

# **Grievance Procedure**

## **Grievance Principles**

Birkbeck is committed to fostering an environment where employees feel confident about raising issues and concerns in order to reach clear resolutions that support, maintain and improve effective working relationships.

Many potential grievance issues can be resolved informally. The College and its employees should always, where appropriate and possible, seek to resolve grievance issues at as local a level as possible and via informal methods in the first instance. Where an issue cannot be resolved informally it should be pursued through the formal procedures. The procedure sets out a framework that will enable these issues to be dealt with promptly and fairly.

## **Scope**

This grievance procedure will apply to all College employees, except Academic staff who are covered by the College Charter and Statutes nor to agency workers or staff with a contract for services who are bound by the terms and conditions governing their contracts within their respective organisations.

For issues involving bullying and/or harassment, reference should be made to the Dignity at Work and Study policy and procedures.

Where an individual discovers information which he or she believes shows malpractice/wrong-doing within the College, reference should also be made to the Public Interest Disclosure ('whistleblowing') policy.

The grievance procedure will not apply to individual job grading matters, for which a separate procedure applies.

This procedure does not apply to issues relating to pay and benefits. The exception would be where the complaint potentially involves discrimination such as an equal pay issue.

This procedure should not be followed in parallel with any other policy or procedure: only one approach may be followed at any one time. This procedure will not apply in instances where a case has previously been raised and or seen through to appeal via another procedure or College policy.

## **Procedures**

### **Informal Grievance Procedure**

Employees should wherever possible and appropriate attempt to settle grievances informally with the other party (also referred to as the respondent who is the individual who has had a grievance taken out against them) to the grievance or their immediate manager. Such an approach will be particularly important where there is a requirement for a close working relationship. It will also allow for problems to be settled quickly. In some cases it may be helpful to use a neutral mediator to help sort out a grievance and maintain working relationships. Mediation (see Section 2.1.1) is often most effective if used early on. Mediation will be proposed only where appropriate (at both the informal and formal stage) and not as a means of absolving managers of their responsibilities. Following the informal discussion the line manager will send a copy of the meeting notes to the employee, this will include a record of any informal attempts at resolution including dates and any agreed actions.

## **Mediation**

As an alternative to raising a complaint through the formal grievance procedure or at any stage of the procedure, the parties involved may request that the matter is dealt with through mediation. Further details on mediation in the context of resolving grievance issues are outlined in section 3 (Guidance).

Mediation is voluntary and will only take place with the agreement of both parties.

Whilst mediation may be advocated by the College, with fuller explanation and encouragement given to its use, there will be no coercion and no punitive consequences to any party as a result of them choosing not to undertake this route to resolution.

Mediation will take the form of a relatively informal meeting, or a series of meetings, involving the employee concerned and the appropriate other party to the grievance. The meeting, or a number of meetings, may initially be held with the parties separately, dependent upon the nature of the grievance.

Where mediation is agreed at a point after the formal grievance procedure has been initiated, the procedure will be adjourned whilst the mediation takes place. In the event that no mutually acceptable solution is reached through mediation, the procedure will be reconvened at the point of adjournment.

If a grievance is resolved through mediation, the mediator can assist the parties to draft a written agreement that will be signed by both parties as acceptance of its terms.

## **Formal Grievance Procedure**

### **Grievance Notification**

If it is not possible to resolve a grievance informally or the matter is sufficiently serious, employees may raise the matter formally and without unreasonable delay with their manager (assuming that this person is not the subject of the grievance – in which case the grievance should be raised with the manager of the individual who is the subject of the grievance). This should be done in writing and should set out the nature of the grievance. Birkbeck will provide respondents with a summary of the grievance raised against them and an opportunity to respond to the grievance. Respondents will also be provided with a notification of the outcome of any formal action taken.

The relevant HR Business Partner should be consulted at the earliest possible stage in all cases where formal action is invoked to provide guidance and ensure a fair and equitable process is followed. A nominee will participate in all formal meetings.

### **The Grievance Meeting**

#### **Resolving Grievances on a Formal Basis**

An appropriate nominee of the College (the Chair) will arrange for a formal meeting; this will be termed the grievance meeting, and will be held without unreasonable delay after a grievance is received. This should normally be within 5 working days, however in exceptional circumstances a short extension may be granted. Individuals should seek further advice from HR.

The Chair of the grievance meeting will ensure a fair and equitable process is followed. The Chair will be accompanied by a representative of the HR department, normally a HR Business Partner. A person designated as minute taker may also be present.

All concerned parties are required to make every effort to attend the grievance meeting. The employee raising the grievance will be given the opportunity to present their case/issue and explain how they think it should be resolved. Consideration will be given to adjourning the meeting to investigate or clarify any issues. The decision should be communicated in writing to the employee normally within 5 working days of the grievance meeting.

Where the grievance is upheld (the employee's complaint has been accepted as legitimate), depending upon the nature of the case, Birkbeck may take further action under another mechanism such as the Disciplinary Procedure or Performance Management Policy and Procedure. Where the complaint is not upheld (no further formal action will be taken), the reason(s) will be explained in writing with appropriate options (given to the complainant), such as mediation. The complainant will also be notified of their right to lodge an appeal against the decision (see section 2.2.2.3). Where the complaint is not upheld because the complaint is considered to be vexatious or malicious, the employee raising the grievance may be subject to disciplinary action.

### **Companions**

Employees have a right to be accompanied at meetings by a trade union representative or a Birkbeck work colleague and they should notify the investigating manager or the meeting Chair that they wish to be accompanied prior to the meeting. Companions may assist staff in stating their case and asking questions on their behalf but may not answer instead of the employee.

### **Appeal**

If the complaint is not upheld the individual will have the right of appeal against this decision. If they wish to appeal they must do so in writing normally within 5 working days of the date of their outcome letter (however in exceptional circumstances a short extension may be granted. Individuals should seek further advice from HR), stating the grounds for their appeal and send it to the Head of HR Business Partnering. The grounds for appeal that will be considered are that the outcome was unfair as evidence presented was not adequately considered (e.g. the panel discounted particular evidence as irrelevant or presented too late without due consideration to the extenuating circumstances) or substantial new and relevant information related to the case is available or there is evidence indicating the procedure was not properly applied.

Appeals will be heard without unreasonable delay. The appeal will be considered by a senior manager who will take the role of Chair of the appeal meeting. The meeting will include a representative from HR. Where possible the appeal will be chaired by a nominee of the College senior to the Chair of the grievance meeting. In all cases the nominated Chair will be a senior manager from a different Department who has not previously been involved in the case. The HR representative will also be a different person from the person who participated in the previous meeting.

The appeal meeting will consider the outcome of the grievance meeting and how this was reached. The appeal panel can uphold or reject the appeal. Employees have a right to be accompanied at appeal meetings. Employees will be informed in writing of the outcome of the appeal meeting within 5 working days of the meeting. The decision of the Chair of the appeal meeting is final.

### **Overlapping Grievance and Disciplinary Cases**

Where an employee raises a grievance during a disciplinary process, the disciplinary process may 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.

Depending on the nature of the grievance, the College may consider bringing in another manager to deal with the grievance process separately but concurrently.

## **Collective Grievances**

Where issues are of a general application affecting some or all categories of employees, the issues should be raised in the first instance as per the informal grievance procedure outlined in Section 2.1, by the local trade union representatives or a nominated employee, with the appropriate immediate manager. HR may be consulted to assist with informal resolution of issues at a local level. If the matter is not resolved at the informal stage, employees may raise the matter formally (see Section 2.2 – Formal Grievance Procedure).

## **Guidance**

### **Right to be Accompanied**

Employees have the right to be accompanied by a companion to investigation meetings and formal grievance meetings.

The chosen companion may be a work colleague or a trade union representative.

### **Conflict of Interest**

Although the employee has the right to be accompanied by a companion at a formal grievance meeting, there may be situations where a conflict of interest arises. For example, it would not normally be reasonable for employees to insist on being accompanied by a companion whose presence would prejudice the meeting or who might have a conflict of interest.

Advice and guidance from HR should be sought where there is the potential for a conflict of interest.

### **Role of the Companion**

It is important that the role of the companion is clearly understood. Outlined below are examples of activity that will help this understanding.

The companion can:

- address the meeting;
- ask questions on the employee's behalf;
- present and summarise the case on behalf of the employee;
- respond on the employee's behalf to any view expressed at the grievance meeting;
- confer with the employee during the meeting;
- request adjournments.
- The companion cannot:
  - answer questions on the employee's behalf;
  - address the meeting if the employee does not wish it;
  - prevent the representative of the College from explaining the case.

## **Mediation**

An independent third party or mediator can sometimes help resolve issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation

what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediation is appropriate in specific circumstances. It is not a means to absolve managers of their responsibilities. Mediators may be employees of the College who are trained and accredited by an external mediation service to act as internal mediators in addition to their normal jobs. Alternatively, they may be from an external mediation provider. They can work individually or in pairs as co-mediators. Where mediation is used during a grievance procedure, the formal process will be temporarily suspended pending the outcome of the mediation.

There are no hard-and-fast rules for when mediation is appropriate but it can be used:

- for conflict involving colleagues of a similar job or grade, or between a manager and a member of their staff;
- at any stage in the conflict as long as any ongoing formal procedures are temporarily held in abeyance;
- to rebuild relationships after a formal dispute has been resolved;
- to address a range of issues, including relationship breakdown; personality clashes; communication problems; and minor infringement of the Dignity at Work and Study policy.
- In some situations, the combination of disciplinary and grievance issues can become blurred. The College may prefer to tackle the underlying relationship issues by means of mediation. In such cases the manager of the manager may be called to intervene and to facilitate agreement as to the appropriate course of action.
- Mediation may not be suitable if:
  - the grounds for misconduct are manifestly clear and mediation would serve no useful purpose;
  - used as a first resort, because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation;
  - it is used by a manager to avoid their managerial responsibilities;
  - a decision about right or wrong is needed, for example where there is possible criminal activity;
  - an individual is raising a complaint under the College's Dignity at Work and Study policy that warrants formal investigation;
  - the parties do not have the power to settle the issue;
  - one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.
- Birkbeck reserves the right to review, revise, amend or replace the content of this policy and / or introduce new policies from time to time, subject to good practice principles of consultation where applicable, to reflect the changing needs of the College and to comply with legislation.

## **Responsibilities**

**The following have direct responsibilities under this policy:**

### **Line Managers**

- Hold informal discussions with staff members to resolve issues, where appropriate and record the main points of discussion.
- Following the informal discussion send copy of the meeting notes to employee.
- Ensure a fair and equitable process is followed.
- Consult HR in all formal grievance cases.

### **Employees**

- Attend informal discussion meeting with line manager to resolve informal issues, where appropriate.
- Attend mediation meeting, where agreed with other party (the respondent).
- Where decision taken to raise a formal grievance, submit grievance in writing to appropriate manager setting out the nature of the grievance.
- Attend grievance meeting.
- Lodge appeal, where appropriate.

### **Human Resources**

- Provide information and guidance on mediation to managers, where appropriate.
- Ensure a fair and equitable process is followed.
- Provide respondent with a summary of the grievance.
- Ensure correct procedures and processes are followed.
- Attend all formal grievance meetings.
- Provide notification of outcomes to respondent (original grievance decision and appeal where required).
- Discuss any cases involving trade union representatives with line manager and trade union officials, prior to any proposed grievance hearing.

### **Grievance Meeting Chair**

- Arrange formal meeting.
- Ensure a fair and equitable process is followed.
- Adjourn meeting to clarify/gather additional information.
- Communicate decision in writing to employee.

### **Head of HR Business Partnering (or nominee)**

- Process requests from employee to appeal against grievance decisions.

### **Chair of Appeal Hearings**

- Review the evidence based on the grounds of the appeal.
- Ensure a fair and equitable process is followed.
- Ensure the outcome is communicated to employee.