

## **Grievance**

***This policy should be read alongside the 'Common Principles'.***

### **10.1. Introduction**

This policy outlines the process an employee can follow where employees are concerned about issues at work, which affect them personally which cannot be resolved informally.

### **10.2. Our approach**

The Academy Trust aims to provide a working environment, which promotes the dignity at work of all employees. We believe that diversity should be valued and respected and that the workplace should be free from all forms of bullying, harassment and unlawful discrimination.

In order to accomplish this, there should be honest and open communication at all times between employees and managers about work and the working environment. When employees raise concerns, they should be taken seriously and resolved as quickly as possible.

Most concerns will be resolved informally and every attempt should be made by employees to seek informal resolution where possible but if the need arises this formal procedure exists.

Employees should note that this policy should not be routinely instigated in response to any performance management issues being addressed.

### **10.3. Policy statement**

This policy provides employees and Managers with an approach for raising and resolving personal work issues, including allegations of harassment, bullying and unlawful discrimination. If at any stage, the evidence and circumstances of a case indicate that the issue is potentially a disciplinary offence, the matter should be dealt with using the Academy Trust's Disciplinary Policy and Procedure.

Employees should make every attempt to resolve concerns informally, before moving onto the formal process. However, an individual seeking to resolve an issue through a formal process must discuss the matter with their Manager, Headteacher or trade union representative before doing so.

Where a formal allegation is found to be malicious, vexatious or in bad faith, disciplinary action against the employee will be taken.

Complaints by two or more employees should be pursued through a Collective Grievance.

Complaints will not be considered except in exceptional circumstances if they are raised more than three months after the incident, which is the subject of the complaint.

## **10.4. Managing Grievances**

No employee will be victimised as a result of raising a concern under this Grievance procedure. This policy and procedure will not be used to prevent a Manager or Senior Leader from managing conduct or performance.

If the complaint is against the employee's Manager they should discuss the matter with their Manager's Manager. If it is about the Headteacher they should raise this matter with the Executive Headteacher; if it is about the Executive Headteacher, they should raise the matter with the Chair of Trustees.

Where the employee formally raises a grievance concern in response to an action or proposed action by management, a decision will be made by the Headteacher, or the Chair of the Local Governing Body (where the matter concerns the Headteacher's action or proposed action) following advice from the Academy Trust's HR Adviser, as to whether it is appropriate or not to delay the action pending conclusion of the grievance process. (or Executive Headteacher and Chair of Trustees where appropriate in place of Headteacher and Chair of Local Governing Body)

Any disagreement between management and the employee concerning the application of this procedure, (e.g. where there are exceptional circumstances justifying the complaint being raised more than three months after the event), may be referred to the Chair of Trustees or to their delegated representative who will decide on the way forward and their decision shall be final.

## **10.5. Definitions and general information**

### **Employees**

This policy applies to all Academy Trust employees.

### **Grievance**

Concerns at work include but are not limited to a belief by an employee that:

- A policy or procedure has not been applied correctly;
- Unfair work or working arrangements exist;
- They have been harassed on the grounds of gender, gender reassignment, marriage and civil partnership, age, race, disability, religion or belief, sex or sexual orientation;
- They have been bullied at work; or

- They have been unlawfully discriminated against or treated unequally on any of the above grounds.

## **Harassment**

Harassment is any unwanted behaviour usually linked to protected characteristics whether intentional or not that violates the dignity of men and women in the workplace or creates an intimidating, hostile, degrading, humiliating or offensive environment for another person.

## **Bullying**

Bullying involves offensive, intimidating, malicious or insulting actions and practices that are directed at one or more staff either deliberately or unconsciously.

## **Record Keeping**

All records connected to the grievance procedure must be retained and kept securely on the employee's Personnel file (in a separate section or envelope marked confidential). These records will be retained until six months after the end of the employee's employment with the Academy Trust.

## **10.6. Roles and responsibilities**

### **Employees**

Any member of staff who feels they have been unfairly treated or been the victim of bullying, harassment or unlawful discrimination may experience feelings of anxiety and distress. Equally, any member of staff who is accused of unfairly treating another member of staff may experience similar feelings and should be provided with the same level of support as the alleged victim. Both parties will need access to information about the options available to them, including the Academy Trust's procedures and support available. These can be obtained from the Headteacher or trade union representative.

All parties should be made aware of the support available through the Occupational Health counselling service and any employee assistance programme which the Academy Trust provides.

Concerns should be discussed at the earliest opportunity and resolved between individuals wherever possible before pursuing formal action.

## **Headteachers and Managers**

Are responsible for ensuring the workplace is free from harassment, bullying or unlawful discrimination and that all employees are treated with dignity and respect. All staff with line management responsibility should be familiar with how to implement the grievance policy.

## **Trades unions**

The role of trade unions is to:

- Assist in bringing about a speedy resolution to concerns arising in the workplace
- Provide support and advice to staff on fairness at work issues
- Provide representation to staff during the grievance process.

## **Mediation**

To support the successful application of the Grievance Policy, the Academy Trust may use a Mediation Service. Mediation is defined as a way of resolving a dispute. It is an intervention whereby a neutral and impartial third party intervenes and assists individuals to reach an agreement acceptable to both sides.

## **10.7. Applying the grievance procedure**

### **Informal Action**

Every employee is expected to respect good working practices and the terms and conditions of employment. However, there may be occasions when an issue arises between colleagues. Wherever possible these concerns should be raised at the earliest opportunity and informal resolution is strongly encouraged in the first instance. Where this cannot be achieved this policy may be instigated.

### **Formal Procedure**

The complaint should be in writing, and where it involves other employee(s) they must be named.

The complaint should outline the grounds of the complaint and the steps taken to resolve the matter informally.

The complaint/grievance should be submitted to the employee's Manager, or the Headteacher (if the complaint is about their Manager/a Senior Leader), or the Executive

Headteacher (if the complaint is about a Headteacher or a member of trust central staff), or the Chair of Trustees (if the complaint is about the Executive Headteacher).

The individual receiving the complaint will either undertake an initial investigation of the issues raised themselves or following consultation with the Headteacher / Chair of Local Governing Body, agree to delegate this task to a Senior Leader or another Governor.

If it is considered that there is a potential disciplinary issue the Academy Trust's Disciplinary Policy and Procedure will apply.

## **Investigation**

If the employee's Manager or the Headteacher, considers that it is an issue that can be dealt with under the grievance policy, the Manager / Headteacher will advise the Investigating Officer. The Manager / Headteacher should also write to all other parties involved in the complaint and advise them as to how the matter will be progressed.

Where it would be inappropriate for the person receiving the complaint to be the Investigating Officer they will appoint a Senior Leader or Governor either to be the Investigating Officer or to appoint an Investigating Officer who is independent of the school.

The Investigating Officer should individually meet with the key people involved to understand the issues of the case, seeking advice as appropriate.

If the circumstances arise where the employee who raised the concern is absent due to sickness during the investigation process, and the employee is unable to attend a meeting due to ill-health, they will be encouraged to provide their representations (e.g. points of clarification or additional information) in writing or via their trade union representative. The same process will apply to any employees who are subject to investigation. The aim is to avoid any unnecessary delays to the investigation process.

## **Representation**

The employee who has raised the concern, and any employee about whom the concern has been raised, will be advised that they may choose to be represented by a work colleague or a trade union representative at the formal investigation meeting. The employee will be invited to submit to the Investigating Officer any documents that they feel are relevant to their complaint.

If the employee's chosen representative cannot attend the meeting and cannot propose a reasonable alternative date and time for the meeting within five working days of the date for the meeting proposed by the Investigating Officer then the meeting should proceed without the representative as it is in the interests of all parties that issues are addressed as soon as possible. Alternatively, the employee may elect to bring another representative.

Neither side may be accompanied by a legal representative during the investigation or grievance appeal process.

## **Investigation Outcome**

Upon conclusion of the investigation a report should be written, containing the Investigating Officer's findings and recommendations. The report should state whether the original formal complaint should be upheld in full, partly upheld or not upheld. The decision should be confined to the issues raised in the original formal complaint.

If Investigating Officer is not the manager of the complainant then they will present the report containing their findings and recommendation(s) to the relevant Senior Leader or the Headteacher.

Where the Investigating Officer's recommendations are accepted and disciplinary action is one of the recommendations, the Academy Trust's Disciplinary Policy and Procedure should be invoked.

The relevant Manager / Senior Leader / Headteacher will be responsible for feeding back and disclosing the findings and recommendations to the complainant and all relevant parties.

## **Timescales**

Complaints will not be considered except in exceptional circumstances if they are raised more than three months after the incident which is the subject of the complaint.

A decision to refuse to consider an issue on the grounds it is out of time should only be made by the manager after receiving advice.

Every attempt will be made to progress any formal investigation promptly.

Post-employment grievances may be considered if they are raised within three months of termination of employment with the Academy Trust. On receipt, the Academy Trust will review the grounds for the complaint and where appropriate will investigate the complaint and respond in writing. In cases where the school considers it not appropriate to deal with the grievance the school will write to the ex-employee informing them why it will not be considered. In such circumstances, advice will be sought.

## **Appeals**

An employee who is dissatisfied with the outcome of their grievance has a right of appeal against the findings of the investigation. Any appeal must be submitted in writing within 10 working days of the date of the letter confirming the outcome of the investigation. Failure to abide by those timescales may result in an appeal being denied.

The appeal must be submitted to the Manager / Senior Leader / Headteacher who confirmed the outcome of the investigation.

An appeal can be lodged on one or more of the following grounds:

- Procedure – there was a failure to follow procedure and this had a material effect on the decision;
- Redress – where no reasonable person, on the facts presented, would have decided on that re-dress; or
- New evidence is available that could not have reasonably have been raised during the investigation and the absence of which had a material effect on the decision.

The appeal submission must also set out clearly:

- The detailed basis, as far as possible, for each ground of appeal to be relied on;
- Details of any new evidence and any supporting documentation to be relied on; and
- Specific grounds of appeal for each contributing factor to the complaint

An appeal will only be considered if the above grounds are covered in the written appeal.

The person(s) hearing the appeal will be different from the person(s) who held the Grievance meeting. The person(s) hearing the appeal will not have been previously involved, directly or indirectly, with the case. The person(s) hearing the appeal:-

(a) will be an Appeal Panel of Governors / Trustees where the decision appealed against was made by a member or members of the Local Governing Body;

(b) will be the Executive Headteacher where the decision appealed against was made by the Headteacher;

(c) in any other case, will be the Headteacher or such other Senior Leader as the Headteacher may nominate.

## **Appeal Hearing**

The person(s) hearing the appeal will write to the employee to confirm that the appeal has been received, review the relevant paperwork, and will invite the employee to a Grievance Appeal meeting giving reasonable notice in writing of the:

- Date, time, place and purposes of the appeal
- Issues to be discussed
- Format of the appeal meeting
- Arrangements for exchanging documents and witness statements

- The opportunity to be represented by a work colleague or a trade union representative The person(s) hearing the appeal has the discretion to postpone the appeal once only normally by up to five working days of the original date – if the employee’s representative is not available at the time proposed.

The presenting manager (who will normally be the individual who determined the outcome of the complaint) and the employee will provide each other, and the person(s) conducting the appeal hearing, with any documents to be used by them and the names of any witnesses to be called in advance of the appeal hearing.

The Grievance Appeal meeting will consider the grounds of appeal and will take appropriate advice. The appeal hearing will not be a rehearing of the issues and will focus on the specific grounds of appeal set out in the employee’s appeal submission.

Where the employee has lodged an appeal on the grounds of new evidence the presenting individual will also be entitled to present new evidence.

The presenting individual will also be able to seek to correct any deficiencies in the original decision by relying on his or her own new evidence.

The person /panel conducting the appeal have the authority to confirm, vary or overturn the original decision. The outcome could be:

- Uphold the appeal in full;
- Uphold the appeal in part; or
- Not uphold the appeal.

Where the person /panel decide to uphold the appeal on grounds of procedure or new evidence they will have to refer the complaint back to the manager/senior leader/governor who considered the original grievance with advice from the school’s HR Adviser. The content of the panel’s decision will be discussed with the manager and appropriate action taken.

The decision of the person /panel hearing the appeal is final and there shall be no further right of appeal.

The outcome, with reasons and any redress, will be confirmed in writing to the employee.

### **Recurrent Complaints or Grievances**

Aggrieved employees dissatisfied with the outcome of their complaints or grievances under the Grievance procedures, having exhausted the procedure, may attempt to restart procedures. If the employee has exhausted the procedure in respect of an issue, it is not open to the employee to restart the procedure in respect of the same issue.

However, care must be taken to ensure that new issues are addressed under the procedures. If the dissatisfaction of an aggrieved employee manifests itself in unacceptable conduct this should be dealt with under the appropriate disciplinary procedure.

In the event a grievance is raised whilst the employee is subject to another formal procedure, a management decision will be taken (following advice), as to whether this concern will run concurrently or whether the employee will be advised to raise the concern during an appeal of that process. The Academy Trust will ensure the complaint is heard.

### **10.8. Collective Grievances**

Collective grievances should only be raised in the event of an industrial dispute between the Academy Trust and two or more of its employees or a group of its employees, or between one group of the Academy Trust's employees and another group of its employees. A collective grievance cannot be raised by individual employees.

Please refer to the Academy Trust's Collective Grievance and Disputes procedure.

### **Appendix : Definitions**

**Unlawful Discrimination** – is less favourable treatment of a person:-

- (a) on the grounds of his/her sex
- (b) on the grounds that s/he intends to undergo, is undergoing or has undergone gender reassignment
- (c) on the grounds that s/he is married or a civil partner
- (d) on the grounds that she is pregnant or has taken or sought to take maternity leave
- (e) on the grounds of colour, race, nationality, ethnic or national origins

(f) on the grounds of disability

(g) for a reason relating to disability where the less favourable treatment is not

Justified

(h) on the ground of sexual orientation

(i) on the grounds of the religion, belief or lack of religion or belief of any person other than the discriminator

(j) on the grounds of his/her age where the less favourable treatment is not justified

(k) because s/he has made a complaint or allegation of breach of any anti-discrimination legislation or has acted as a witness or informant in connection with proceedings under any anti-discrimination legislation

There are four types of discrimination direct, indirect, harassment and victimisation.

**Harassment** - is any unwanted behaviour that violates the dignity of men and women in the workplace or creates an intimidating, hostile, degrading, humiliating or offensive environment for another person. Harassment can take many forms and occur for a variety of reasons. It may be related to age, sex, race, ethnic or national origins, disability, religion, sexuality or any personal characteristic of an individual. It may be directed at one person or many people. Often it takes place when there are no witnesses, but not always. It can take many forms – jokes, comments, suggestions, actions, abuse, ridicule, physical contact, verbal or non-verbal (e.g. written or email). It can be persistent behaviour over a period of time, but a one-off act may also amount to harassment. Harassment occurs if its effects, rather than just its purpose, are to violate dignity. This means there is no need to show that the harassment was intentional. A person or a group of people may harass someone deliberately or unknowingly. It is the harassed individual's perception of the behaviour which is important. Extreme forms of harassment, such as sexual or racial assault, which constitute offences under the criminal law, are clearly recognisable.

**Bullying** - involves repeated offensive, intimidating, malicious or insulting actions and practices that are directed at one or more workers. The behaviours are unwelcome to the victim and undertaken in circumstances where the victim has difficulty in defending themselves. The behaviours may be carried out as a deliberate act or unconsciously. Bullying, unlawful discrimination and harassment can cause humiliation, offence and distress to the victim. These definitions apply regardless of the intentions of the perpetrator. These forms of behaviour can cause psychological distress, which affects social and work behaviour. It may involve the abuse of authority and the exercise of unfair disciplinary measures, unreasonable changes in an employee's responsibilities or exclusion of the individual from normal social, consultative and/or decision-making processes.

## **Appendix: Management guidance for informal procedure**

1. Discuss the complaint/grievance with the employee(s) – giving them an opportunity to explain.
2. Where the employee(s) indicates they would prefer to discuss the matter with a person of the same sex/race, this should be arranged, whenever possible. Avoid

making judgments and allow employees to express and explain their views/perceptions, etc.

3. Take a non-threatening/critical approach.
4. Provide appropriate support/counseling if necessary.
5. Subject to (6) below, any discussions are confidential and no further action should be taken without the employee's consent.
6. In some cases, the allegation may be so serious as to require immediate action, e.g. if it involves a criminal offence or serious misconduct. In such circumstances, the manager/governor may be compelled to take action and to communicate the contents of the discussions to third parties irrespective of the employee's wishes.
7. In the informal stage, outline options to the individual. Any individual(s) can seek advice or talk through the options available to them from their HR team or Trade Union representative at any stage.

## **Appendix: Undertaking a grievance investigation**

In carrying out the investigation interview, the aggrieved employee must first be interviewed to enable them to fully outline and document the nature of their complaint/grievance.

At the meeting the Investigating Officer(s) will enquire if the aggrieved employee can identify any witnesses to support their complaint/grievance.

The Investigating Officer(s) may appoint a trained note taker to compile notes during the investigation. This practice will enable the investigating officer(s) to fully focus on the discussions with the aggrieved employee and any witnesses (if applicable).

The notes of the meeting will be forwarded to the aggrieved employee to check for accuracy, sign and return to the Investigating Officer(s) to be included in the investigation report.

If witnesses to the complaint/grievance are identified, the Investigating Officer(s) will meet them to take a statement in relation to the grievance raised. The Investigating Officer(s) will interview anybody who they feel will provide information relevant to the grievance raised.

The witness statement/notes will be returned to them to check for accuracy, sign and return to the Investigating Officer(s) to be included in the investigation report.

The Investigating Officer(s) will collate any other relevant documents in relation to the complaint/grievance raised.

Following completion of the investigation the Investigating Officer(s) will produce an investigation report detailing their findings.

This is a suggested process for carrying out the interview with the aggrieved employee

1. Explain that this is an investigation meeting and that the purpose is to fact find.
2. Outline that due to the nature and seriousness of the allegations, it is important to ensure that all evidence, relevant facts and witness statements are collected.
3. This meeting is an opportunity for the employee to put their side across.
4. Explain that you will be taking notes during the meeting and that following the meeting; you will request that they sign the notes as a true and accurate record of the discussion. This may involve you typing up the notes
5. They have the right to be accompanied by a Trade Union Representative or work colleague.

If they are accompanied by a representative, the representative's role is to support and

advise the employee and assist the process if required. They cannot answer questions on the employee's behalf.

6. Ask questions that are relevant and will help ascertain the facts. Some of the questions to consider are:

- a) Who is involved?
- b) What happened?
- c) Where exactly did it happen?
- d) When did it happen – what day, what time of day?
- e) Why it might be a grievance – is there a breach of contract?

7. Listen carefully to the individual, without prejudice and judgment.

8. Ask questions for clarification or additional information.

9. Distinguish between fact and opinion.

10. Determine which facts are relevant to the matter under discussion.

11. Explain the next stage.

12. Thank those present for attending.