

GRIEVANCE POLICY

INTRODUCTION

A Grievance Policy is necessary to enable employees to seek redress for complaints relating to their employment where normal management/employee communication has failed to resolve matters. The procedure, once invoked, encourages a rapid resolution of complaints at as early a stage in the procedure as possible.

The policy is applicable should an employee wish to formally complain about a matter which relates to working conditions or the application of a National Agreement or local agreement reached between Tayside Contracts and the trade unions. It does not apply to complaints relating to grading, pension or disciplinary issues.

This policy is in accordance with the 2015 Acas Code of Practice on Disciplinary and Grievance procedures and applies to all Tayside Contracts employees with the exception of the Managing Director who is covered by a separate, albeit similar, procedure.

PRINCIPLES

- The Grievance Policy is not designed to replace management/employee relationships, but is there to supplement them. Every effort should be made to resolve a grievance or potential grievances using informal mechanisms e.g. discussion with the line manager, or through an informal approach by a trade union representative, before moving to the formal procedure.
- If you feel you cannot discuss your complaint with your immediate supervisor/line manager, for example, if the complaint relates to them, or to harassment of a sexual, racial or other nature, you may wish to discuss your complaint with a representative from HR Services.
- If your grievance is in relation to an existing working practice, or a work instruction, you should continue with the practice/carry out the work instructed, unless it is not safe for you to do so, until your complaint has been considered at a Grievance Hearing and any resultant change in requirements is communicated to you.
- A representative from HR Services will be present at all formal Hearings convened under the Grievance Policy.
- The Grievance Hearing is held to allow a panel to hear your complaint and consider any evidence in support of your complaint (i.e. for you to present your case and any evidence supporting what you are complaining about, including calling witnesses) in order to determine if there is a reasonable basis for your complaint and whether any action is required/appropriate.
- In accordance with the principles of fairness and natural justice, a different panel will be involved at each stage of the Grievance Procedure.

- You have the right to be represented or accompanied by a trade union representative or work colleague at all formal Hearings convened under the Grievance Policy. It is your responsibility to arrange the attendance of your representative. There is no entitlement to be accompanied by any other representative, including family members or legal representatives at the Hearing.
- There is no legal right to be accompanied during any grievance investigation. However, you will be offered the opportunity to be accompanied by a Trade Union representative or work colleague wherever practicable. The investigation proceedings will not be unduly delayed due to their unavailability.
- You will be given the opportunity to call and question witnesses and/or to produce documentary evidence at all formal Hearings convened under the Grievance Policy.
- The panel of the Grievance Hearing may also call witnesses when considering a grievance and may adjourn the Grievance Hearing if they believe further investigation is necessary.
- If you cannot attend or fail to attend a Grievance Hearing it will be rearranged on the first occasion. If you fail to attend the rearranged Hearing, or if you cannot provide a reasonable explanation for why you cannot attend the rearranged Hearing, a decision may be made in your absence based on the evidence available at that time, or your grievance will be considered to have been withdrawn.
- If you choose to withdraw your grievance at any stage, Tayside Contracts may still investigate your complaint if it is considered necessary to do so.

Competency of Grievances

Only grievances that fall in the scope of this policy will be considered. If your grievance relates to a complaint about your grade, your pension or a disciplinary issue your grievance will not be considered competent and will not be heard at a Grievance Hearing. Similarly, if you raise a grievance relating to an employment policy instead of pursuing the process outlined in that policy, your grievance will not be considered competent.

If it is apparent that no effort has been made to resolve a grievance informally, or if it is apparent that there is further action that could be taken to resolve a grievance informally your complaint will not be considered as a formal grievance until reasonable efforts to resolve the matter informally have been concluded.

It is in everyone's best interests that any issues or concerns that could give rise to a grievance or complaint are dealt with promptly. Wherever possible complaints should be raised within two weeks of the issue, incident or action you are aggrieved about occurring. Grievances raised regarding incidents, situations or issues that occurred more than three months ago will not be considered as competent and will be time-barred, unless the issue is still ongoing at the point the grievance is raised.

It is not normal practice for a manager to raise a grievance against one of their employees, if a manager has concerns about the conduct or performance of an employee these concerns should be dealt with via the Disciplinary Policy or the Performance at Work Policy.

Overlapping Grievance and Disciplinary Cases

Should you raise a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. However, if the grievance is related to the disciplinary case it may be appropriate to deal with both issues concurrently.

Joint Grievances

Where two or more employees wish to raise the same grievance the same process as outlined above will apply. The names of every employee the grievance is being raised for must be included in the letter raising the grievance if it progresses to the formal stage.

If the joint grievance is to be raised formally, the group will be required to nominate no more than two employees to present the grievance at the Hearing or any investigation. Unless there are exceptional circumstances preventing this, this should be the same two employees at every stage of the process.

There will still be the opportunity to be represented or accompanied at every stage, however, there can only be one representative/companion, despite the fact there may be two employees presenting the grievance.

Collective Grievances

Grievances raised on behalf of two or more employees by a representative of a recognised trade union are covered by the Collective Disputes Procedure and will be addressed by the HR Manager via the full time official of the relevant trade union.

Cross-employer Grievances

If you have a complaint against employees of another organisation you should raise these with your line manager in the first instance. Representatives of both organisations may be involved in any formal processes used to deal with the complaint.

Malicious complaints

Where there is evidence that a complaint has been raised with malicious or vexatious intent, or where there is a history of making complaints that are found to have no foundation, this will be considered as a disciplinary matter and dealt with in accordance with Tayside Contracts' Disciplinary Policy.

Retaliation or victimisation as a result of a grievance being raised will also be dealt with via the Disciplinary Policy.

Former Employees

Grievances and complaints made by former employees will not be considered under the terms of this policy. If you raise a complaint under this policy prior to handing in your resignation all efforts will be made to conclude the process prior to you leaving Tayside Contracts. If your grievance has not been considered at a Grievance Hearing by the time you leave, you will be given the opportunity to attend any investigation meetings and/or the Hearing, otherwise your complaint will be heard in your absence on the basis of the evidence available and you will receive the outcome in writing.

GRIEVANCE PROCEDURE

Stage 1 (Informal Grievance)

Before raising a formal grievance you must first have tried to address your complaint informally by discussing the matter with your immediate supervisor/line manager.

Your supervisor/line manager will reply verbally to your complaint within 2 working days of the complaint being raised.

Stage 2 (Formal Grievance)

If you are not satisfied with the response given to your informal grievance you should, within 7 calendar days, write to the relevant Corporate Management Team member stating, in full:

- the basis of your complaint **and**
- the redress/remedy sought.

This letter should also state:

- what measures have been taken to address the complaint informally **and**
- why these measures failed.

The CMT member or nominated representative will, within 7 calendar days of receipt of your written complaint, arrange a Grievance Hearing. The purpose of the Hearing is to confirm understanding of the grievance, the redress sought and to consider the complaint.

Where practicable this Hearing will be held within 4 weeks of receipt of the written complaint.

Should your letter not provide sufficient details regarding the basis of your complaint or the remedy sought, you will be provided with a grievance form, issued by HR Services, which you will be required to complete prior to the Hearing being scheduled.

Any documentation in support of your grievance and the names of any witnesses that can support the grievance should be submitted along with the letter raising the formal grievance. If the documentation or names of witnesses cannot be submitted at that point these must be submitted to the Chair of the Grievance Hearing at least two days prior to the Hearing.

Where deemed appropriate by the panel of the Hearing, the Hearing may be adjourned to allow further information to be gathered or an investigation to be undertaken. Upon completion of the investigation and the report being submitted to the Panel, the Hearing will be reconvened.

If your grievance relates to another employee, that employee will be given a summary of your complaint in order that they can prepare a response prior to being called to attend the Grievance Hearing. If the panel have determined that an investigation is required your complaint will be discussed with the employee during the investigation.

The Chair of the Hearing may advise you of the conclusions reached at the end of the Hearing, but in any event will confirm the outcome in writing within 7 calendar days of the Hearing.

ROLES AND RESPONSIBILITIES

Your Role

If you have decided to make a complaint or raise a grievance you must be prepared to explain the circumstances of your case, i.e. what you are complaining about and why and what you would like to be done about it. It is particularly important that you are clear about the remedy/redress you are seeking, as the panel cannot properly consider your grievance if they do not know what you would like done about it.

This may include providing evidence to support your complaint, or giving details of witnesses to the action or activity you are complaining about.

If you are absent from work due to sickness at the same time as raising a grievance, advice will be sought from Occupational Health about whether or not you are fit to participate in the grievance process. If you are not considered fit to participate then your grievance will not progress until you have returned to work/are considered fit.

The Role of Your Representative/Companion

As stated above you have the right to be accompanied or represented by a Trade Union representative or a work colleague at a Grievance Hearing. While there is no legal right to be accompanied at an investigation, should the panel of the Hearing decide one is necessary, you will be offered the opportunity to be accompanied by a Trade Union representative or work colleague wherever possible.

Your representative or companion can address the Grievance Hearing on your behalf. They can put forward your case or assist you to do so. They can question witnesses on your behalf and help you to sum up your case as well as responding to any view expressed at the Hearing on your behalf. Your representative can confer with you and address the Hearing at any point. However, your representative may not answer any questions directly asked of you.

Your representative or companion should not be someone who is involved in the incident leading to the Hearing, or who is likely to be required to provide their own evidence as a witness.

The Role of Managers and Supervisors

All managers/supervisors who undertake investigations and Grievance Hearings should have been given full training.

Wherever possible different managers/supervisors will carry out the investigation and conduct the Grievance Hearing.

The manager/supervisor Chairing the Grievance Hearing is part of the decision-making panel, along with the second manager/HR representative. However, if the panel cannot reach agreement the Chair's decision is final.

In certain circumstances the Chair will be the sole decision maker, although guidance with regards to reasonableness, consistency and fairness can be discussed with the second manager/HR representative. If these circumstances are to apply you will be informed of this in the letter asking you to attend the Grievance Hearing.

The Role of HR Services

A representative from HR Services may be appointed as an Investigating Officer, where they will actively participate in the investigation and be involved in the decision-making process about what action is required following the investigation.

A representative from HR Services will attend the Grievance Hearing, in most cases as part of the decision-making panel. In certain circumstances the HR representative will only be there to provide professional advice on the application of policies/procedures and employment law. If this is to be the case you will be informed of this in the letter asking you to attend the Grievance Hearing.

The HR Services representative may ask questions and seek clarification from witnesses throughout the Hearing regardless of whether or not they are part of the decision-making panel.

OUTCOME AND ACTIONS

Potential Outcomes of Formal Grievance Hearings

There are three potential outcomes for complaints submitted under the Grievance Procedure:

1. The grievance is upheld, i.e. there is evidence that the decision or action that prompted the grievance is not appropriate and some action is required.
2. The grievance is upheld in part, there is evidence that some action is required in relation to the decision or action that prompted the grievance, but not all aspects of the grievance were found to be upheld.
3. The grievance is not upheld, i.e. there is evidence that the decision or action that prompted the grievance was reasonable/appropriate and no action is required.

Potential Actions Following Formal Grievance Hearings

If your grievance is upheld, or upheld in part, a judgement regarding the appropriateness and availability of redress will be determined by the panel of the Hearing and may include the following:

- No action is required
- Training for either or both parties
- Mediation/facilitated discussions between both parties
- Counselling for either/both parties
- Referring the matter for consideration in accordance with Tayside Contracts' Disciplinary Policy.

This list is not exhaustive and other actions may be considered depending on the circumstances of your case.

The Grievance Hearing will be reconvened in order for you to be informed of the outcome and any action that is to be taken. Written confirmation of the outcome of the Grievance Hearing including the reason for the decision, details of action to be taken (if applicable) and any right of appeal will normally be sent to you within 7 calendar days of the Grievance Hearing. If the outcome of the Hearing has implications for another employee for reasons of confidentiality you will not be provided with the detail of those implications, i.e. you will only be told that further action will be taken, not the nature of that action.

Mediation

Mediation or facilitated discussions will be considered as a means of resolution for all complaints at stage 1 and stage 2 (informal and formal). There is no right to be accompanied during the mediation or facilitated discussion process.

Mediation is suitable in cases where both parties are willing to focus on the future and are seeking a constructive solution. If either party is seeking a punitive outcome for the other mediation is not likely to succeed.

Employee Support

You may require support at any stage of the grievance process. If you have raised a grievance your line manager, where appropriate, will maintain regular contact with you to provide support during the grievance process.

If you are considering raising a grievance a member of HR Services can provide general advice on possible options for dealing with your complaint and procedural advice and guidance at any stage of the process, but they will not give specific advice or opinion on individual circumstances. Your Trade Union representative can provide you with case-specific support and/or advice and may be able to help you set out your grievance.

If a complaint has been made against you by another employee, you can contact a member of HR Services for procedural advice and guidance. This can also be provided by your Trade Union representative.

Tayside Contracts provides counselling services via our Occupational Health Service and it may be appropriate for you to be referred for consideration for counselling at any stage during the grievance process. If you feel counselling would be of benefit to you during the process you should raise this with your line manager or the Chair of the panel in the first instance.

RIGHT OF APPEAL

An appeal may be lodged against the outcome of a formal Grievance Hearing if your grievance was not upheld, or was upheld in part. There is no right of appeal against a grievance that has been upheld, or the parts of a grievance that were upheld. In accordance with the principles of fairness and natural justice a different panel will be involved at each stage of the Grievance Procedure.

When delivering the outcome of the Grievance Hearing, the Chair will advise you of the right of appeal (if applicable) and the person to whom the appeal should be addressed. Should you wish to exercise this right this must be done in writing within 14 calendar days of receiving written confirmation of the outcome of the Grievance Hearing.

Any appeal must fully outline the reason(s) why you are dissatisfied with the outcome and/or any actions following the Grievance Hearing. These might include (but are not limited to) you believe any of the following applies:

- There was a failure to follow appropriate processes at an earlier stage.
- The decision reached was not supported by evidence presented.
- The proposed action to remedy the grievance is not appropriate given the circumstances.
- New information has become available that could have a significant impact on the decision reached.

The purpose of the Appeal Hearing is to consider whether the outcome of the original Hearing was reasonable and the appeal will not be a re-run of the original grievance. New information or documentation will only be considered if it has genuinely come to light since the original Grievance Hearing or if there is sufficient evidence to suggest it would have a significant impact on the decision reached at the previous stage in the process.

If there is any such information or documentation to be submitted this must be done with the letter of Appeal, or if this is not possible, at least two days in advance of the Appeal Hearing.

All appeals will be heard in the first instance by the Managing Director or nominated representative, along with a second manager, or HR representative and the outcome of the appeal will be confirmed in writing within 14 calendar days of the date of the Hearing.

At an Appeal Hearing you have the right to be represented or accompanied by a trade union representative or a work colleague of your choice. It is your responsibility to arrange the attendance of your representative.

A member of the original panel, or a HR representative, will present the case in support of their original decision at all internal Appeal Hearings.

After all the evidence has been presented to the panel the Appeal Hearing will be adjourned in order for the panel to consider the evidence and make their decision, which will be one of the following:

- 'That the grounds of the appeal have been substantiated and the appeal is upheld'.
- 'That the grounds of the appeal have been substantiated in part and the appeal upheld to the extent that'.
- 'That the grounds of the appeal have not been substantiated and the appeal is not upheld'.

The Appeal Hearing will normally be reconvened for you to be given the Panel's decision, which will then be confirmed by a letter setting out the decision and the reason(s) behind it and, if applicable, your further right of appeal against the decision. Written confirmation of the decision will normally be sent to you within 14 calendar days of the Appeal Hearing.

Further Right of Appeal

Should an appeal against a grievance outcome not be upheld by the Managing Director or nominated representative you may submit a further and final appeal by writing to the Managing Director within 14 calendar days of receipt of written confirmation of the outcome of the initial appeal. The Managing Director will arrange for this final appeal to be heard by an Appeals Sub-Committee, comprising of elected members of Tayside Contracts' Joint Committee.

At an appeal to be heard by the Appeals Sub-Committee you have the right to be represented or accompanied by a trade union representative or a work colleague of your choice. It is your responsibility to arrange the attendance of your representative.

A representative from HR Services will present Tayside Contracts' case in those appeals heard by the Appeals Sub-Committee.

After all the evidence has been presented the Hearing will be adjourned for the members of the Appeals Sub-Committee to consider the matter make their decision, which will be one of the following:

- 'That the grounds of the appeal have been substantiated and the appeal is upheld'.
- 'That the grounds of the appeal have been substantiated in part and the appeal upheld to the extent that'.
- 'That the grounds of the appeal have not been substantiated and the appeal is not upheld'.

Where practicable the Sub-Committee's decision will be announced at the conclusion of the Hearing and will be confirmed in writing, within 5 working days. There is no further right of appeal against a decision of the Appeals Sub-Committee.

POLICY VIOLATIONS

Failure to comply with this, or any other employment policy may result in individuals being investigated and disciplinary action taken against them in accordance with Tayside Contracts' Disciplinary Policy.

RELATED POLICIES

The Disciplinary Policy links to the following policies, which can be found on the intranet, from your line manager and from the HR Admin Team:

- Employee Code of Conduct
- Disciplinary Policy
- Bullying and Harassment Policy
- Equality and Diversity Policy

The above list is not exhaustive.

CONSULTATION

Tayside Contracts' recognised Trade Unions have been fully consulted on this employment policy.

POLICY REVIEW

The Grievance Policy will be reviewed at three yearly intervals, or as required by legislative changes.

DATA PROTECTION LEGISLATION

Tayside Contracts respects the privacy of our employees, any personal data processed during the application of this policy will be in line with Data Protection Legislation. Further information on how we may process personal data for the purpose of applying this policy can be found in our Privacy Notice.

Should you have any queries or require further clarification regarding any aspects of this policy or related policies please contact, HR Services on 01382 812721 or employment.policies@tayside-contracts.co.uk

If you would like this document translated into another language or in another format such as audio or large print then please contact Angie Thompson, Equalities and Communications Manager on 01382 834165 or angie.thompson@tayside-contracts.co.uk