

UNIVERSITY OF LEICESTER ORDINANCE

GRIEVANCE (Ordinance Policy)

For use in:	All Divisions/Schools/Departments/Colleges of the University
For use by:	All University employees
Owner	Staffing Policy Committee
Dates of Trade Union Consultation and Negotiation	Start: 8 January 2010 End: 2 March 2011
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GRIEVANCE ORDINANCE: POLICY

1. Introduction

- 1.1 For the purpose of this Ordinance, a grievance is a serious, written complaint, dispute or disagreement by a member of staff regarding their employment. Where a member of staff wishes to raise a complaint about minor or day-to-day issues, the University expects that he or she will seek a genuine resolution of the issue(s) through informal discussions with their line manager, without the need to invoke the formal grievance procedure.
- 1.2 The Grievance Ordinance is made up of a policy and procedure that takes account of the ACAS code of practice. The Grievance Ordinance Policy and Procedure should be read together.
- 1.3 The University will maintain the right of academic staff to exercise their Academic Freedom. The Grievance Ordinance (Procedure) includes appropriate procedural modifications to ensure the protection of Academic Freedom. Decisions about the definition of Academic Freedom will be made with reference to the “Ordinance Agreement on the definition of Academic Freedom”.
- 1.4 Staff will be consulted on changes via the established channels for consultation and negotiation with the recognised Trade Unions, where the University wishes to amend the Grievance Ordinance.

2. Aims

The aims of the Ordinance are:

- 2.1. To establish a framework for handling grievances and to provide informal and formal routes for managing grievances.
- 2.2. To ensure that grievances are addressed in a fair, sensitive, timely and consistent manner.

3. Scope

- 3.1. The Grievance Ordinance Policy and Procedure applies to all University employees.

4. Principles

- 4.1. The University will consider, only, grievances that it has the power to resolve.
- 4.2. A grievance should be lodged within 3 months from the act complained of (or if a series of acts, 3 months from the last act in that series).
- 4.3. A grievance must be submitted, in writing, in line with the notification requirements set out in the Grievance Ordinance (Procedure).

- 4.4. The proceedings of a grievance will be treated with sensitivity and strict confidentiality, particularly where they involve other members of staff.
- 4.5. The University will operate the Grievance Ordinance in line with the principle that a grievance belongs to the individual raising the grievance.
- 4.6. No individual involved in a grievance should unreasonably delay the process.
- 4.7. A member of staff may, with good reason, object to the appointment of any individual involved in the hearing of their case. The objections will normally be considered by a manager of a higher grade than the chair of the hearing.
- 4.8. In cases involving issues of Academic Freedom, panel decisions will reflect the view of the majority.
- 4.9. In cases where a member of staff has an inter-dependent contract of employment with the NHS and the University, representatives from the NHS may be included in formal proceedings (e.g. in an Investigation or Hearing).
- 4.10. Consideration for the application of, and impact on, other relevant policies will be included in all deliberations e.g. Data protection, Health and Safety.
- 4.11. Where more than one member of staff has submitted a grievance relating to the same or substantially the same issue, the grievance(s) may be considered together in the interests of fair and consistent decision-making. The procedure for managing a grievance that is lodged as the result of another, related grievance will be modified as set out in Appendix 3 of the Grievance Ordinance (procedure).
- 4.12. Where a member of staff raises a grievance in good faith, and the grievance is not upheld by a subsequent investigation, no action will be taken against them. However, if a line manager considers that a member of staff has raised or persists in raising malicious or vexatious grievances, the line manager may activate the Discipline Ordinance.
- 4.13. The Grievance Ordinance will be operated in accordance with the principle of Natural justice. Natural justice includes the notion of procedural fairness, which includes the following:
 - A right to advance warning - the relevant member of staff should be given adequate notice about the proceedings including any allegations made against them and access to relevant documentation in a timely manner;
 - Proceedings should be conducted so they are fair to all the parties;
 - Each party to a proceeding is entitled to ask questions and challenge the view of other parties;
 - A person who makes a decision should be unbiased and act in good faith;
 - A person (or panel) making a decision should declare any personal interest they may have in the proceedings;
 - Justice should be seen to be done.

5. Role of HR

- 5.1. The role of HR is to ensure that formal proceedings comply with employment law and the University's policies and procedures. The primary role of HR is to advocate on the part of the institution, not for a manager or a member staff.
- 5.2. During formal proceedings, members of HR will act as independent, advisory guardians and regulators of the process. Members of HR will point out any issues in respect of employment law or the University's policies and procedures during formal meetings.
- 5.3. Members of HR are not permitted to undertake the role of decision maker on individual cases. Any questions from members of HR must be asked through the chair of a formal meeting.
- 5.4. Once informed of a formal grievance, HR will issue the Grievance Ordinance (Policy and Procedure) to all parties involved.

6. Right to be accompanied

- 6.1. A member of staff has the right to be accompanied to formal meetings. The chosen companion may be a trade union representative, an official employed by a trade union or a fellow worker.
- 6.2. Where the right to be accompanied is exercised, the normal expectation is that a member of staff will be accompanied by a local Trade Union representative at formal meetings and, where required, by an official employed by the Trade Union at appeal.
- 6.3. Where the Grievance Ordinance (Policy and Procedure) refers to a "Trade Union representative", this includes an official employed by the Trade Union.
- 6.4. A member of staff who has an inter-dependent contract of employment with the NHS and the University may be accompanied to formal meetings by a representative of a medical defence union.
- 6.5. Where it has been agreed to resolve the issue(s) through an informal process, the aggrieved member of staff does not have the right to be accompanied to informal meetings.

7. Witnesses

- 7.1. The member of staff has the right to call witnesses. However, the staff member's witnesses are not obliged to attend if they do not wish to.
- 7.2. Witnesses and the relevant individual(s) involved in a grievance will normally be interviewed as part of the formal investigative process.

- 7.3. Interviews with witnesses will be documented. A note of the interview must be signed by each witness or relevant individual to confirm that the information is accurate and complete.
- 7.4. The aggrieved member of staff will receive a copy of all appropriate paperwork relevant to the investigation that they are entitled to see (including witness statements).
- 7.5. Where requested, the note of an interview may be disclosed to other appropriate individuals involved in a grievance (e.g. a named individual in a grievance or a witness). However, in accordance with data protection regulations, these documents may be redacted to items relevant only to that individual.
- 7.6. Where the aggrieved member of staff wishes to call witnesses, the request must be made to the chair at least 72 hours in advance of the hearing. Where the Investigating Officer wishes to call relevant witnesses, the member of staff will be informed at least 72 hours in advance of the hearing.
- 7.7. Any member of staff called to attend a grievance hearing may request that alternative arrangements are made to reflect the sensitivity of the situation (i.e. submissions may be made in writing or HR may have the member of staff in a separate room). The chair of the hearing will decide, after seeking advice from HR, if the request is appropriate.
- 7.8. Any relevant information including evidence from witnesses or relevant individuals must be made available to the individual(s) named in a formal grievance at least 5 working days before a hearing.
- 7.9. Witnesses and the relevant individual(s) named or involved in a grievance have the right to be accompanied to formal meetings, if they choose, by a Trade Union representative or work colleague.

8. Informal Resolution

- 8.1. It is expected that, where possible, line managers and members of staff will attempt to resolve grievances through informal resolution before resorting to the formal grievance procedure as outlined in the Grievance Ordinance (Procedure).
- 8.2. HR will advise and support line managers in informal grievance cases, where requested, but will not attend informal meetings.
- 8.3. Where an issue under informal procedures is potentially in serious breach of common law or other statutory provision e.g. Health and Safety or Equality, the manager may be obliged to invoke formal proceedings, under the Discipline Ordinance.

9. Mediation

- 9.1. The University of Leicester recognises that encouraging positive working relationships has a positive impact on staff wellbeing.
- 9.2. Where appropriate, mediation may provide an objective and impartial framework for resolving conflict, on a voluntary basis. Mediation may also assist in reconciling working relationships, where possible.
- 9.3. Members of staff and/or line managers are advised to contact HR for details about whether mediation may be appropriate. Where it is deemed to be appropriate, HR will provide contact details of relevant sources of mediation to staff or line managers.

10. Formal Grievance

- 10.1. Upon receipt of a grievance, the line manager should ask the member of staff whether he/she wants the grievance to be handled informally or formally.
- 10.2. The formal grievance procedure may be invoked by a member of staff where:
 - informal resolution has failed;
 - informal resolution is inappropriate due to the seriousness of the issue e.g. due to a conflict of interest, and no informal means of resolution could reasonably be attempted;
 - a member of staff requests that they want their grievance to be considered under the formal grievance procedure.
 - the complaint may involve issues of Academic Freedom.
 - no other University Ordinance or policy would be more appropriate to follow in the circumstances e.g. where the issue is about whistleblowing, the member of staff should follow the Public Interests Disclosure Policy instead.
 - the University has the power to resolve the issue e.g. the University would not have the power to resolve a grievance raised as the result of nationally agreed pay negotiations.
- 10.3. The formal grievance procedure has up to three stages:
 - Investigation of the allegation(s);
 - Grievance hearing and outcome;
 - Appeal, where required.

Further details can be found in the Grievance Ordinance (Procedure).

- 10.4. HR will attend formal grievance meetings and will support and advise line managers; chairs of hearings; panel members and investigating officers in formal grievance cases. Advice given by HR to an aggrieved member of staff will be limited to explaining the Ordinance.

11. Exclusions

- 11.1. Collective grievances raised through a Trade Union will not be considered under the Grievance Ordinance.
- 11.2. The Grievance Ordinance will not apply where the grievance relates to an issue which is governed by another University Ordinance or Policy e.g. Whistleblowing.
- 11.3. The University will not normally accept a grievance that challenges the outcome of an appeal in order to re-appeal or re-hear a case that has been completed as part of a different procedure. This is because appeal hearings are final. Grievances of this nature will only be heard, in exceptional circumstances, on the approval of the Chair of Staffing Policy Committee.

12. Raising a Grievance during another Formal Process

- 12.1. Where a member of staff raises a grievance during the course of another formal process (e.g. Discipline or Performance Management), the other formal process may be temporarily suspended by the University in order to deal with the grievance.
- 12.2. Where the grievance and the other formal process is related, it may be appropriate for the University to deal with both issues concurrently.
- 12.3. The decision to suspend or continue with another formal process once a grievance has been raised will be made by the PVC Resources (for academic staff) and the Registrar & Secretary (for all other staff).

13. Stress/Illness and Grievances

- 13.1. The University has a duty of care to all of its members of staff. Therefore, where a member of staff is experiencing stress or illness during a grievance process and there is a possibility that the process could be delayed as a result of the absence, the University will request a medical report (from the staff member's GP, specialist and/or Occupational Health) to determine if and when a member of staff is fit to attend a hearing.
- 13.2. The role of Occupational Health is to meet, confidentially, with a member of staff and based on the medical evidence, to provide recommendations to the University about a staff member's health.
- 13.3. Where a medical practitioner or Occupational Health recommend that the member of staff is deemed fit enough to attend, the hearing will be arranged in the normal way. Where the medical advice suggests that a hearing may go ahead with adjustments, the hearing will be arranged accordingly.
- 13.4. Where a member of staff is deemed to be too unwell to attend by a medical practitioner or Occupational Health, the hearing will normally be rescheduled. However, where the member of staff is persistently unable to attend, the chair (or panel) may take a decision to hold the grievance hearing in their absence or make arrangements for written statements to be submitted instead.

14. Rearranging or Non-Attendance at Hearings

- 14.1. A member of staff must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct.
- 14.2. Where a member of staff is unable to attend for any reason then he/she must notify the chair of the grievance hearing as soon as possible and fully explain the failure to attend.
- 14.3. Where the chair of a grievance/appeal hearing considers that a member of staff has failed to attend without good reason, the chair may take a decision (in consultation with HR) based on the available evidence, where appropriate.
- 14.4. Where the member of staff is persistently unable to attend (for example for health reasons), the chair of a grievance/appeal may take a decision on how to progress the case (in consultation with HR) based on the available evidence, where appropriate.

15. A Disciplinary arising out of a Grievance

- 15.1. Where appropriate, the University has the right, at its discretion, to initiate the start of proceedings under the Discipline Ordinance for any member of staff involved in a grievance. This may take effect at any point during the grievance process according to the circumstances of the case. The decision to invoke the Discipline Ordinance will be taken by a manager of the same or more senior level than the chair of the Grievance Hearing.
- 15.2. In cases where the Discipline Ordinance is activated as a result of a grievance (which may include any relevant appeal), the grievance investigation report, previous witness statements, meeting notes and submissions from the related grievance will normally form the basis of a disciplinary investigation.
- 15.3. All relevant documentation from the related grievance will normally be used as the basis of a disciplinary investigation report. This will avoid duplication and will ensure accuracy regarding the allegation(s) and the evidence.
- 15.4. In exceptional cases, it may be necessary to invoke the Discipline Ordinance before the grievance has been concluded. The evidence gathered to that point will be made available to the disciplinary investigating officer and further investigation(s) will be carried out as required.
- 15.5. Issues that have already been investigated and addressed during a related grievance investigation or hearing will not normally be re-investigated during a subsequent disciplinary investigation. However, additional investigation interviews may be carried out, as required. For example, where there are new witnesses/parties or new information is directly relevant to the disciplinary allegation(s).

16. Documentation

- 16.1. All documentation (informal and formal) relating to this Ordinance will be written sensitively by line managers, treated as confidential and forwarded to HR for filing on the staff member's personnel file. Informal documentation will be retained for data protection purposes, only.