

Grievance Procedure

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1. Policy

- 1.1. Barnet Council employees have the right to raise a grievance relating to their employment with the Council, excluding matters for which separate appeal arrangements operate.
- 1.2. Barnet Council defines grievances as concerns, problems or complaints that employees raise with them.
- 1.3. Anybody working in the Council may, at some time, have problems or concerns about their work, working conditions or relationships with colleagues that they wish to raise with management. It is the Council's intention to resolve problems before they can develop into major difficulties for all concerned. Bullying, harassment and victimisation complaints will be investigated within this Policy see **Annex D** for further detail.
- 1.4. If as a result of the investigation of a grievance it is found that a disciplinary offence might have been committed by another person, action may be taken in accordance with the Council's Disciplinary Policy.
- 1.5. The above forms the Council's policy as at May 2017, it should be noted that:
 - the policy does not confer any contractual rights the Council will retain the right to review the policy at any time. Changes may result from employee, management and trade union feedback and/or from changes in employment legislation. The Council, following consultation with recognised Trade Unions, will implement revisions and updates.
- 1.6. The policy will be reviewed by April 2019.

2. Scope

- 2.1. This policy applies to all Council employees, including Head Teachers, Teachers and Chief Officers.
- 2.2. A Chief Officer is defined as a Senior Manager appointed on Grades 1 to 8.
- 2.3. The policy excludes the Chief Executive.
- 2.4. The policy is recommended for implementation by staff directly employed by schools, for example those based in Academies.
- 2.5. Where the Grievance relates to the Chief Executive, the matter should be referred, in all cases, to the HR Director. On receipt of the Grievance, the HR Director will arrange any necessary investigations and meetings in accordance with ACAS guidance using internal and external facilitators as necessary, whilst maintaining, as far as is practicable, full confidentiality.
- 2.6. This policy also applies to all Agency, Casual and Supply Workers, Consultants and serving Governors.

2.7. Summary of Procedure

The Grievance Procedure contains the following stages:

Stage	Suggested Timescale	Action	Outcome
Stage 1 - Informal	Weeks 1- 4	The employee raises their grievance informally with their line manager; this can be verbally or in writing. See Annex A for detail of who will be involved in the grievance process.	The line manager investigates and uses mediation if appropriate. If the outcome is acceptable to the employee the case is closed, subject to monitoring and review. Where the outcome is not acceptable to the employee the grievance may be progressed to Stage 2.
Stage 2 - Formal	Weeks 4-8	The employee submits their grievance in writing to their line manager, using the form at Annex B . See Annex A for detail of who will be involved in the grievance process.	The manager investigating the grievance should acknowledge the grievance within 5 working days. Where the grievance concerns the Manager the matter will be referred to the next level of Management for action.
			The manager carries out an investigation and makes a decision. Where the decision is accepted the case is closed and the line manager then provides mediation, support and will monitor and review where necessary. Where the decision is challenged the grievance may be progressed to Stage 3.
Stage 3 - Appeal	Weeks 8-12	The employee sets out their appeal in writing. See Annex A for detail of who will be involved at this stage.	The appeals manager makes a decision, which is final at this stage of the procedure. Mediation, support, monitor and review by the employee's line manager may also be appropriate.

4. Procedure

- 4.1.** Issues that may cause grievances include, but are not limited to:
- terms and conditions of employment
 - health and safety
 - work relations
 - bullying, harassment or victimisation
 - new working practices
 - working environment
 - organisational change
 - discrimination
- 4.2.** Where reference is made to “working days” in this policy, the meaning of a “working day” for all establishments except Schools is Monday to Friday (excluding Bank and Public Holidays), irrespective of whether this is a normal working day for the employee. For Schools, “working day” means one of the 195 days in a School year; of which 190 days must be days on which the teacher may be required to teach pupils and perform other duties and 5 days must be days on which the teacher may only be required to perform other duties.
- 4.3.** Setting out a grievance in writing is not easy – especially for those employees whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee should be encouraged to seek help for example from a work colleague, a trade union or other employee representative. Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments which may include assisting employees to formulate a written grievance if they are unable to do so themselves because of a disability.
- 4.4.** Occasionally an employee who is subject to capability or disciplinary process for an unrelated matter may lodge grievances. Both processes will normally run at the same time, however, consideration may be given to suspending the Capability or disciplinary Procedure.

5. Exemptions to the Grievance Procedure

- 5.1.** There are occasions when it is not necessary to follow this procedure for example, if the employee is raising a concern in compliance with the Public Interest Disclosure Act or a grievance is raised on behalf of at least two employees by an appropriate representative, see Annex C for more details.
- 5.2.** The Council and all employees will normally be expected to go through this Grievance Procedure unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour or they will be harassed. There will always be an amount of anxiety for all parties when dealing with grievance cases, but the exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue. The HR team must be contacted where this situation may apply.

- 5.3. Equally, the procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad. The HR team must be contacted where this situation may apply.

6. Dealing with long-term sickness absence

- 6.1. An employee may become anxious in the run-up to a grievance meeting, particularly if they have to face the person who is the cause of their grievance. This could lead in some cases to them being absent from work.
- 6.2. In this situation, the investigating manager should request a medical report from the Council's occupational health specialist. If this requires access to medical records then the employee's agreement must be sought before doing so.
- 6.3. The report should state whether or not the employee is fit enough to attend a hearing. If they are deemed fit enough, the hearing should be arranged.
- 6.4. If not, the grievance procedure may be completed in the employee's absence without unreasonable delay. In this situation, the procedure can be viewed as having been completed and a decision made in the employee's absence. The employee must be informed that they can supply written material if they wish.

7. Modified Statutory Grievance Procedure

- 7.1. Wherever possible a grievance should be dealt with before an employee leaves employment with the Council. If an employee has already left before the grievance procedure was invoked or completed a modified grievance procedure can be used. This is a two-step process as follows:

Step 1 - Statement of grievance

The employee must set out in writing:

- i) the grievance; and
- ii) the basis for it.

The employee must send the statement or a copy of it to the Council.

Step 2 – Response

The Council must set out their response in writing and send the statement or a copy of it to the employee.

8. Grievance Procedure – Guidance

8.1. Stage 1 – Informal Resolution

- 8.1.1.** Informal procedures focus on conciliation, not sanctions, for example asking someone to apologise. The Council provides a mediation service to help with conciliation and this should be considered before a grievance progresses to the formal stage.
- 8.1.2.** Most grievances should be resolved informally with line managers.
- 8.1.3.** Ideally, it should take no more than 4 weeks to deal with a grievance at Stage 1.
- 8.1.4.** At this informal stage in the procedure neither party will be accompanied nor will the right of representation exist, as the aim is to try and resolve matters on a one to one basis and in an informal capacity.

8.2. Mediation

- 8.2.1.** Mediation should be considered if both parties are willing and the matter is appropriate for mediation. The aim of mediation is for both parties to reach a mutually acceptable outcome and to feel able to maintain their working relationship.
- 8.2.2.** If mediation is suitable then both parties should confirm that they understand what this involves and are happy to participate. The manager should contact the HR Department to arrange a mediator.

8.3. Stage 2 – Formal Grievance

- 8.3.1.** The grievance procedure commences formally when the matter is raised in writing. This should be within 12 weeks of the event or issue occurring. Only in exceptional circumstances may a formal grievance be raised and dealt with under this procedure after 12 weeks of the event or incident occurring.
- 8.3.2.** The employee should complete a Grievance Form, see **Annex B**. This should be sent to their line manager, see **Annex A** for details. Grievances may be submitted by e-mail.
- 8.3.3.** For details of who should be involved in the grievance investigation please see **Annex A** for details. However if the grievance is against a Director the process will start with the Chief Executive.
- 8.3.4.** In some straightforward cases the manager assigned to deal with the grievance may be able to reach a decision based on written evidence without the need for a meeting to be arranged and convey the decision in writing.
- 8.3.5.** A grievance should not be dismissed where it has not been submitted on the appropriate form. Whenever managers are made aware of a grievance either verbally or in writing they must use this procedure to deal with it.

8.4. Representation – Stage 2 and 3

- 8.4.1.** If the employee or person subject to the complaint is invited to a meeting to discuss the grievance they should be advised of their right in writing to be accompanied by a Trade Union representative or a Barnet Council colleague. All parties can be represented throughout the formal stages of the process.
- 8.4.2.** The colleague or representative is permitted to address the meeting and to confer with the person they are representing in order to clarify issues. They are not entitled to answer questions on behalf of the employee.
- 8.4.3.** If an employee's colleague or Trade Union representative is not available, an alternative date can be proposed so long as it is reasonable and not more than 5 working days after the date originally proposed.
- 8.4.4.** It is not appropriate for an employee to insist on a colleague or Trade Union Representative whose presence would prejudice the hearing or who might have a conflict of interest.
- 8.4.5.** Employees with a disability and employees whose first language is not English may request additional assistance / representation. Advice from the HR team should be sought in this situation and further support not be unreasonably refused.

8.5. Timescales

- 8.5.1.** An essential feature of this procedure is making sure that grievances are dealt with quickly.
- 8.5.2.** It may be appropriate to deal with the grievance immediately to ensure the safety of the employee making the complaint. This should be considered particularly in cases involving bullying, harassment or victimisation. Such action could include reorganising or relocating work to avoid close or regular contact. In serious cases pending a short urgent investigation the subject of the complaint may be suspended as a neutral act and as a precautionary measure under the Council's discipline Procedure.
- 8.5.3.** Each stage of the procedure should ideally take no more than 4 weeks, which can be extended for more complex cases. On receipt of a grievance the investigating manager should contact the employee making the complaint within 5 working days. Where it is not possible to respond within the specified time periods the employee should be given an explanation for the delay and informed when a response should be expected.
- 8.5.4.** If the employee is genuinely unable to attend the grievance meeting they should be offered an alternative meeting at a reasonable date and time, normally within 10 working days of the date of the original meeting. If the employee fails to attend the rearranged meeting then consideration will be given to making a decision in their absence and they will be notified in writing of the decision and their rights of appeal.

8.6. Investigation

- 8.6.1.** The investigation should gather all the facts that are relevant to the matters under consideration.
- 8.6.2.** Those conducting the investigation will ensure that the employee who is subject to the complaint:
- knows the details of the grievance against them
 - has the opportunity to state their side of the case before any decision is made
 - has the opportunity to be represented by a Trade Union representative or a Barnet Council colleague at the formal stages
 - is dealt with fairly, reasonable and impartially at all times.
- 8.6.3.** In most cases the investigation would involve a meeting with the employee making the complaint and those subject to it. All of who should make every effort to attend. They should be invited to the meeting in writing, which includes their right to representation.

8.7. Stage 2 – Decision

- 8.7.1.** Investigation and decision making must be thorough and objective. The decision and what action is to be taken must be based on evidence collected and on the balance of probabilities.
- 8.7.2.** If the Investigating Manager reaches the conclusion that formal disciplinary procedures should be implemented a formal disciplinary process will be scheduled, in line with the Council's Disciplinary Policy.

8.8. Stage 2 – Post Investigation

- 8.8.1.** At the end of the investigation the Investigating Manager will prepare a report outlining the process followed, the decisions reached and the reasons for their conclusion.
- 8.8.2.** The employee making the complaint and those subject to it will be informed of the findings and the outcome of the investigation. A copy of the report will be provided to the employee.
- 8.8.3.** The investigation report may be used as a management statement of the case for any disciplinary meetings or used at any appeal hearing under this Grievance Procedure.
- 8.8.4.** If there is no case to answer all written records will be held centrally within HR, for monitoring purposes. They will not be stored within any Personal Files. The record will be kept for 2 years unless the complaint involved safeguarding where the records will then be kept indefinitely. The records will be kept in accordance with the Data Protection Act 1998.
- 8.8.5.** If an allegation cannot be substantiated following a formal investigation and there is a reasonable belief that the employee making the complaint acted maliciously, disciplinary action may be taken against them, in line with the

Disciplinary Policy.

8.8.6. In cases where the parties are to remain in the service of the Council and are from the same work area, it may be necessary for them to work separately but efforts will be made to keep them in the same work area wherever possible. It will be the employee who was subject to the grievance who would be moved had the complaint been upheld against them, if this is the most appropriate action. Even if the grievance is not upheld the employee making the complaint and the employee subject to it may still be separated where practical in the interests of good working relations.

8.8.7. In all cases review dates should be arranged and agreed to monitor the outcome of the grievance after the procedure has been completed to ensure that any agreed actions have been implemented.

8.9. Stage 3 – Appeal

8.9.1. The employee making the complaint can appeal against the decision at Stage 2. The appeal must be made to the manager in writing within 5 working days of receiving the decision in writing.

8.9.2. The authorities listed in **Annex A** will hear the appeal.

8.9.3. The appeal should not be delegated to a manager or governor who has had any previous direct involvement in the grievance or where there may be a conflict of interest.

8.9.4. The manager / panel hearing the appeal should give a decision about the outcome of the grievance within 10 working days. This decision is final, except where it is felt that a grievance impacts on an important policy issue.

8.9.5. The points contained in post investigation, **8.8.4** to **8.8.7** at Stage 2 above, may also be applicable following the outcome of an Appeal.

Annex A

Grievance Management Job Role	Stage 1 - Informal	Stage 2 - Formal	Appeal
Head Teacher – directly employed by the Council under Head Teachers’ pay and conditions	Nominated Governor	Chair of Governors who may delegate to a Governor	Panel of Governors
Head Teacher – employed by the Governors	Nominated Governor	Chair of Governors who may delegate to a Governor	Panel of Governors
Teacher, including Deputy Head Teacher - directly employed by the Council under Teachers’ pay and conditions	Line Manager, Head Teacher or nominated Governor	Head Teacher or Chair of Governors	Panel of Governors
Teacher, including Deputy Head Teacher - employed by the Governors	Line Manager, Head Teacher or nominated Governor	Head Teacher or Chair of Governors	Panel of Governors
Chief Officer	Line Manager, however where the grievance is against the Line Manager this should be to the Second Line Manager	Line Manager, however where the grievance is against the Line Manager this should be to the Second Line Manager.	Chief Executive or individual nominated by him/her
All other employees, not listed above, including Centrally Employed Teachers	Line Manager, however where the grievance is against the Line Manager this should be to the Second Line Manager	Line Manager, however where the grievance is against the Line Manager this should be to the Second Line Manager	Line Manager who must be more senior than Stage 2

For Schools Based Employees: Please send the form to the Chair of Governors or Head Teacher where appropriate.

For all other Council Employees: Please send a copy of this form to your line manager or to your second line manager and your HR Team, for monitoring purposes.

<u>Grievance Form</u>
Your Name:
Job Title and Service Area or School:
Work Address:
Contact Telephone Number:
Mobile Telephone Number:
What is your Grievance? <i>Please continue on a separate sheet and attach supporting documents if required</i>
Did you speak informally to your manager about your grievance? Yes on the following date(s)..... No
Why are you dissatisfied with this response?
What do you think should be done to resolve your grievance?
Your signature:
Date:

Exemptions to following the Grievance Procedure

The Grievance Procedure is treated as having been complied with, where:

- the employee is complaining that action to which the disciplinary policy applies is not genuinely on the grounds of conduct or capability and arises from or relates to unlawful discrimination. In these circumstances, where the employee has raised that complaint as a written grievance before any appeal hearing or before presenting at a tribunal, the grievance will not be progressed unless and until the appeal has been heard and a decision made.
- the employment has ended and the employee has raised a written grievance, but it has become not reasonably practical to have a meeting or an appeal. However, the employer must still give the employee a written answer to the grievance; or
- an official of a recognised independent union or other appropriate representative has raised the grievance on behalf of two or more named employees. Employees sharing the grievance may choose one of their number to act as a representative; or
- the employee pursues the grievance using a procedure available under an industry-level collective agreement.

Other Special Circumstances in which the Procedures need not be begun or completed

In addition, neither the employer nor employee need begin a procedure (which will then be treated as not applying), or comply with a particular requirement of it (but will still be deemed to have complied) if the reason for not beginning or not complying is:

- the reasonable belief that doing so would result in a significant threat to themselves, any other person, or their or any other persons' property;
- because they have been subjected to harassment and reasonably believe that doing so would result in further harassment; or
- because it is not practicable to do so within a reasonable period.

Bullying and Harassment

Principles

Barnet Council promotes a work environment where all employees are treated fairly and with respect. The Grievance Policy provides a framework for dealing with harassment, bullying and victimisation at work, in line with the Council's Equality statement.

Barnet Council defines harassment, in line with the ACAS code, as unwanted conduct that has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Harassment applies to all unwanted conduct and in particular harassment relating to protected characteristics. Protected characteristics as defined within the Equality Act 2010 relate to Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, Sexual Orientation.

Using the Grievance Procedure employees can make a complaint of harassment for behaviour they find offensive, even if it is not directed at them.

If an employee feels a third party has harassed them they should make a complaint using the Grievance Procedure. Managers then have a duty to fully investigate the grievance in line with the Procedure.

Barnet Council defines racial harassment as any incident that is perceived to be racially motivated by either the victim or any other person. All racial incidents must be reported and investigated through the Grievance Procedure.

Barnet Council defines bullying as offensive, intimidating, malicious, insulting or humiliating behaviour, which affects an individual or group of employees. Any claims of bullying should be treated in line with the Grievance Procedure.

Barnet Council defines victimisation occurring when an individual is treated less favourably because they have made or supported a complaint or grievance. Claims of victimisation should be managed in accordance with the Grievance Procedure.