

Report to: Personnel Committee



Date of Meeting 29th January 2024

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

HR Policy Review - Grievance Policy

Report summary:

To seek Personnel Committee approval to changes to the Council's Grievance Policy.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

- To approve the proposed changes to the Grievance Policy.

Reason for recommendation:

To ensure that the Council's HR policies are up to date and fit for purpose.

Officer: Jo Fellows, Corporate Lead – Human Resources. jfellows@eastdevon.gov.uk

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Communications and Democracy
- Economy
- Finance and Assets
- Strategic Planning
- Sustainable Homes and Communities
- Culture, Leisure, Sport and Tourism

Equalities impact Medium Impact

The equalities impact assessments are attached as appendices.

Climate change Low Impact

Risk: Low Risk; The policies provide clarity and consistency in the Council's approach and the review ensures that it remains within legal and good practice requirements. HR continue to monitor application of the policies to ensure equality is maintained

Links to background information n/a

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
 - A greener East Devon
 - A resilient economy
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1. Personnel Committee's remit includes approving the devising and development of overall employment policies and as such Committee are asked to approve changes to the Grievance Policy.

2. Grievance Policy

2.1. Following recent grievance cases, where there were some incidences of questions regarding our approach to certain aspects of the grievance process, particularly relating to the provision of information to the employee following an investigation, the HR Team sought legal advice and a review of the Grievance Policy. Appendix 2 highlights the proposed changes which in summary are:

- 2.1.1. Further clarification of certain points, for example the role of the manager considering the grievance.
- 2.1.2. A new section regarding who can attend the grievance proceedings with the employee, amalgamating the information from other sections, into a new section, to provide increased clarity.
- 2.1.3. Further clarification regarding situations where investigation is required.
- 2.1.4. Further clarification on the written records that will be retained and what information will be shared with the employee.

3. UNISON are aware of these policy proposals and have been asked to provide feedback, which will be shared with Committee at the meeting to inform the decision.

Financial implications:

No financial implications have been identified.

Legal implications:

It is important that our HR policies are reviewed on a regular basis to ensure that they comply with employment legislation and good practice.

Grievance policy and procedure

1. East Devon District Council encourages open and free communication between employees and their managers. This helps to ensure that questions and problems arising during the course of employment can be aired and, where possible, resolved quickly, informally and to the satisfaction of all concerned.
2. Grievances are concerns, problems or complaints that employees raise with their employers, and this policy has been introduced to ensure that there is a clear process for dealing with grievances quickly and effectively. As such, this policy aims to:
 - Support a culture in which issues and problems are resolved quickly and at the lowest level of management
 - Provide a clear framework for dealing with grievances if they arise
 - Support motivated and customer focused staff
 - Improved service delivery
3. It is anticipated that most grievances will be resolved through informal discussion, normal management channels or mediation without the need to invoke the formal grievance procedure.
4. Where the normal channels prove unsuccessful in dealing with the grievance, this policy and procedure should be adopted.
5. Any steps under this procedure should be taken promptly unless there is good reason for delay. The time limits in this procedure may be extended where it is reasonable to do so.
- ~~6. We may vary this procedure as appropriate to a particular case.~~
7. This policy does not form part of any contract of employment or other contract to provide services, and we may amend it at any time.
8. If you have difficulty at any stage of the grievance this procedure due to a disability, you should ask **inform** HR for assistance.
9. When involved in any of the steps in this procedure, you should treat the matter as confidential and not discuss it with other colleagues, unless they are acting as your companion.

10. Scope

- 10.1. ~~The scope of this policy includes~~ **applies to** matters which are not entirely in the control of the organisation such as client, customer and member relationships and working on another employer's site. These will be treated in the same way as grievances within the organisation, ~~with the Council investigating as far as possible and taking action if required.~~ The relevant service should make it very clear to any third party that grievances are taken seriously and action will be taken to protect Council employees.

- 10.2. For matters involving accusations of unacceptable behaviour (bullying or harassment), the Grievance Procedure should be followed once all steps in the Unacceptable Behaviour Policy have been exhausted and the unacceptable behaviour remains unresolved.
- 10.3. This grievance procedure should not generally be used to ~~complain about~~ **address** disciplinary, performance or absence management **issues** ~~action that has been taken against you~~. If you are dissatisfied with any action, you should submit an appeal under the Disciplinary Policy and Procedure, Absence Management Policy or Dealing with Unsatisfactory Performance Policy and Procedure as appropriate. Grievances raised while you are subject to disciplinary proceedings will usually be heard only when the disciplinary process has been completed. Where a grievance has any bearing on the disciplinary proceedings, it should be raised as a relevant issue in the course of those proceedings. ~~Ultimately, a decision will be taken on whether or not to temporarily suspend the disciplinary process.~~
- 10.4. ~~The scope of this policy also excludes situations where the matter constitutes a~~ **This procedure does not apply to** grievances relating to salary, grade or job evaluation outcome. These shall be handled using the Job Evaluation Appeals Procedure. ~~where there is a dispute about the decision of the panel.~~
- 10.5. This procedure does not apply to a disclosure made under the Public Interest Disclosure Act 1998 ('whistleblowing'). The Council operates a separate Whistleblowing Policy to enable employees to report illegal activities, wrongdoing, and malpractice within the organisation.
- 10.6. This procedure can be utilised to raise a grievance against a member's alleged unacceptable behaviour, with a view to the Council, as employer, taking reasonable and proportionate steps to seek to deal with this, if the behaviour is deemed unacceptable. However, this is a separate process to raising a complaint about member behaviour via the member's Code of Conduct, which the employee is also able to do if they wish, and which will be dealt with under the arrangements within the Localism Act 2011. Reference should be made to the Protocol for Relationships between Members and Officers when dealing with such issues.
- 10.7. ~~This procedure will apply for~~ **to** collective grievances where two or more employees are raising an issue. ~~The grievances will be dealt with together.~~
- 10.8. This procedure applies to all employees regardless of length of service, except the Chief Executive, where a separate procedure applies. It does not apply to agency workers or self-employed contractors.

11. Levels of responsibility within the Grievance Policy and Procedure

- 11.1. The following framework applies:

<i>Level of employee</i>	<i>Level of actioning grievance officer</i>	<i>Level of appeal officer</i>
Staff	Line Manager or a more senior manager	Assistant Director/Director or senior manager above level of actioning grievance officer
Assistant Director	Director	Chief Executive

<i>Level of employee</i>	<i>Level of actioning grievance officer</i>	<i>Level of appeal officer</i>
Director (chief and statutory officers, except the Chief Executive/Head of Paid Service)	Monitoring Officer or S.151 Officer	Chief Executive
Grievance against the Chief Executive (all staff)	Grievance Sub-committee	Employment Appeals Committee

12. Informal processes ~~procedure~~

- 12.1. ~~If you feel comfortable to do so, you should~~ You have the right to speak to your line manager about issues which arise during the course of your employment, ~~There are many opportunities where you can communicate directly with your Manager, for example through one to one meetings, Performance Excellence Review meetings, team meetings or through a specially scheduled meeting.~~
- 12.2. ~~If you have a grievance relating to your employment, you should raise the matter informally with your line manager during the course of normal work. This is not part of the grievance procedure. If the issue involves your immediate line manager, you should talk informally to the line manager's manager or your trade union representative informally in an attempt to resolve the issue before raising a formal grievance.~~
- 12.3. Mediation is a very effective tool in helping to resolve grievances particularly where working relationships have been damaged. Mediation ~~should~~ **may** be suggested at the informal stage but may also be recommended to help resolve matters in formal grievances.

13. Formal grievance procedure

- 13.1. If it is not possible to resolve a grievance informally you should raise the matter formally, in writing, and without unreasonable delay with your line manager (as long as that person is not the subject of the grievance in which case you should raise the matter with another manager).
- 13.2. Your written grievance should indicate that you are invoking this ~~grievance~~ procedure and contain a brief description of the reasons for your complaint, including any relevant facts, dates and names of individuals involved. In some ~~situations~~ **cases**, we may need to ask you to clarify the subject matter of your grievance in advance of ~~the~~ **an initial** meeting or to provide further information.
- 13.3. A suggested pro forma for setting out the necessary information is annexed, but if you would like help in formulating your written grievance, you may seek help from a colleague, HR or a trade union representative.
- 13.4. ~~When stating your grievance~~ It is important that you ~~try to stick to the facts and avoid language which~~ **that** may be considered insulting or abusive.
- 13.5. ~~East Devon District Council~~ **The grievance officer** will arrange for **an initial** grievance meeting to be held without unreasonable delay after a grievance has been received. This will normally be within 10 working days. ~~We may carry out such investigations as we consider appropriate prior to the meeting. This may involve interviewing you and any witnesses if appropriate.~~

- ~~13.6. You may bring a companion to the meeting. You and your companion should make every effort to attend the meeting. If you or your companion cannot attend at the time specified for a meeting, you should inform us immediately and we will make reasonable efforts to agree an alternative time. If the meeting does not take place for a second time because you or your representative cannot attend due to an unforeseeable reason, the Council is not obliged to rearrange it again.~~
- ~~13.7. Grievance proceedings should be treated as confidential. You may contact your Trade Union representative or colleague representative to discuss your grievance. However, you should treat the matter as confidential and not discuss it with other colleagues.~~
- 13.8. The purpose of the initial grievance meeting is to enable you to explain your grievance and to discuss **how you would like it to be resolved** it with us. If you have a companion, they may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the meeting. ~~You will be allowed to explain your grievance and how you think it should be resolved.~~ Consideration will **also** be given to adjourning the meeting for any further investigation that may be necessary.
- 13.9. Further meetings may be necessary to discuss your grievance in more detail, or to discuss information obtained during the investigation.**
- ~~13.10. We~~ **The grievance officer** will inform you of ~~our decision~~ **the outcome of your grievance** and your right of appeal within 5 working days of the final grievance meeting. We may hold a meeting to give you this information but in all cases it will be confirmed in writing. If it is not possible to respond to you within 5 working days, a letter will be sent explaining the reason for the delay and identifying a time frame by which a response will be given.
- 13.11. The Council **grievance officer** will bear in mind actions taken to resolve a grievance may have an impact on other individuals who may also feel aggrieved, **and/or be named as part of the grievance or investigation.**
- 13.12. If the grievance highlights any issues concerning policies or procedures these will be addressed through recommendations.

14. Investigation

- 14.1. The grievance officer will appoint an investigating officer, after seeking guidance and advice from HR, to carry out such investigations as they consider appropriate, this may be before the initial meeting, during an adjournment or after.**
- ~~14.2. When dealing with any grievance matter, an investigation of events may take place. The investigation should be completed as soon as practicable, preferably within 4 weeks from the date that it is requested.~~
- ~~14.3. The investigating officer will not be the same person as the officer hearing the grievance. Managers will contact HR for advice regarding who will arrange for a suitable person to investigate.~~
- 14.4. The investigation will **may** involve, **as appropriate**:
- clarifying the nature of / grounds for the grievance
 - enquiring into the circumstances surrounding the issues raised
 - ~~taking~~ **talking to** witnesses statements if appropriate
 - gathering factual information
 - producing an investigation report
 - ~~presenting the report and the findings of the investigation to the grievance officer and the employee at the grievance hearing~~

- 14.5. The purpose of ~~the~~ an investigation is to ~~provide~~ ~~enable~~ the grievance officer ~~with all relevant information in order for them to be able to determine~~ to decide if the grievance ~~outcome should be totally or partially upheld or not~~. ~~If an investigation report is produced, it is to assist the grievance officer, and they will determine whether it is appropriate to provide a copy of this report to the employee.~~
- 14.6. If you are a witness in a grievance matter you are expected to keep the matter confidential and not discuss it with ~~work~~ colleagues.
- 14.7. Breaches of confidentiality may be treated as a disciplinary matter.

15. Appeal procedure

- 15.1. An appeal against the ~~decision~~ ~~grievance outcome~~ should be made in writing to HR, stating the full grounds of ~~your~~ appeal, within 5 working days of the date on which the decision was sent ~~to you~~.
- 15.2. ~~The appeal officer will arrange for an initial~~ An appeal meeting ~~will to be held, without unreasonable delay, normally no longer than 10 working days after we receive your~~ an appeal ~~has been received. This will normally be within 10 working days.~~
- 15.3. ~~Where practicable, this will be held by~~ ~~the appeal officer will be~~ someone more senior to the ~~person who conducted the~~ grievance ~~officer meeting~~. You may bring a companion to the appeal meeting (this may be a work colleague or trade union representative).
- 15.4. ~~We~~ ~~The appeal officer~~ will inform you of the outcome of your appeal, ~~in writing~~, within 5 working days of the appeal meeting. If it is not possible to respond to you within 5 working days, a letter will be sent explaining the reason for the delay and identifying a time frame by which a response will be given. We may hold a meeting to give you this information but in all cases it will be confirmed in writing.
- 15.5. ~~This is the end of the procedure and there is no further appeal.~~

16. Procedure for dealing with a grievance raised by an employee against the Chief Executive

- 16.1. An employee raising a grievance against the Chief Executive should do so using this ~~Grievance~~ procedure. Due regard will also be given to the guidance within the Joint Negotiating Committee for Local Authority Chief Executives Model Disciplinary Procedure and the flow chart contained within Appendix 7 of the Conditions of Service Handbook ~~and this information will be shared with the employee who has raised the grievance.~~
- 16.2. Grievances against the Chief Executive should be ~~submitted in the same way as any other grievance and then~~ forwarded to the Council's Monitoring Officer (the 'Receiving Officer'). If the Monitoring Officer is the person bringing the grievance against the Chief Executive or is otherwise involved in the grievance, then another appropriate Chief Officer and/or a Monitoring Officer from a neighbouring authority ~~should~~ ~~will~~ be commissioned to act as the Receiving Officer.
- 16.3. A meeting will be held between the Receiving Officer and the complainant without unreasonable delay after a grievance is received. The employee should be allowed to explain the grievance and how it could be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

- 16.4. The Receiving Officer will then undertake initial filtering to assess the best procedure for dealing with the matter. For example, allegations and complaints that are directed at the Chief Executive, but are actually complaints about a particular service, should be dealt with through the Council's general complaints procedure. If appropriate an attempt should be made to resolve the matter informally. This might be through internally facilitated informal joint discussions or informal joint discussions facilitated externally by an external mediator. If the matter is a serious complaint against the Chief Executive's personal behaviour such as sexual or racial harassment, the matter would potentially be one that would be appropriate for an investigation under the disciplinary procedure.
- 16.5. After the initial filtering and any attempt at informal resolution, if the grievance remains unresolved, then the matter will move to Formal Stage 1. In most cases it will be appropriate for an independent investigator to be commissioned to carry out an investigation. If the outcome of the investigation is in favour of the complainant, a solution should be proposed, taking into account the remedy requested by the complainant and the Receiving Officer's assessment of what would be appropriate in all the circumstances. If the Chief Executive is unwilling to accept these proposals, the matter will be referred to a panel of elected members (the Grievance Sub Committee) to hear the grievance on behalf of the employer (Formal Stage 1). It is here that the power exists to resolve a grievance against the Chief Executive. The Grievance Sub Committee can either uphold or dismiss the grievance.
- 16.6. If the outcome of the Stage 1 investigation is that the grievance is not upheld, then the complainant has the right to appeal (Formal Stage 2) to a different panel of elected members (the Employment Appeal Sub Committee) and the Chief Executive should be immediately informed that this has happened. The Employment Appeal Sub Committee will then be responsible for considering the appeal with appropriate technical and procedural advice from the Receiving Officer. Where the Employment Appeal Sub Committee upholds the appeal and also decides that it is a matter of a serious nature, then it may decide to refer the matter to the Investigation and Disciplinary Committee. That Committee will then consider the matter in accordance with the Council's Disciplinary Procedure for Statutory and Chief Officers.

17. Companion

- 17.1. You may bring a companion, which should be a colleague or trade union representative, to the grievance and appeal meetings.
- 17.2. You and your companion should make every effort to attend the meeting. If you or your companion cannot attend at the date or time specified for the meeting, you should inform the grievance officer immediately, and we will try, within reason, to reschedule the meeting.
- 17.3. If the meeting does not take place for a second time because you or your companion cannot attend, it's at the discretion of the individual considering your grievance or appeal as to whether to reschedule the meeting.

18. Records

- 18.1. ~~Meeting minutes~~ Written records will be kept of the formal hearing ~~meetings that take place under this procedure~~. These records will be confidential and retained in accordance with the Data Protection ~~and Document Retention Policy Act 1998~~.
- 18.2. ~~With the exception of the minutes taken~~ Copies of any meetings ~~with you, copies of any other meeting minutes may be provided to you, as appropriate. In records should be given to you although in certain some circumstances it may not be appropriate to provide meeting minutes to you, some information will be withheld,~~ for example to protect a witness. ~~You will be given an opportunity to comment on the accuracy and propose amendments to minutes taken at meetings with you and if the proposed amendment is agreed this will be reflected in the minutes.~~
- 18.3. ~~Meetings that take place under this procedure should not be recorded. The Council does not agree to the recording of meetings and Any recording of meetings will be treated as misconduct which may result in disciplinary action including warnings and potentially dismissal under the Disciplinary Procedure. Managers should remind people of this You will be reminded of this at the start of meetings and you may be asked to turn off you~~ for mobile phones ~~to be switched off.~~
- 18.4. ~~Notes will be taken of meetings where appropriate and there will be an opportunity for individuals to amend the notes taken. If agreement cannot be reached, both sets of notes will remain as a record of the meeting.~~

19. Discipline and grievance

- 19.1. ~~Where an employee raises a grievance during a disciplinary process, a decision will be taken as to whether or not the disciplinary process will be temporarily suspended in order to deal with the grievance. A decision on whether to suspend the disciplinary process in order to deal with the grievance(s); to deal with the matters concurrently; to deal with the grievance(s) as part of the disciplinary process; or to address the grievance(s) following the conclusion of the disciplinary procedure will depend on the nature of the allegations and grievance(s). The aim of the approach decided upon will be to ensure a fair disciplinary process is followed.~~

Policy administration

- **Who authorised the policy/strategy and date of authorisation** - Following review to clarify Chief Officer arrangements, this policy was agreed with SMT+ and UNISON in November 2022 and confirmed with Personnel Committee on 28th November 2022. Following legal advice, some changes were made to the policy and approved by ELT on 16th January 2024, shared with UNISON in January 2024 and agreed with Personnel Committee on 29th January 2024.
- **Policy date for review and responsible officer** - Corporate Lead – Human Resources, 2027.

Equality Impact Assessment



Version	1.0	Date Completed	29 th November 2023
Description of what is being impact assessed			
Grievance policy Following recent grievance cases, where there were some incidences of questions regarding our approach to certain aspects of the grievance process, particularly relating to the provision of information to the employee following an investigation, the HR Team sought legal advice and requested a review of the Grievance Policy. The proposed changes are: <ul style="list-style-type: none">• Further clarification of certain points, for example the role of the manager considering the grievance.• A new section regarding who can attend the grievance proceedings with the employee, amalgamating the information from other sections, into a new section, to provide increased clarity.• Further clarification regarding situations where investigation is required.• Further clarification on the written records that will be retained and what information will be shared with the employee.			
What data/information have you used to assess how this policy/service might impact on protected groups?			
Anecdotal knowledge and experience of recent grievance cases, including feedback from HR colleagues who have been involved in cases and legal advice. Analysis of recent cases against their individual employment records does not indicate that individuals with protected characteristics were the subject of grievance cases more than those who do not have protected characteristics.			
Who have you consulted with to assess possible impact on protected groups and what have they told you? If you have not consulted other people, please explain why?			
Not in relation to this policy review but feedback from employees as part of recent grievances has been considered and legal advice sought, which has informed this policy review. UNISON's views on the proposed changes will be sought during January 2024.			

Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. The Council also has a legal duty to have due regard to armed forces personnel when carrying out healthcare, housing and education functions. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, assess the likely outcome, before you have implemented any mitigation.

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
Age	Policy supports application of a consistent approach to handling grievances which does not discriminate on the grounds of any protected characteristic. HR is closely involved with all grievances to ensure compliance and to mitigate any discrimination risks. The grievance policy itself provides employees with a mechanism to raise concerns should they feel that they are being discriminated against.	☐	☐	☒
Disability		☐	☐	☒
Gender reassignment		☐	☐	☒
Marriage and civil partnership		☐	☐	☒

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
Pregnancy and maternity	<p>Policy supports application of a consistent approach to handling grievances which does not discriminate on the grounds of any protected characteristic. HR is closely involved with all grievances to ensure compliance and to mitigate any discrimination risks. The grievance policy itself provides employees with a mechanism to raise concerns should they feel that they are being discriminated against.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race and ethnicity		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion or belief		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sex		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual orientation		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Armed Forces (including serving personnel, families and veterans)	<p>The policy also provides consistency to ensure that people from different backgrounds are treated fairly. The grievance policy itself provides employees with a mechanism to raise concerns should they feel that they are being discriminated against.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other, e.g. carers, care leavers, low income, rurality/isolation, etc.		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
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Negative outcomes action plan
 Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

Action taken/to be taken	Date	Person responsible	How will it be monitored?	Action complete
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>

If negative impacts remain, please provide an explanation below.

Completed by:	Jo Fellows, Corporate Lead – Human Resources
Date:	29/11/2023
Approved by:	
Date:	
To be reviewed by:	Jo Fellows, Corporate Lead – Human Resources
Review date:	2027 (same time as policy next reviewed)