

# Grievance Procedure

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## Grievance Procedure

### 1.0 Introduction

- 1.1 The following procedure has been adopted by Birmingham Diocesan Multi-Academy Trust (BDMAT) board of directors.
- 1.2 The procedure sets out the steps that will be taken when a grievance is raised by an employee. A grievance is a concern or problem that an employee or a group of employees might raise with their employer about their work, their terms and conditions of employment, their working environment or their relationship with colleagues.
- 1.3 The procedure is designed to:
  - ensure that employees who have a grievance about their employment are aware of their rights and have a clear framework to enable the grievance to be dealt with;
  - encourage employees to communicate their problems with the appropriate people i.e. between employees and their line managers e.g. headteacher / CEO; and
  - encourage parties to deal with grievances fairly, consistently and speedily and as near as possible to the point of origin.
- 1.4 ***The board of directors encourages employees to resolve grievances in an informal manner and without recourse to the formal grievance procedure wherever possible.***
- 1.5 Employees raising a grievance should be able to do so without fear of victimisation as a result of the grievance or any subsequent investigation/management action. All grievances shall be dealt with in a non-discriminatory and consistent way.
- 1.6 If an employee feels that they have been victimised as a result of raising a grievance, there are various routes that they can take in order to resolve the matter legally. Employees are encouraged to seek advice from their trade union or professional association at any stage.
- 1.7 This procedure was implemented following consultation with BDMAT's Joint Consultative Committee – involving recognised trade unions; BDMAT headteachers and the BDMAT Staff Forum. The policy will be reviewed on a three-year cycle and staff will be consulted on any proposed amendments to this.
- 1.8 This policy does not form part of staff terms and conditions of employment with BDMAT and can be amended at any point.

## 2.0 Scope

- 2.1 The procedure applies to **all** employees in BDMAT. ‘Employee’ means a person employed to work at one of the MAT schools or within the Central Team or in provision made by the board under the Education Acts, other than a person employed by a contractor, including by the authority acting as contractor, or who is self-employed.
- 2.2 The procedure applies to both individual and collective grievances, i.e. those grievances raised by two or more employees about an issue that affects them all.
- 2.3 There are alternative procedures for the following:
- Concerns, problems or complaints made under the Public Interest Disclosure Act, which should be dealt with under the BDMAT whistle-blowing procedure
  - Concerns, problems or complaints that an employee may have about pay or grading, which should be dealt with under the pay policy adopted by the Trust. This may exclude complaints about how appraisal/performance management was managed which might be made under this procedure
  - Concerns, problems or complaints about disciplinary action, which should be raised by the employee during the disciplinary procedure adopted by the Trust.
  - Concerns, problems or complaints about an actual or contemplated dismissal by an employer, which should be dealt with under the procedures of the disciplinary policy, capability or sickness policy, depending on the policy being followed.
  - Concerns, problems or complaints that an employee may have over national insurance, income tax or rules of pension schemes, which are generally outside of the Trust’s control and which should be raised with the appropriate bodies such as the Inland Revenue or the Teachers’ Pension Scheme.
  - Concerns, problems or complaints that an employee may have about conditions of service outside the control of the Trust (for example, the sick pay and maternity leave schemes adopted by the employer under national or local agreements) as distinct from the way in which those conditions have been interpreted and applied by the Trust. These matters, which are generally outside of the Trust’s control should be raised with your Trade Union / Professional Association.
  - Any other matters which are clearly outside the control of the Trust.

- 2.4 If an employee raises multiple complaints including one or more which, if submitted individually, would be dealt with under one of the procedures listed above, or if it is unclear whether the complaint is a grievance which should be dealt with under this procedure or whether it falls within other procedures (examples of which are listed in 2.3 above), the employee will be asked whether they wish the complaints to be heard under the grievance procedure or under another procedure. The aim is not to preclude genuine concerns from being raised, however an employee is not able to raise the same complaint using different procedures. This will not prejudice the investigation of the grievance.

### **3.0 Principles**

- 3.1 The Trust accepts the following principles:

- Employees with a grievance about their employment have a right to raise that grievance and to have it heard.
- Wherever possible, grievances should be dealt with at the early stages of the procedure and by way of informal discussions.
- Where formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case.
- Whenever formal action is taken, it is important to deal with issues fairly.

- 3.2 In addition, the Trust acknowledges that the ACAS Code includes the following key principles:

( ACAS statutory Code of Practice on Disciplinary and Grievance Procedures ):

- Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act consistently.
- Employers should carry out any necessary investigations, to establish the facts of the case.
- Employers should allow employees to be accompanied at any formal grievance meeting. BDMAT requests that any representative / companion attending meetings retain confidentiality at all times in relation to the grievance.
- Employees must be given an opportunity to appeal against any formal decision made.

- 3.3 If any aspect of the grievance procedure causes an employee difficulty on account of any disability that they may have, or if the employee requires assistance because English is not their first language, the employee should raise this issue

with either the member of staff investigating the grievance (referred to in this policy as the Grievance Manager) or their line manager, supervisor or other senior member of staff, who will make appropriate arrangements. Reasonable adjustments may include offering an interpreter or allowing an employee extra time or other help, although these examples are not exhaustive.

- 3.4 The Grievance process is an **internal** employment matter and as such whilst the aggrieved person can be accompanied to meetings by a work colleague or **recognised** Trade Union representative they cannot be accompanied by someone external working in a legal capacity.

#### **4.0 Informal Resolution**

- 4.1 The Trust encourages employees to resolve grievances in an informal manner and without recourse to the formal grievance procedure wherever possible.
- 4.2 The Trust acknowledges that the ACAS Code does not prescribe how grievances should be dealt with or resolved informally. Informal resolution is likely to involve direct discussions between an aggrieved employee and the person or persons perceived to be either the source of the grievance or who are best placed to assist in its resolution. However, it is recognised that employees may be reluctant to engage in such discussions without the support of a workplace colleague or trade union representative. This will be permissible at informal meetings, on the understanding that the meeting takes place on an informal, non-adversarial basis. In such informal meetings either party may withdraw at any point. If a direct approach to the person or persons perceived to be the source of the grievance is inappropriate or unsuccessful, even with the support of a companion, the employee may wish to seek resolution indirectly, by asking someone, such as a manager, phase leader, or head of department, to try to resolve the grievance on their behalf.
- 4.3 Mediation may also be appropriate at this stage provided that the complainant and the person allegedly causing the unacceptable treatment or behaviour express a mutual desire to attempt it and the mediator believes that the situation lends itself to this process. Mediators should be trained, accredited and impartial with experience of resolving disputes.
- 4.4 Mediation may be attempted at any stage of this process subject to agreement between the parties. However, if it is attempted, once the formal process is already underway, the formal process will be suspended pending the outcome of the mediation process. If the mediation process is unsuccessful, this Policy will continue at the appropriate point.

4.5 If, however, an employee does not feel able to pursue a grievance informally, they may lodge a formal grievance. Similarly, an employee who has endeavoured to resolve the grievance informally but without apparent success may also lodge a formal grievance.

## **5.0 Formal Resolution**

5.1 If an employee wishes to lodge a grievance formally, they must state the grievance in writing. The employee is required to be explicit about the nature of the grievance and wherever possible to indicate the desired resolution or action that they would like the school / Central Team to take to resolve the grievance. Employees should indicate whether there has been an attempt to resolve the grievance informally. Employees should provide as much factual information as possible although it is acknowledged that it may be appropriate for them to explain their feelings about the grievance. If the employee wishes to submit written evidence in support of their formal grievance, it should be attached to the statement of formal grievance or letter, or shared as soon as possible after the grievance is submitted, but before any meeting takes place. If the written statement of grievance is unclear, the employee may be asked to clarify it before any meeting takes place. The written statement should include:

- The name, job title and contact details of all employee wishing to raise the grievance;
- Details of the grievance including explicit examples, dates and times of issues and events giving rise to the grievance; where possible provide evidence
- Details of how they would like the grievance to be resolved;
- The signatures of the employee; and
- The date

5.2 Employees should do all that they reasonably can to lodge a formal grievance within 20-working days of the incident taking place. However, it is recognised that grievances of this nature may relate to cumulative actions taking place over a period of time. If this is the case, the formal process may only be entered into if staff do all they reasonably can to lodge a formal grievance within 20-working days of the latest incident or informal meeting from which the employee remained dissatisfied.

5.3 The formal grievance should be sent to the headteacher (unless the grievance is about the head teacher, in which case it should be passed to the CEO). If the grievance is against the chair of the Local Academy Board (LAB), it should be passed to the CEO. Grievances made by employees against members of the

Central Team, governors, directors or members should be passed to the CEO. Any grievances about the CEO should be sent to the Chair of Trustees. If for any reason, the member of staff feels uncomfortable raising a formal grievance about a headteacher with the CEO, they should take advice from their trade union representative. In very serious cases, a criminal offence may be alleged and the member of staff may also wish to report matters directly to the police and / or use the BDMAT whistleblowing policy.

- 5.4 If a member of staff raises multiple grievances but it is unclear whether they should be dealt with under this Policy or another, they will be asked to clarify under which Policy they wish the grievances to be dealt with. In the vast majority of cases the member of staff will be requested to follow this grievance policy.

## **6.0 Grievance Meeting**

- 6.1 Once a grievance has been received it needs to be decided who will lead on the grievance – this individual will be referred to as the Grievance Manager. The Grievance Manager should not be the person whom the grievance is about – in these cases it should be passed upwards to their line manager. The Grievance Manager will write to the employee inviting the employee to a formal ***grievance meeting***. The meeting will be held as soon as is reasonably practicable (if possible within 10-working days) and normally in work time. The letter will acknowledge the grievance and explain the purpose of the meeting, i.e. to discuss the concerns that have been raised and ways of resolving the issues. The employee should also be informed of their right to be accompanied by a trade union representative or fellow-employee of their choice. If the member of staff is uncomfortable having a meeting on school premises they can request another venue is considered.
- 6.2 If the grievance concerns allegations against another employee or employees in the Trust, the Grievance Manager will inform those employee(s) concerned to of the allegations being made against them and explain the next steps. The employee(s) whom the allegations are against should be informed as soon as possible but it may be delayed if the Grievance Manager needs to meet with the employee submitting the grievance first for further details. If the allegations are serious (for example safeguarding issues or significant disciplinary issues), the headteacher or CEO (depending who is dealing with the grievance) may decide to suspend an employee in accordance with the disciplinary procedure adopted by the Trust. The disciplinary procedure includes the need for preliminary investigations before deciding what action to take.
- 6.3 The meeting will be chaired by the Grievance Manager, who will be accompanied by an appropriate person to take notes and a BDMAT appointed HR officer. The

aim of the meeting is to find a way forward. At the meeting, the employee will be asked to explain the nature of the grievance and invited to suggest how it might be resolved. Whilst the employee should be given every opportunity to explain their case fully, they should make every effort to confine their explanation to matters that are directly relevant to the grievance. The person chairing the meeting will ensure that the discussion concentrates on the grievance(s) set out in the Formal Grievance or grievance letter.

6.4 If following this initial meeting investigations are required the Grievance Manager should:

- arrange for the grievance to be investigated promptly by one of the following (the Investigation Officer):
  - BDMAT's HR Officer
  - Another member of the management team
  - Commission an independent investigator. The investigator should be suitably trained or experienced.
  - Or in some cases, which are not complex, the Grievance Manager may be able to undertake the investigation themselves
- send a letter to the employees concerned (including witnesses) to confirm that they will be contacted by the person investigating and invited to an ***investigation meeting*** where they can be accompanied by a workplace colleague who is not already involved in the case or by a Trade Union representative.

6.5 The investigating officer should present a report of their findings to the Grievance Manager. This report should contain the evidence that the investigating officer has discovered during their investigation

6.6 Once the Grievance Manager has read the report they should make a decision on the next steps (see 7.2)

6.7 In exceptional cases, the Grievance Manager may need to seek advice from outside organisations (e.g. specialist HR / solicitors).

## **7.0 Possible Outcomes**

7.1 Whatever the outcome, the Grievance Manager should meet with the Complainant and then the person allegedly causing the unacceptable treatment or behaviour individually to discuss the findings. The Complainant shall be entitled to see a full copy of the investigation report and appendices if they request it. In addition, if the matter leads to a disciplinary hearing against the person allegedly causing the unacceptable treatment or behaviour, they will be entitled to receive a full copy of



the investigation report and appendices (unless any items have to be held-back as there would be a contravention of data laws e.g. GDPR).

- 7.2 The outcome and the next steps are entirely the decision of the Grievance Manager. This decision will be based on the facts presented in the report and advice from BDMAT HR Officer or other specialist HR services. Outcomes may be:
- The Grievance is upheld and appropriate management action is taken against the person causing the unwanted behaviour.
  - The grievance is not upheld and no further action will be taken.
  - There may be instances where some points are upheld, and others not. In these cases, the grievance is partially upheld.
- 7.3 If the Grievance Manager considers, having regard to the investigator's report, that there is a case to answer for disciplinary action against the person allegedly causing the unacceptable treatment or behaviour, these findings should be discussed with HR Officer and next steps agreed. It is good practice for the Grievance Manager to keep the complainant and the person allegedly responsible for the unacceptable treatment or behaviour updated so as to avoid any surprises.
- 7.4 The Grievance Manager in receipt of the written grievance shall summarise the outcomes of the grievance in a letter. The complainant should be informed of the right of appeal, both at the meeting and subsequently in writing.
- 7.5 There may be some circumstances where the employee isn't able to attend a meeting, or makes a request to not attend. In these circumstances, the employee may request to only receive feedback in writing. The feedback will include details of the employee's right of appeal.

## **8.0 Appeals**

- 8.1 If the complainant is dissatisfied with the outcome of the investigation into their formal grievance, they have the right of appeal against that decision.
- 8.2 The appeal should be made in writing to the clerk to the governing body (for grievances dealt with at a school level, for grievances dealt with by the CEO or Chair of BDMAT Trustees, the appeal should be submitted to the Clerk to the BDAMT Board) within 10 working days of receiving formal written notification of the outcome.
- 8.3 The appeal must be heard by an impartial committee of governors (three governors, normally from the school but governors may be called upon from other BDMAT schools if it is not possible to form the committee internally) who have had no involvement in the matter to date (known as the appeal committee) (for school

based grievances); for grievances involving either a headteacher or CEO then these will be heard by a committee of three directors who also have had no involvement in the matter to date.

- 8.4 The appeal letter must clearly set out the appellant's specific concerns and the basis for those concerns. The letter should be accompanied by any additional evidence to be presented in support of the appeal. If the appellant does not wish to provide any supporting evidence, they must confirm this in their letter of appeal and they may not be able to use at any appeal hearing, any evidence not previously provided. The appellant should also name any witnesses whom they wish to call and indicate whether they will be accompanied by a union representative or fellow-employee and the name of that person.
- 8.5 The clerk will arrange the appeal as quickly as possible (normally within 20 days of receipt of the appeal). The clerk should make every effort to agree a date with the employee's representative if they are already involved in the case, before sending out the formal invite letter and supporting paperwork to the relevant parties.
- 8.6 The appellant may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The appeals committee may reject the suggestion if it is unreasonable and may proceed to hear the case in the absence of the appellant or the appellant's representative. The appeals committee may also defer the date of the hearing to reach mutual agreement on a particular date.
- 8.7 The clerk shall give a minimum of 10-working days' notice of the hearing to all participants. Written notice will have attached a full copy of the investigation report and appendices.
- 8.8 Present at the appeal hearing, will be the appeal committee, the Appellant (i.e. the Complainant), the Grievance Manager and/or the Investigating Officer, the Appellant's representative and the clerk to the relevant board. The Appellant will start by presenting the grounds of appeal and the Investigating Officer and/or the Grievance Manager will respond on behalf of management. If Management wish to call any witnesses, the Appellant must be notified of the names of those witnesses in the letter inviting them to the Appeal. Appropriate witnesses will be determined based on the grounds for appeal.
- 8.9 Following an adjournment to consider the evidence, the appeal committee may:
  - a) dismiss/reject the employee's appeal (so that the original outcome stands); or

b) uphold/accept or partially uphold the employee's appeal and determine what further action should be taken. This may include requesting the Grievance Manager to re-open the investigation on the basis that it has been mismanaged. In these circumstances, it will usually be appropriate for a new and impartial Grievance Manager to be commissioned.

8.10 The appeal committee will notify the employee of the decision within 5 working days of the hearing by letter.

8.11 There is no further stage of internal appeal.

## **9.0 Malicious and vexatious allegations**

9.1 The fact that an allegation has not been substantiated following a formal investigation does not mean that it should be considered as malicious or vexatious. No action will be taken against any member of staff who makes an allegation in good faith, reasonably believing it to be true, even if the outcome is that there is no case to answer.

9.2 However, after receiving advice from BDMAT HR, there may be exceptional cases which lead the Grievance Manager to believe that a grievance may be malicious or vexatious. In these circumstances, the Trust may decide that a new investigation is conducted under the Disciplinary Procedure against the original complainant, with new terms of reference. Following this process, the investigator may conclude that there is no case to answer or that the matter should continue to be dealt with as a disciplinary matter in accordance with the Trust's disciplinary procedure.

## **10.0 Collective Grievances**

10.1 The Trust acknowledges that provisions of the ACAS Code on grievance procedures do not apply to grievances raised on behalf of two or more employees, by a representative of a recognised trade union or other appropriate workplace colleagues and therefore BDMAT provides for these grievances to be handled in accordance with this section of the grievance procedure adopted by the Trust, although the relevant stages referred to above will still apply.

10.2 If more than one employee within the Trust raises an identical grievance the Grievance Manager shall draw their attention to this section of the procedure and, if the employees have not already nominated a representative or representatives, invite them to do so and to proceed with a collective grievance. If any of the employees decline that invitation and asks for their grievance to be heard separately as an individual grievance, the person in receipt of the grievance shall

consider and decide on that request, having regard to the circumstances giving rise to the grievance on the part of that employee.

### **11.0 Nominated Representatives for collective grievances**

11.1 Employees wishing to pursue a collective grievance should nominate individual(s) known as “nominated representatives” to represent their interests throughout the process. Nominated representatives may be another employee in the Trust and/or a recognised trade union official and will be responsible for representing the interests of all employees who are party to the collective grievance, including presenting the case on their behalf at meetings and hearings.

### **12.0 Informal Resolution with collective grievances**

12.1 The Trust encourages employees to resolve grievances in an informal manner and without recourse to the formal grievance procedure wherever possible. Employees who consider that they have a collective grievance are therefore encouraged to follow the guidance on informal resolution set out in section 4 of this procedure.

### **13.0 Formal Resolution of collective grievances**

13.1 Once the relevant employees have nominated a representative or representatives and wish to proceed to formal resolution of their collective grievance, the representative(s) should prepare a written statement setting out that grievance and arrange for that statement to be signed by all employees who are party to the grievance (alternatively, employees may sign separate copies of the statement and forward those copies to their nominated representative(s)).

13.2 The formal grievance should be sent to the headteacher (unless the grievance is about the headteacher, in which case it should be passed to the CEO; or if the grievance is against the CEO it should be passed to the Chair of Trustees; grievance against member of the Central Team, other than the CEO should be submitted to the CEO). If the grievance is also against the chair of LAB, it should be passed to the CEO. If for any reason, the members of staff feel uncomfortable raising a formal grievance about a headteacher with the CEO, they should take advice from their trade union representative. In very serious cases, a criminal offence may be alleged and the member of staff may also wish to report matters directly to the police.

The written statement should include:

- The names, job titles and contact details of all employees wishing to raise the grievance;
- The name and contact details of the nominated representative(s);
- Details of the grievance including explicit examples, dates and times of issues and events giving rise to the collective grievance; where possible provide evidence
- Details of how they would like the grievance to be resolved;
- Confirmation that each employee has voluntarily consented to invoke the collective grievance procedure;
- Confirmation that each employee understands that the grievance will give each employee the right to only one collective grievance hearing, one identical outcome and (if applicable) one appeal hearing and appeal outcome
- The signatures of all relevant employees to whom the grievance; and
- The date

#### **14.0 Formal Collective Grievance Meeting, Investigation and Appeal**

14.1 Arrangements for formal collective grievance meetings, including investigations where agreed, will follow the formal procedure as above in section 6, except that correspondence will be between the person in receipt of the written grievance and the nominated representative(s) rather than the employees. Prior to the grievance meeting, the nominated representatives must inform the clerk to the governing body / trustees of the names of the employees attending the meeting and any witnesses they wish to attend.

14.2 The results of any investigation will be shared with the nominated representative(s) on behalf of the employees.

14.3 If, following the grievance outcome, some employees are satisfied with the outcome and do not wish to proceed to an appeal, the request for an appeal should clearly identify those employees who are withdrawing from the process and those wishing to pursue the appeal. In the event of more than one employee wishing to appeal, the nominated representative(s) will be responsible for submitting the appeal in writing to the clerk to the governing body / trust board in accordance with the procedure for appealing in the case of individual grievances (section 6) and the correspondence will be between the clerk and the nominated representative(s). If only one employee wishes to appeal, the individual grievance procedure will apply.

14.4 Following the appeal hearing, the nominated representative(s) will be informed of the outcome within ten working days. The outcome of this hearing will be final.

### **15.0 Failure to Agree Following Negotiation (collective grievances)**

15.1 In exceptional circumstances, the parties to a collective grievance may still fail to agree despite the collective grievance procedure being exhausted. If a dispute is declared, the matter may be referred for conciliation in accordance with section 16 below.

### **16.0 Collective Disputes**

16.1 The Burgundy Book provides a “model procedure to facilitate the resolution of collective disputes between teachers and a school governing body”. That procedure “is complementary to the school’s grievance procedure; it is not an alternative.” It defines a collective dispute as arising “from a difference between the governing body and all, or at least a substantial number of, teachers at the school. The school’s own collective disputes procedure applies only to those matters which fall within the purview of the governing body.” The Trust accepts that this procedure for teachers should apply equally to support staff. The Trust notes that recognised unions representing teachers and support staff may advise their members on a collective dispute, even when their members do not form a substantial proportion of the total number of employees at the school.

16.2 The Burgundy Book states that the “prime objective is to reduce the possibility of disputes arising between teaching staff and the governing body. That is best achieved by the establishment of agreed, standing arrangements at the school for regular consultation between staff and the governing body.” In BDMAT we have instigated a Joint Consultative Committee with the recognised trade unions and also a Staff Forum to support consultations and discussions.

16.3 Mediation may also be appropriate at this stage provided that the complainants and the person allegedly causing the unacceptable treatment or behaviour express a mutual desire to attempt it and the mediator believes that the situation lends itself to this process. Mediators should be trained, accredited and impartial with experience of resolving disputes.

## **17.0 Grievances from Former Employees**

17.1 Wherever possible, a grievance should be raised by an employee and dealt with before an employee leaves employment.

17.2 The ACAS Code of practice on disciplinary and grievance procedures does not expressly state that it applies to grievances raised by employees who have left the organisation and therefore while it does not require employers to hear or consider grievances from former employees it may be viewed as good practice by an Employment Tribunal for them to do so. Therefore, provided that a former employee sets out their grievance and the basis for it in writing within 20 working days (other than in exceptional circumstances) of ceasing to be employed by the Trust, the headteacher or, where the headteacher is the subject of the grievance, the CEO (when the CEO is the subject of the grievance this should be the Chair of Trustees, where it is a member of the Central Team this will be the CEO), will:

- Acknowledge receipt of the grievance within 10 working days of receipt;
- Where possible, invite the employee to a meeting to hear their grievance;
- Investigate any issues raised on the basis of the letter received within 10 working days of receipt where practicable; and
- Respond in writing to the employee outlining the findings of the investigation and stating if any of the allegations in the grievance had been upheld.
- If the former employee is dissatisfied with the outcome of the investigation into their formal grievance, they have the right of appeal against that decision. The appeal process will be heard by three governors (for complaints dealt with by the headteacher), for complaints dealt with by the CEO or Chair of Trustees the appeal panel will be three directors.
- If appropriate, the Trust can offer the former employee or the former employee may request a two-stage process and the Employer will respond only in writing and therefore a grievance hearing would not take place.