Grievance Policy and Procedure

|  |  |
| --- | --- |
| Version number : | 5.0 |
| Consultation Groups  | JSC Policy Sub-committee, JSC, People and Culture Team |
| Approved by (Sponsor Group) | JSC Policy Sub-committee |
| Ratified by: | Joint Staff Committee |
| Date ratified: | 4th December 2019 |
| Name of originator/author: | Lisa Baker, People Business PartnerGemma Kendall, People Relations Advisor |
| Executive Director lead : | Tanya Carter |
| Implementation Date : | February 2020 |
| Last Review Date  | November 2019 |
| Next Review date: | November 2021 |

|  |  |
| --- | --- |
| Services  | Applicable  |
| Trustwide | x |
| Mental Health and LD  |  |
| Community Health Services  |  |

Version Control Summary

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version** | **Date** | **Author** | **Status** | **Comment** |
| 4.0 | 02/05/2017 | Stephanie Nartey, HR Business Partner | Approved |  |
| 5.0 | 04/11/2019 | Lisa Baker, People Business PartnerGemma Kendall, People Relations Advisor |  |  |

**Contents**

|  |  |  |
| --- | --- | --- |
| **Paragraph** | **Section** | **Page** |
|  | Flowchart of Grievance Process | 4 |
| 1 | Introduction | 5 |
| 2 | Scope | 5 |
| 3 | Principles | 6 |
| 4 | Industrial Action | 6 |
| 5 | Representation | 6 |
| 6 | Timescales | 7 |
| 7 | Maintaining Records | 7 |
| 8 | Informal Discussion | 8 |
| 9 | Grievance Procedure – Informal Stage | 8 |
| 9 | Mediation | 8 |
| 10 | Grievance Procedure – Formal Stage 1 | 9 |
| 11 | Formal Stage 2 – Appeal | 11 |
| 12 | Collective Grievances | 12 |
| 13 | Outstanding disciplinary/capability matters relating to grievance | 12 |
| 14 | Post-employment grievances | 13 |
| 15 | Equality impact assessment | 13 |
|  |  |  |
| **Appendices** |  |  |
| 1 | Roles and Responsibilities | 14 |
| 2 | The Mediation Procedure | 16 |
| 3 | Grievance Notification Form – Stage One | 19 |
| 4 | Investigation Procedure | 21 |
| 5 | Grievance Appeal Form – Stage 2 | 25 |
| 6 | Appeals Procedure | 26 |
| 7 | Appeal Hearing | 27 |

**Flowchart of Grievance Process**



## **GRIEVANCE POLICY & PROCEDURE**

1. **INTRODUCTION**
	1. The East London Foundation Trust (herein referred to as ‘the Trust’) is committed to creating a work environment where everyone is treated with dignity and respect and is committed to encouraging free and open communication between employees and their managers to ensure that concerns arising during the course of employment can be raised and, wherever possible, resolved quickly.
	2. Grievances may be concerned with a wide range of issues, including the allocation of work, the working environment or conditions, operational management procedures, work relations, flexible working issues, health and safety issues, opportunities for career development, the style of management or any other issue affecting employment.
	3. In order to promote good employee relations, the Trust’s Grievance Policy and Procedure provides a framework for resolving grievances and disputes in a fair, reasonable, timely and consistent manner at the earliest possible stage and as close to the point of origin as possible. This policy therefore encourages proactive and meaningful discussions to take place at the informal stage of this policy.
	4. The Grievance Procedure follows this philosophy but provides the formal method for any employee to raise a grievance where the issue has not been resolved earlier on an informal basis, in line with the ACAS Code of Practice 2019.
2. **SCOPE**
	1. This policy and procedure applies to both individual and collective grievances and applies to all Trust employees including fixed-term and substantive employees. This policy also applies to bank staff, agency, locum, students and honorary staff.
	2. A seconded employee who wishes to raise a complaint against a Trust employee must do so under this procedure. A Trust employee wishing to raise a complaint against a seconded employee should raise the matter with the seconded employee’s line manager to be dealt with using the seconded employee’s organisational policies and procedures, unless stated otherwise under a formal secondment agreement.
	3. Any grievance raised against a member of staff who provides services to the Trust, but is employed by a third party organisation (e.g. Local Authority) will have to be raised with the third party organisation. The People and Culture Team should be notified in such cases.
	4. The Grievance Policy and Procedure will not be used in situations that relate to:

### Procedures where the Trust has no discretion or authority in the matter e.g. Agenda for Change, Medical and Dental or Senior Managers contractual terms and conditions of employment (except for the interpretation of the contract).

### Concerns raised by service users, their carers, relatives or other members of the public, which should be handled by the Trust’s Complaints Process.

### Concerns about illegal activities, clinical complaint, wrongdoing or malpractice that should be handled by the Raising Concerns (Whistleblowing Policy).

### Concerns about bullying or discrimination that should be handled by the Dignity at Work Policy.

### Income Tax, National or Graduated Insurance, pension and pension rights, Government Policy.

### Issues of strategic policy for the organisation.

### Any other matter for which a separate local or trust-wide procedure exists, such as the Disciplinary Policy or the Staff Performance Improvement and Capability Policy, which have their own appeal procedures.

1. **PRINCIPLES**
	1. Other than in exceptional circumstances the status quo, i.e. the previously agreed working and/or management arrangements, which applied before the grievance or dispute, will continue through the informal stages of this procedure.

**Temporary Redeployment**

* 1. Prior to any formal action being taken the line (or next-in-line) manager along with the People Relations Advisor may consider the appropriateness of temporary redeployment of either party until resolution has been sought. This action may be taken to relieve the stress and pressure on one or both and/or to prevent the risk of further incidents occurring.
	2. If the grievant expresses concern about both parties continuing to work together until a resolution has been sought the grievant may be redeployed.
	3. The needs of the service will determine the most appropriate means of redeployment.
1. **INDUSTRIAL ACTION**
	1. No withdrawal of labour, lockout or other industrial action will take place if all stages of this procedure have not been exhausted in accordance with the stated time limits.
2. **REPRESENTATION**
	1. All employees have the right to be represented by a recognised Trade Union, professional association (i.e. Royal College of Nursing/RCN, General Medical Council/GDC) or a current work colleague not acting in a legal capacity, at all formal stages of this policy. The onus lies on the employee to arrange his/her representation. The employee is required to attend the hearing and the representative cannot represent an employee if the employee does not attend.
	2. Where an accredited representative of a trade union or professional association has a grievance or dispute the People and Culture Department must always seek to discuss the details of the grievance with a full time official of the organisation concerned.
	3. If the employee’s representative is unable to attend any formal meeting as part of this process on the proposed date, the employee may be offered an alternative time and date so long as it is reasonable and within a further 10 working days. Should the employee and/or representative be unavailable on the rescheduled date, the meeting may go ahead in their absence.
3. **TIMESCALES**
	1. In line with the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary and Grievance Procedures, 2019, the Trust will aim to deal with issues promptly and will not unreasonably delay meetings, decisions or confirmation of those decisions. We understand that some cases may have exceptional circumstances, and in this situation, the timescale will be reviewed on a case by case basis. Where resolution to a grievance is being delayed various options may be considered to ensure a timely resolution to the matter e.g. Union representation in the absence of an employee, written submissions where formal meetings cannot be arranged or agreed. Where resolution to a grievance is being delayed, the employee will be notified of this.
	2. Any grievances raised under the informal or formal stage of this procedure should be raised within 3 months of the issue arising. The grievance will be considered to be out of time if raised after 3 months and as such it will not be allowed to proceed.
	3. Where the grievance or dispute relates to the complainant’s line manager, the matter should be referred to the next-in-line manager.
	4. In the event an informal method of resolution is being explored, any formal processes or investigations underway will be halted. Formal processes will only recommence once the informal process has come to an end.
4. **MAINTAINING RECORDS**
	1. Where possible, the employer and employee will both keep written records during the entire grievance process. The records will include:
* The nature and type of grievance raised
* A copy of the written grievance
* The Trusts response
* Any actions that the Trust or employee has taken
* The reasons for any actions taken
* Any information relating to appeals
* Copies of all evidence obtained
	1. The exception to this is the mediation process, where only a record of a final agreement may be made and only with all parties consent. No notes will be made of this process.
	2. Records of any individual complaint raised under this policy will normally be kept on both the complainant and respondent’s HR file for a period of 1 year following outcome, detailing the nature of the grievance raised, the Trust’s response, any action taken and the reasons for it. All records will be kept confidential and retained in accordance with the Data Protection Act 1998. Unless specified otherwise and only in exceptional circumstances, after 1 year the records in both employees and the HR files will be removed and destroyed.
1. **INFORMAL DISCUSSION**
	1. The Trust encourages staff that, any issue raised as part of this policy, be resolved informally and expects that where possible the informal route is exhausted before referral to a formal grievance. When raising a formal grievance, the employee should outline the steps that they have taken to resolve the grievance informally to demonstrate that all informal options have been explored prior to raising a formal grievance. With the permission of all parties involved informal discussion may take place at any time to resolve the grievance even where the grievance is at a formal stage. If all parties agree that the grievance is resolved at any point informally there will be no requirement to continue with any formal meetings as described in this policy. Similarly, where an issue is sufficiently serious or where agreement is unlikely the grievance may be initiated at the Formal Stage.

**GRIEVANCE PROCEDURE**

1. **INFORMAL STAGE**
	1. Most grievances can be resolved quickly and informally by an employee raising matters with their line manager. Therefore, an individual should raise any grievance with their immediate line manager in the first instance or to the next-in-line manager if the grievance is against the line manager.
	2. The manager will meet with the employee to give them the opportunity to discuss the issue and will endeavour to resolve their concerns informally.
	3. The Manager will write to confirm the outcome of the informal discussion to the employee within 10 working days, including details of any remedial action which may be taken and notifying of the method by which the employee may invoke the formal procedure if still dissatisfied.
	4. Informal resolutions may include (this list is not exhaustive):
* A one to one meeting with the employee who the grievance is against.
* The line manager or a work colleague may facilitate an informal conversation i.e. a three-way meeting.
* Mediation carried out by an internal mediator. The mediation procedure is attached as **Appendix 2**.
	1. A file note should be kept of any informal discussions (except in mediation meetings, where consent by both parties must be given)
	2. Every effort should be made by the line manager and grievant to explore all options to resolve the grievance informally before proceeding to the formal stages of this process. In some occasions it may be appropriate for HR or the next-in-line manager to refer the matter back for further informal exploration. This is in an attempt to resolve the majority of grievances at the earliest opportunity, for the best interest of all concerned.

 **Mediation**

* 1. Research indicates that most acts of unacceptable behaviour are best resolved with mediation. The Trust has a list of trained mediators. Mediation is an informal, confidential and voluntary process of negotiation and is generally used when disputes exist among two or more parties. The Mediator is not there to form or make any judgments or decisions but is there to help both parties reach a mutual decision which will assist them to move forward.
	2. It is expected that staff raising a grievance or having a grievance raised against them will wish to resolve matters informally and it is therefore anticipated that, in all instances, mediation will be explored before the grievance is escalated to Formal Stage 1. . If staff are not willing to participate in mediation before Formal Stage 1, they should offer a clear justification as to the reasons why, so that this can be taken into consideration when escalation to Formal Stage 1 is being contemplated.
	3. Following successful mediation both parties should be offered an opportunity to review the outcome allowing a reasonable period but no more than 90 working days from the final mediation meeting.

* 1. For further information please refer to the Trust’s Mediation Guide available on the intranet.
1. **FORMAL STAGE 1**

 **Notification of Formal Grievance**

* 1. If the informal procedure or mediation has not been successful, or the issue is serious enough, the employee should outline the nature of their concerns formally in writing, using the Grievance Notification Form which is attached as **Appendix 3** and send this to their immediate line manager (or next-in-line manager if the grievance is against their line manager) within 15 working days of the outcome of the informal stage. This form will help with the decision as to whether it is a grievance or dignity at work complaint, and therefore how the matter then proceeds according to the policy.
	2. The grievance should be sufficiently detailed to allow the manager dealing with it to understand the nature of the grievance and should include any accompanying documents and evidence to support their complaint. The grievance should also include, why it was not resolved at the informal stage and the desired outcome.
	3. If the grievance is unclear, clarification of the complaint will be required before any meeting takes place. This will take the form of an ‘Exploratory Interview’ held by the manager commissioning the investigation and a People and Culture representative. The purpose of this meeting shall be to clarify the terms of reference for the investigation and the desired outcome from the complainant. The employee may be accompanied as set out at section 5 above. It should be noted that the commissioning manager has the discretion to disregard complaints that are out of the time limits of this policy, have been dealt with elsewhere in another process and/or remain unclear despite further discussions. The outcome of this meeting shall be confirmed in writing by the commissioning manager within 10 working days.
	4. Employees are encouraged to seek help from a work colleague or a trade union representative in completing the grievance notification form, when there may be a language barrier or the employee has difficultly expressing themselves on paper. The Trust is also willing to consider any reasonable adjustments and provide information in an accessible manner to employees that have a disability.

 **Response to Formal Grievance**

* 1. The grievance will be acknowledged by the line (or next-in-line) manager in writing within 10 working days of receipt.
	2. Upon receipt of the notification form, the manager will take the most appropriate of the following actions:

***Further Informal Resolution***

* 1. Refer back for informal resolution where this had not been fully explored, such as through mediation

***Stage 1 Grievance Investigation***

* 1. If the grievance or dignity at work issues were not resolved at the informal stage and it is feasible to do so, a formal investigation to establish facts will be conducted. The investigation procedure is attached as **Appendix 4.**
	2. Upon completion of the investigation, in most cases, the commissioning manager will send both parties a copy of the investigation report and will invite the complainant and respondent to individual outcome meetings within 10 days of receipt of the investigation report. However, if there are concerns about confidentiality, this should be discussed with the Locality People Relations Advisor. This may lead to part of the investigation report being redacted or not being sent to both parties. In this case, both parties will be informed of the findings of the report during the individual outcome meetings. Appropriate actions are outlined in section 9.
	3. The commissioning manager considering the grievance will advise the employee(s) (if applicable, both the aggrieved and responding employees) of the outcome, and that this will be confirmed in writing within 10 working days of the meeting. If it is not possible to respond within this period of time the employee(s) will be given an explanation for the delay and told when a response can be expected.
	4. In the feedback meeting outcome letter, the grievant will also be notified of the right and process to appeal. As the respondent has not raised the original grievance complaint, there is no right of appeal for the respondent.
	5. We do recognise that this can be a very stressful process for both parties. In cases where some or all of the grievance is upheld, but no formal process proceeds against the respondent, the commissioning manager should ensure that individual meetings are held with both the grievant and the respondent to discuss any recommendations, support and pastoral care.

**Possible Outcomes**

* 1. Except where successfully resolved at the informal stages, the following outcomes may be reached by the next-in-line manager at conclusion of Stage 1:

***To uphold some or all of the grievance.***

* 1. If such a finding is made it will normally be appropriate for the commissioning manager to also recommend actions to remedy the situation. This could include further informal resolution, or in the case that the complaint is against an individual it may be appropriate to undertake capability management, a meeting of concern or formal disciplinary action. Due to confidentiality, the complainant may not be given details of the remedy that relates to performance or conduct management of another staff member; it will be sufficient that they are made aware that appropriate action has been taken. Any disciplinary action will be dealt with under the Trust’s Disciplinary Policy & Procedure.

***To not uphold the grievance.***

* 1. It may also be appropriate with such a finding to also recommend actions, although it may be the case that no further action is required.
	2. The complainant has a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld.

***To find that the grievance is vexatious.***

* 1. The Trust is confident that the very large majorities of grievances raised by staff are not vexatious and would not deter any individuals from raising a grievance that is genuine and made in good faith. However, if it is found that the grievance is vexatious, then it may be decided to undertake disciplinary action against the complainant which will be dealt with under the Trust’s Disciplinary Policy & Procedure. In this event a separate formal process may commence which may draw upon the information gathered as part of the grievance process.
	2. Staff who submit multiple grievances, either simultaneously or on separate occasions about the same or other matters, which are subsequently found to be without merit will be considered to be acting in a vexatious manner. Similarly, staff who seek to perpetuate the processes unnecessarily and without merit, shall be considered to be acting in a vexatious manner.

**Confidentiality**

* 1. To ensure the requirement for confidentiality is not breached, the grievance letter should only be sent to the relevant line manager, the Investigating Officers, the respondents (only the parts relevant to them), the relevant People Relations Advisor and the trade union representative or work colleague who will be accompanying the complainant during the process. The grievance should not be sent or copied to other employees, external people or organisations. If this occurs it could be considered a breach of the Data Protection Act and it could also be a breach of complainant’s contract of employment which includes a confidentiality clause. Therefore disciplinary action could be taken after consideration is given of the facts related to the disclosure.
1. **FORMAL STAGE 2 – APPEAL**

 **Notification of appeal**

* 1. If the grievant is dissatisfied with the decision made at the Stage 1 they should write to the Service Director within 15 working days of the receipt of the letter confirming the outcome of the meeting held under the formal process. The appeal notification form is attached as Appendix 6. The letter can be emailed in addition to being hand delivered or sent recorded delivery to allow for record of proof of delivery and receipt.
	2. The grounds for appeal should cover one or more of the reasons below:
* The grievance policy and procedures were not followed and was not taken into consideration.
* The grievance was not properly investigated.
* Non-compliance with statutory policy, procedure and legal rights.
* Acts of discrimination, bullying and harassment throughout the grievance process.
* The grievance investigations and evidence which was not considered at stage 1.

 **Response to appeal**

* 1. The appeal will be acknowledged in writing within 10 working days by the Service Director receiving the appeal notification form as **Appendix 5.**
	2. Upon receipt of the notification form and consideration of the stated grounds for appeal, the Service Director and the ER Lead will take the most appropriate of the following actions:

 ***Decide there are no grounds to appeal***

* 1. Where the Director decides there are no grounds for appeal the employee will be informed in writing within 10 working days of receipt of the notification form.

 ***Stage 2 Grievance Meeting***

* 1. If the Director decides that the grounds for appeal warrant an Appeal Hearing, a Stage 2 Grievance Meeting to hear the appeal will be arranged within 30 working days and the panel will comprise of a Director and a People and Culture Representative who have not been associated with the case.The appeals procedure is attached as **Appendix 6.**
	2. The decision of the appeal panel is final and no further appeals are permitted. The format for the appeal hearing is attached as **Appendix 7.**
1. **COLLECTIVE GRIEVANCES**
	1. Where a grievance is lodged by a group of employees, it will be dealt with and heard on behalf of the group as a whole where this is practicable. The group will elect a maximum of 2 people to present their case.
	2. A collective grievance can be resolved locally or informally where appropriate and where possible.
	3. The process outlined in informal stage and Stages 1 and 2 above will be followed for collective grievances.
2. **OUTSTANDING DISCIPLINARY/CAPABILITY MATTERS RELATING TO GRIEVANCE**
	1. In accordance with ACAS guidance on the grievance procedures, where any outstanding disciplinary/capability or existing grievance matters are still ongoing, an employee may raise a grievance by sending a letter to the Director who commissioned the report. If the grievance relates to a case under investigation, the original process will continue and the individual will be asked to raise the issue as part of their statement of case. However, if the points raised may materially affect the outcome of the issue being investigated, the formal processes may be suspended for a short time, while the points raised are considered under the Grievance Procedure, before proceeding with the original investigation. The line manager who commissioned the investigation will make the decision after seeking advice from the relevant People Relations Advisor.
3. **POST-EMPLOYMENT GRIEVANCES**
	1. The Trust encourages all employees to resolve issues in good time and whilst in employment. Grievances raised by leavers whose complaint falls outside the 3 months’ time limit outlined in this policy will not be progressed.
4. **EQUALITY IMPACT ASSESSMENT**
	1. The Equality Impact Assessment demonstrates that if this policy was applied consistently it would not disproportionately affect any of the Groups with the personal characteristics covered in the Equality Act 2010. (Age, Gender, religion and belief, marriage and civil partnership, race, gender re-assignment, sexual orientation, religion and belief, pregnancy and maternity).

**Appendix 1**

**Role and Responsibilities**

**The Trust**

The Trust will ensure that:

* Formal training to support this policy is provided to appropriate employees, in particular people who will facilitate, mediate or hear grievance hearings and those who support and advice individuals who complain or are complained about.
* All employees are informed about the contents of this policy and complaints procedures.
* Policy provisions comply with UK law and regulations.
* Trained Mediators within the Trust are available to conduct the informal mediation process.
* All staff have access to independent counselling, if they so wish

**Managers**

Managers and supervisors have a particular duty to ensure that their own behaviour is beyond reproach at all times. Managers and supervisors are essential in implementing this policy. They do this by:

* Ensuring employees know about this policy and know how to raise a grievance.
* The line manager must declare any conflicts of interest or involvement in a grievance at the point that it is raised.
* Dealing with any complaints fairly, thoroughly, quickly and confidentially, respecting the feelings of all concerned.
* Getting advice from People and Culture as quickly as possible following the receipt of a grievance.
* Ensuring that there is no retaliation against the employee who made the complaint.
* Creating an environment and culture where destructive forms of behaviour are not tolerated and where everyone is treated with respect and dignity
* Dealing with any complaints fairly, thoroughly, quickly and confidentially, respecting the feelings of all concerned
* Complying with the timescales set out in this policy.

 **Staff**

All members of staff are responsible for adhering to this policy. They are required to:-

* Seek to resolve matters informally as much as possible
* Formal grievances should clearly state the grounds of the grievance and any actions that have been taken to resolve it informally and complete and submit the notification of grievance form
* Treat all colleagues with dignity and respect and be aware of how their behaviour can affect other people, for example, by ensuring that normal workplace banter enhances rather than undermines teamwork
* Ensure that they understand the policy and the consequences of vexatious complaints and abuse of this policy
* Comply with the requirements of this policy when setting out a grievance, including the provision of evidence and compliance of timescales set out in this policy and should make every effort to attend any meetings arranged by management.
* Employees are responsible for arranging their own trade union representation or support throughout the grievance procedure.

**People and Culture Department**

The People and Culture Department has a responsibility to ensure that the policy is followed fairly and consistently. Their duties include:

* Advising managers on the application of the policy.
* Advising managers and staff, where appropriate, when individuals feel that they are being harassed or bullied in the course of their employment.
* Ensuring the effective implementation of the policy.
* Monitoring levels of grievances and dignity at work complaints, identifying trends, initiating appropriate action and reviewing and amending the policy as necessary.

**Commissioning Manager**

**The Commissioning Manager will be the Head of Service for the relevant discipline i.e. Head of Nursing/Head of Administration etc.**

The responsibilities of the Commissioning Manager include:

* Informing the employee of the allegations and the process to be followed; Along with the relevant People Relations Advisor appoint and inform the Trusts Investigating Officers of the allegation and the need to investigate;
* Keep up to date with the progress of the investigation by regularly checking with the Investigating Officers that they are adhering to the timing schedule agreed in the Investigation Planner Tool. Any recommendations that come out of the investigation are implemented where possible and in a timely manner with input from the relevant People Relations Advisor.
* On reading of the investigation report, the Commissioning Manager will make a decision as to what the next steps should be in order to resolve the Grievance.

**Appendix 2**

**The Mediation Procedure**

The Trust is committed to encouraging harmonious working relationships between staff and promoting fairness to all. In most instances, workplace conflict can be resolved informally without the involvement of a third party, however where resolution is not achieved, the Trust has both informal and formal processes to support staff in conflict.

 **Definition of Mediation**

Mediation is a confidential process where a neutral, non-judgemental third party brings the parties in conflict together in a safe environment to facilitate open and honest dialogue as a first step in helping the parties find mutually agreed solutions.

This approach operates outside of any formal dispute or grievance procedures and is entered into voluntarily by both parties. It is best attempted before the situation escalates into a formal dispute.

Exploring mediation options usually starts with informal discussions with HR or one of the accredited mediators with the Trust.

Accredited mediators all have the National Certificate I Workplace Mediation and participate in regular quality assurance activities via Total Conflict Management (TCM).

Use of this process is voluntary and members of staff therefore have the option to withdraw from the process at any time and to instigate the formal Grievance Procedure, should they wish to.

In addition to mediation, members of staff may also choose to contact the Trust’s free confidential employee advisory provider for advice and support. Further details can be found on the ELFT intranet site.

**Relationship with Dispute Resolution Procedures**

Mediation does not replace the Trust Grievance, Dignity at Work or Disciplinary procedures and should be adopted only where it is agreed that the matter might be best resolved through mediation at an earlier stage or where the appeals procedures have been exhausted.

Mediation may be recommended as part of informal arrangements within a disciplinary issue, or grievance related dispute, including Dignity at Work allegations, with the agreement of the individuals involved in a dispute / relationship breakdown.

If mediation is agreed, the disciplinary or grievance process may be temporarily suspended at the absolute discretion of the panel. In the event that mediation does not resolve the dispute, the relevant disciplinary or grievance process shall continue on conclusion of the mediation.

 **When Mediation May Be Appropriate / Inappropriate**

Mediation may be suitable:

* To resolve conflict involving colleagues of a similar job or grade or between a line manager and a member of staff.
* To support rebuilding relationships after a formal dispute has been resolved / formal procedure completed.
* To address a range of issues, including relationship breakdown, personality clashes, communication problems, dignity at work complaints.
* Where an ongoing professional working relationship is required / or there is a requirement to act cooperatively.
* Where there are questions over fairness and reasonableness.
* Where it is in the interest of both parties to resolve.
* When both parties are willing to participate.

Mediation would not be suitable:

* Where one party to a dispute is unwilling to engage with mediation.
* To use as a first resort for contact. Employees should have made attempts to speak to each other and discussed issues with their line manager, (or the next level of management if the line manager is involved), before seeking a solution through mediation.
* For a manager to use to avoid their managerial responsibilities; e.g. to question poor performance or discuss capability issues.
* Where a decision about right or wrong is genuinely required to resolve a dispute for example, where there is possible criminal activity; or to communicate a formal sanction.
* Where an individual is raising discrimination or harassment concerns, which would first require the allegations to be investigated.
* There is an unbridgeable imbalance of power.

 **Accessing Mediation**

If you are involved in a personal conflict within the workplace, you may contact the mediation team inbox at elft.mediation@nhs.net who will act as the ‘gate keeper’ and direct you to an appropriate mediator/facilitator

At the first point of contact the mediator will:

* Assess if mediation is appropriate in the given circumstances
* Confirm if they are available and suitably selected to support the case
* Be independent to the situation

The mediator will hold a separate meeting with each individual to understand the situation and gain agreement to a joint meeting

The mediator and parties involved will decide arrangements for the joint meeting e.g. appropriate venue, date and other practical matters relating to the mediation process. Mediation meetings will generally be held on the Trust’s premises, unless exceptional circumstances apply.

There is no legal right to be accompanied at a mediation session. There are limited exceptions to this e.g. where an interpreter may be required.

Successful mediation should be achievable in one joint session with both parties participating. Sufficient time should be allocated to facilitate a successful outcome and prevent the need for repeat meetings.

An individual should agree appropriate time to be released from responsibilities to attend mediation sessions with their Line Manager. If you are concerned regarding covering workloads; where possible, suitable cover or other arrangements for time will need to be agreed with the line manager. If in doubt speak to the mediation team or the mediator directly.

**Mediation Team**

The mediation service is provided by a small team of staff who have undertaken Total Conflict Management (TCM) mediation skill training.

Contact details for current Mediators is available at elft.mediation@nhs.net

**Appendix 3**

###### Grievance Notification Form – Stage One

Stage One of the procedure should only be invoked if the informal process has not been successful

This form must be completed and sent within 15 working days from the date on the letter confirming the outcome of the informal stage to the individual’s line manager, and if the issue is related to the line manager then it should be sent to the next-in-line manager.

All parts of this form must be completed and ideally sent by email.

**PART 1 – EMPLOYEE DETAILS**

**Name: ……………………………………… Job Title: …………………………………………..**

**Department: ……………………………….. Location: ………………………………....………**

**Telephone No. ……………………………... Email: ………………………………...……………**

**Are there any dates that you are unavailable to attend meetings? Please detail these here i.e. annual leave, part-time working:**

**………..………………………………………………………………………………………………….**

**PART 2 – GRIEVANCE COMPLAINT**

Please select whether you are submitting a grievance and/or a dignity at work complaint and tick all that apply. Please ensure you provide details to evidence this in part 3

**GRIEVANCE**

* **Management decision**
* **Operational issue or procedure**
* **Flexible working issue**
* **Health and safety issue**
* **Other (please outline)**

**Name of who your complaint is against (if applicable):**

**……………………………………………………………………………………..**

**PART 3 – DETAIL OF ISSUE**

1. **In your own words summarise what you are aggrieved about. This should be sufficiently detailed to allow identification of particular matters. You should provide details such as dates and times of events, the names of any witnesses, where events took place and any relevant background information leading up to the issue.**
2. **Why was your grievance/dignity at work issue not resolved at the informal stage? (Please enclose the outcome letter from the informal stage).**
3. **What outcome are you looking for from your raising this issue? How do you think it could be resolved?**

**PART 4 – REPRESENTATION**

If a Trade Union Representative or workplace colleague is supporting you with this complaint please provide their details

**………………………………………………………………………………**

**Signature …………………………………. Date: ……………………………………**

**Appendix 4**

**Investigation Procedure**

Where a formal investigation is necessary, the commissioning manager will consult with the People and Culture Department and an Investigating Officer will be appointed. If the case is complex which includes interviewing a number of witness and multiple allegations a Co-Investigating Officer may be appointed. Employees suitable for undertaking investigations will be selected from the list of accredited Investigating Officers held by the People and Culture Department.

**Commissioning Officer**

Definition - The manager who commissions the formal investigation and appoints the Investigating Officer(s).

The Commissioning Officer will set out the terms of reference for the Investigation. No further complaints may be added once the formal investigation is underway.

The Commissioning Officer shall inform the respondent of the grievance and share any written documentation (as relevant). In the interests of preserving confidentiality, the grievance documentation may be redacted as necessary; i.e. if the grievance relates to more than one person, only the elements that relate directly to the respondent shall be shared with them.

It is the Commissioning Officer’s responsibility to maintain contact with and update the grievant and respondent on the progress of the Investigation.

**Investigating Officer**

The Investigating Officer must be someone who would not be potentially implicated in the investigation. For example, the Investigating Officer should not be a member of staff who could be a potential witness. The onus is on the Investigating Officer to declare to the line manager and the People Relations Advisor any issues which might compromise the credibility of the report. Investigations will not be conducted by the alleged member of staff’s line-Manager.

It is the Investigating Officer’s responsibility to ensure a timely and thorough investigation. The Investigating Officer(s) should timetable the investigation as a priority and this must be agreed with their Line-Manager. It is expected that even the most complex of investigations should be completed without unreasonable delay**.**

**Trained Investigating Officers**

The Trust will develop and maintain a list of trained Investigating Officers. Investigating Officers must have received formal training or gained suitable experience in this field. The Deputy Director of People and Culture will decide whether previous experience merits accreditation.

The People and Culture Department should ensure that a meeting with the Investigating Officers is arranged prior to them starting the investigation. During this meeting, the People Relations advisor will explain the process of the investigation.

**The Responsibility of the Investigating Officer**

1. **Initiating the Investigation**

The Investigating Officers should:

* Attend the initial meeting with the locality People Relations Advisor in order to obtain the necessary information and understand the full process involved in carrying out the investigation.
* Seek advice from the relevant People Relations Adviser throughout the investigation process and report to them on a fortnightly basis with an update of progress.
* Inform the employee in writing that they will be conducting the investigation into the allegation previously communicated to them which will involve collating evidence to support and/or refute the allegations, and that this will include collecting statements (where appropriate) and conducting interviews (where necessary).
* Request that the employee submits a written statement to be considered as part of the investigation if they haven’t already done so.
* Ask the employee if there are any individuals that they would recommend that the Investigating Officer should request a written statement from and state the reason why that employee is relevant to the case. If the Investigating Officer decides not to call a witness suggested by the employee, they need to justify their decision. This does not preclude the Investigating Officer from seeking other witness statements pertaining to the allegations.
* Inform the employee that they will be invited (in writing) to attend an investigatory meeting with the Investigating Officers to give them a further opportunity to state their case before the investigation is concluded.
1. **Obtain information**

The Investigating Officers should:

* Obtain signed and dated statements from the employee and any witnesses if these have not already been submitted as part of the investigation into the alleged conduct/performance issues.
* Advise witnesses that they are expected to check and return notes of meetings within 10 working days after which time the notes will be considered as accepted.
* Collect any other documentation, supporting evidence from witnesses and any other individuals in relation to the alleged misconduct/performance issues.
* Interview the employee to clarify the contents of their statement and to add any other further information they feel may be important to the case; with the exception of adding new issues.
* Interview witnesses to clarify the contents of their statements where necessary.
* Write to the employee and witnesses, requesting their attendance at an investigatory meeting, in addition, reaffirming the allegation/s, outlining the purpose of the meeting and informing the employee of their right to representation at this meeting.

**3. The Report**

The Investigating Officers will also be expected to:

* Write up an investigatory report within 10 working days of the completion of the investigation unless there are exceptional circumstances.

**4. Notice of the Investigation Meetings**

The Investigating Officer(s) should give the employee at least 10 working days’ notice of an investigation meeting to allow them time to find representation. If the employee’s representative is unable to attend on the proposed date, the employee may offer an alternative time and date so long as it is reasonable and falls before the end of the period of a further 10 working days. Should the trade union representative be unavailable on the rescheduled date, the meeting may go ahead in their absence.

Should the employee fail to attend the investigatory meeting at the rescheduled date then they will be advised that they may not be given a further opportunity to provide their evidence at this stage and the report may be completed in its absence.

**Witnesses**

Witnesses should be advised of their right to representation prior to being asked for information, and informed that any statement or information gathered may be used in a grievance meeting and will be given to both the employee initiating the grievance and the employee against whom the allegations have been made.

If a witness is asked to provide evidence as a part of the investigatory process they must comply with this request. Failure to do so may lead to disciplinary action being taken against them.

**Service User involvement within the Grievance process**

If an allegation is made by a Service User or a Service User is witness to an incident that is subsequently investigated under the Trust Grievance Procedure, then the Investigating Officer(s) will liaise with the Service User’s Lead Clinician or Consultant Psychiatrist in order to determine the suitability of their participation within the Grievance Investigative interview. If the Service User’s involvement is approved, then the Investigating Officers should ensure that they conduct the interview in the presence of an appropriate user advocate.

**Investigation Report**

The investigating officer of the grievance must come to a conclusion about which version of events is most credible, and resist any temptation to apply their own opinions/standards to the seriousness of the issue. The case of the employee who has the grievance will be stronger if s/he complained at the time, or made notes of the incident and the response. However, take into account that the complainant complaining may have been too upset or distressed to do so, or may not have thought of it at the time.

* Following the investigation the Investigating Officer(s) will produce a report; this will be sent to the relevant People Relations Advisor to ensure that report complied with the standards outlined in the policy. Any amendments should be completed within 10 working days. The report should be sent to the manager who commissioned the report. The investigation should include signed and dated statements and interviews from the following:
* The individual raising the allegation(s).
* The employee against whom the allegations have been made.
* Any employee who can offer relevant information, especially anyone who witnessed the alleged offence, or was on duty at the time the alleged offence took place.
* In addition, copies of the employee’s rotas, timesheets and relevant policies and procedures may be included as a part of the report if relevant.
* The report should highlight which of the allegation(s) are upheld based on the evidence gathered as part of the investigation.
* The report should not include recommendations of the next steps in the process e.g. Whether the case should go to a grievance hearing or not.

**Investigation Interviews**

The employee(s) investigating the aggrieved member of staff should first find out the facts from the point of view of the employee complaining. At interview ask questions such as:

* What happened?
* In what context did this happen?
* Who was involved?
* When did the incident take place?
* How did you react?
* Was this the first time this has happened?
* Tell me about the other occasions?
* Did anyone see/hear this or a previous incident?
* Is there any physical, documentation, or other evidence of the incident?
* Have you talked about this incident to anyone?
* How has it affected you?
* What do you want to happen to resolve this situation?
* Are there any mitigating circumstances?

Questions that should not be asked include:-

* What were you wearing at the time?
* Did you do anything to lead him/her on?
* Surely s/he was only joking?
* I know the employee you are talking about. I can’t believe s/he would do something like that. Are you sure that there hasn’t been a misunderstanding?
* Do you really want me to take this complaint further?

**Appendix 5**

###### Grievance Appeal Form – Stage 2

This form must be completed and sent to the Service or Corporate Director within **15 working days** of the date of the letter confirming the outcome of Stage One. Please ensure that your grounds of appeal include at least one of the criteria for accepting appeals below. You may continue on a separate sheet

***Parts 1 and 2 of this form must be completed.***

*PART 1 – EMPLOYEE DETAILS*

***Name: ……………………………………… Job Title: ……………………………..***

***Department: ……………………………….. Base: ………………………………***

***Telephone No. ……………………………... email: ……………………………...***

*PART 2 – DETAILS OF APPEAL*

***Date of Stage One Grievance hearing: …………………………………………***

*Please state in your own words the grounds on which you are basing your appeal against the decision taken at Stage One and what outcomes you are looking for*

***The grounds for appeal should cover one or more of the reasons below:***

***• The grievance policy and procedures were not followed and was not taken into consideration.***

***• The grievance was not properly investigated.***

***• Non-compliance with statutory policy, procedure and legal rights.***

***• Acts of discrimination, bullying and harassment in the hearingthroughout the grievance process.***

***• The grievance investigations and evidence which was not considered at stage 1.***

***Signature …………………………………. Date: ……………………………………***

##### Appendix 6

##### Appeals Procedure

**Following receipt of an appeal, an appeal panel will be convened within 3 months.**

The employee must submit an appeal letter to the Service Director within 15 working days after the date of the letter confirming the decision following the grievance hearing. If the letter lacks sufficient detail as to which aspects of the panels’ decision the appellant is dissatisfied with they lose their right to appeal.

Upon receipt of the appellant’s grounds for appeal, the Director will send a holding letter to the appellant within 10 working days of receipt of the appeal. The appeal letter should be forwarded to the Chair and People Relations Advisor who attended the Stage 1 Outcome Meeting so that they can write their response (‘the management case’).

A Trust Director and a People and Culture representative who has not been associated with the case should be appointed to act as appeal panel members.

The Stage 1 outcome meeting members will have 15 working days before the appeal hearing to submit their management case to the Director. This should include the investigation report, , notes of the meeting, and outcome letter, a comprehensive justification for the decision made at the outcome meeting and respond to any queries raised by the appellant. No other paperwork should be accepted after the deadline.

At least 10 working days before the appeal hearing the employee statement of case and the management side case will be forwarded to all relevant parties by the Director (all appeal panel members, the employee and their representative and Manager and People Relations Advisor presenting the management case).

If the employee or management case has not been submitted within the stipulated time frame, the hearing will be postponed. In exceptional circumstances, an extension of 10 working days may be granted for the submission of the paperwork which requires the agreement of all parties.

**Notice of appeal hearing date**

The appellant should be given at least 10 working days’ notice of the date and time that the appeal hearing will be convened.

**Rescheduled appeal hearing timescales**

Postponed appeal hearings will be rescheduled a second time. If the reason for postponement has been non-submission of paperwork, then all relevant missing paperwork must be submitted 10 working days before the date of the second hearing. The same timescales for exchange of missing paperwork applies, i.e. 10 working days.

If the Management/appellant case is not submitted 10 working days before the date of the second hearing is arranged then the hearing will go ahead. The management/appellant will be given the opportunity to present their case and question the other side. In the absence of an appellant case, the original appeal letter can be used in the hearing. No new paperwork can be presented at the hearing.

If the employee is unable to make the date or does not turn up to the hearing, they will be given one further opportunity to attend. Failure to attend a second time will result in the appeal hearing being heard in their absence.

##### Appendix 7

##### Appeal Hearing

The hearing is chaired by a Panel Member. At the hearing of Appeal Panel the following procedure shall be observed:

**1.0 Introductions**

* The Chair ask all attendees to introduce themselves and should ask the employees representative whether they are a work colleague if not they should state what Trade Union/Recognised body they are from
* The purpose of the hearing is explained by the Chair of the panel
* The procedure to be followed is explained by the Chair of the panel

**2.0 The Appellant’s case**

* The appellant and/or their representative shall put their case to the panel in the presence of the Management side. In support they may call witnesses.
* The management side will have the opportunity to ask questions of the appellant, their representative and witnesses.
* The members of the Appeals Panel shall have the opportunity to ask questions of the appellant, their representatives and witnesses.
* The appellant or his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel or the management side.
* During the course of the meeting the chair may call adjournments to either consider evidence or for natural breaks.
* The employee or their representative or the Management Side may ask the chair to consider an adjournment at any stage of proceedings. The Panel may at its discretion adjourn the appeal at any time in order that further evidence may be produced by either party to the dispute or for any other reason.

**3.0 Management’s Case**

* The management side shall state the Trust’s case in the presence of the appellant and his/her representative. S/he may call witnesses.
* The appellant or his/her representative shall have the opportunity to ask questions of the management side and witnesses.
* The members of the Appeal Panel shall have the opportunity to ask questions of the Management Side and witnesses.
* The Management Side shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel, the appellant or his/her representative.

**4.0 Summing Up**

* The panel will call a brief adjournment to all parties to prepare for the summing up of their cases.
* The management side sums up their case
* The appellant or his/her representative
* Neither party may introduce any new matter.

**5.0 Adjournment**

* An adjournment is called to allow the panel to consider the evidence
* Management, the appellant and his/her representative shall withdraw to allow the panel to make a decision.

**6.0 All parties return and the decision of the panel is communicated.**

* The Panel may call all parties back into the room on the day of the appeal hearing to give their decision. However, in some cases it may be necessary to consider the case overnight where a decision may be confirmed at a later date. The decision will be confirmed in writing within 10 working days of the decision being made.
* The panel will consider all the evidence and representations carefully before them in advance of making a decision. The panel will provide reasons for any decisions that they make.