality law recognises that bringing about equality for disabled people may mean changing the way in which employment is structured; the removal of physical barriers and/or providing additional support for a disabled employee. This is the duty to make reasonable adjustments. The duty aims to make sure that a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person, as far as is reasonable.

When the duty arises, employers are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces. In particular the need to make reasonable adjustments for an individual employee or job applicant must:

- not be a reason not to appoint someone to a job or promote them if they are the best person for the job with the adjustments in place
- be considered in relation to every aspect of a person's job
- not be a reason to dismiss an employee.

Less favourable treatment of a disabled person for a reason related to their disability cannot be justified where the reason for the treatment can be removed or made less than substantial by a reasonable adjustment.

Where a disabled employee is subject to the disciplinary policy, advice on the duty to consider reasonable adjustments may be sought at any stage of the process from a human resources advisor, the Occupational Health Department or from trade union or professional organisation representatives.

The Disability Advisory Service (Access to Work) can advise on work place adjustments and where necessary possible alternative employment options and in certain cases will contribute to the purchase of specific equipment or other workplace adjustments, which will enable the person to continue in employment. The employee will be involved in all of the above processes.

Only equality law is referenced above. There are other laws which you need to comply with to ensure that the disciplinary process is fair. You can find out more from the ACAS Code of Practice on Disciplinary Procedures at www.acas.org.uk