

## GRIEVANCE AND DISPUTES POLICY

### Summary

The Royal Marsden NHS Foundation Trust (hereinafter called the Trust) recognises the importance of maintaining harmonious and good working relationships and the contribution this will make in supporting delivery of high quality patient care. The aim of this policy is to ensure that any grievance or dispute is settled fairly, speedily and as close to the point of origin as possible. To accompany this policy are supporting documents which are available from Employee Relations.

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### 1. INTRODUCTION AND POLICY STATEMENT

- 1.1 The Trust is committed to providing a fair and effective mechanism for handling grievance issues. This policy sets out the guiding principles for ensuring that grievance issues are dealt with in a fair, prompt and consistent way across the Trust.
- 1.2 All employees have the right to seek resolution for grievances/disputes either on an individual or collective basis. This policy and procedure provides information to employees to know how to raise a grievance for it to be dealt with as swiftly as possible. This procedure applies to both individual grievances and collective disputes.

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- 1.3 Where possible every effort should be made to resolve a grievance informally between the employee and their manager. When this has not been possible the employee may raise the matter under the formal part of the procedure.
- 1.4 This policy and procedure has been developed taking into account the current ACAS code of practice on Disciplinary and Grievance procedures.

## 2. PURPOSE AND SCOPE

- 2.1 The Trust aims to encourage open on-going communication between employees to ensure issues arising during the course of employment can be aired and resolved quickly and to the satisfaction of all concerned. Where, despite the attempts of all parties, resolution does not prove possible, this policy comes into effect and provides the framework for dealing promptly and fairly with issues which cannot be resolved through the normal working relationship. The aim of the Grievance Procedure is to allow grievances to be settled quickly, fairly and as close to the point of origin as possible in a spirit of conciliation.
- 2.2 The Trust believes in providing equity in its services, in treating people fairly with respect and dignity and in valuing diversity both as a provider of health services and as an employer. These principles will apply in the application of this policy and procedure.

## 3. GENERAL PRINCIPLES

No employee will be penalised for raising a matter under the grievance procedure if they have a genuine concern. However, where a grievance is malicious or vexatious without good reason or an employee raises a number of grievances over a short period of time to seize up, frustrate and delay processes, this will be treated as a conduct issue and disciplinary action may be taken.

### 3.1 Definitions

#### Grievance

Grievances are concerns, problems or complaints that employees raise with the Trust. A grievance will include an issue relating to an individual employee with regard to his or her conditions of service, banding, working practice or working conditions about which that individual feels dissatisfied.

#### Collective Grievances/Disputes

A collective grievance or dispute is a problem or concern raised by a group of employees collectively or by a Trade Union representative on behalf of their members about which they feel aggrieved and the grievance is within the scope of those matters which can be resolved by the Trust. When a dispute is raised Management may ask the trade union representative for formal confirmation of the numbers of employees who feel aggrieved.

#### Aggrieved employee

The staff member, or members, who have lodged the grievance.

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### 3.2 A number of matters will not be considered under this policy, including:

- Issues concerned with action taken under a procedure that has an appeal process within it – issues relating to disciplinary matters, poor performance, pay progression, sickness and redundancy selection must be dealt with using the appropriate policy and procedure
- Issues concerned with bullying and harassment – there is a separate procedure
- Concerns about a lack of governance, malpractice that compromises standards of patient care and service delivery, unlawful acts etc – there is a separate Whistleblowing Policy and Procedure
- Non-renewal of fixed term contracts on their expiry – a separate right of appeal is given
- Any matters that have previously been considered under this policy.

The grievance procedure may be used in cases where there are difficulties in working relationships between colleagues that do not constitute bullying and harassment.

## 4. ROLES AND RESPONSIBILITIES

### 4.1 Managers are responsible for:

- Trying to resolve grievances under the informal part of the procedure wherever possible
- Applying the Grievance Policy fairly and consistently whilst maintaining confidentiality and adhering to timescales
- Seeking advice from HR when a matter is raised under the formal part of the procedure
- Writing grievance reports including preparing a management statement of case, where appropriate
- Ensuring appropriate records are kept at each part of the procedure
- Ensuring that no less favourable treatment is applied against an employee who has lodged a grievance

### 4.2 Human Resources are responsible for:

- Ensuring that new employees are made aware of this policy and how they can access it
- Providing support, advice and guidance throughout the grievance process as appropriate
- Monitoring the application of the procedure to ensure it is applied in a fair and consistent way across the Trust

### 4.3 Employees are responsible for:

- Complying with any Trust and local departmental standards of conduct, standard operating procedures and professional codes of conduct
- Complying with the policy as required including providing evidence, attending interviews and hearings, acting as a witness and meeting timescales as set out in the policy
- Attempting to resolve grievances under the informal part of the procedure wherever possible

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- 4.4 The employee may, if they wish seek advice from their Trade Union or Professional Association at any stage of the procedure. They can also obtain advice from a Workplace Advisor by contacting the confidential helpline on 020 8661 3628. More information is provided under section 6 of the Bullying and Harassment Policy available on the intranet or from HR.

## 5. REPRESENTATION

- 5.1 During the informal stage the matter will be handled by the manager with the employee on a one to one basis. However, in exceptional circumstances the employee can be supported by a Trade Union representative, or an official employed by a Trade Union, or Professional Association, or by a work place colleague who is an employee of the Trust.
- 5.2 At the formal stages of the procedure the employee has a right to be represented by a Trade Union representative or an official employed by a Trade Union, or Professional Association, or by a work colleague who is an employee of the Trust.

The choice of companion is a matter for the employee but the Trust reserves the right not to accept a companion whose presence would compromise the grievance process, e.g. if the companion is involved in the proceedings, or because he or she will not be available for a meeting for a substantial length of time. In cases of the latter the employee will normally be expected to arrange for an alternative Trade Union representative or companion to attend.

The representative will be allowed to address the hearing, to present and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting, and confer with the employee during the hearing. The representative does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employee from explaining their case. It is the responsibility of the employee to contact their chosen representative, ensure that they are willing to act in that capacity and is available on the day of the hearing.

Efforts will be made when arranging hearings to accommodate the availability of Trade Union representatives and work colleagues. However, where this is causing an unreasonable delay, a date for a hearing will be set subject to 10 working days notice.

- 5.3 If the employee is unable to attend the date arranged because of circumstances beyond their control, they must inform their line manager or HR as soon as possible. A postponement of up to 5 working days will be allowed, or longer in exceptional circumstances. If there is an unacceptable delay because of the non-availability of the chosen companion, the employee will normally be expected to arrange for an alternative Trade Union representative or work colleague to attend. If there is a failure to attend without explanation or if the employee is persistently unable or unwilling to attend without good cause, then the hearing/meeting may be conducted in their absence and a decision made on the evidence available.

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If a hearing has been arranged and the employee wishes to postpone it, this may be agreed dependant on the circumstances. If the employee requests a postponement of a hearing the chair of the hearing will make a decision on whether a postponement is possible. A hearing will only normally be postponed once, and where possible rearranged within 5 working days.

## 6. OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES

- 6.1 Where an employee raises a grievance during a disciplinary process, the manager responsible will need to make a judgement about the best way to handle the two issues. Both disciplinary and grievance issues should be dealt with promptly and without unreasonable delay. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. Any procedural issues with the disciplinary action should be raised by the employee as part of their case at the disciplinary hearing and not by way of a grievance. In the event that a grievance is raised in response to the instigation of formal disciplinary investigation, the hearing of the grievance will normally be deferred until the conclusion of the disciplinary action. The only exception to this would be a grievance relating to the length of time an employee has been suspended. In other cases the disciplinary process may be temporarily suspended in order to deal with the grievance.
- 6.2 A complaint about the disciplinary process may be handled best by the employee raising the matter in the disciplinary hearing or on appeal. In cases where the complaint amounts to the rebuttal of allegations of misconduct, or a defence of mitigating factors, the most appropriate forum to consider this will be the disciplinary hearing.
- 6.3 Where a grievance is raised concerning a matter that has been made, considered and rejected in the course of a disciplinary process the Trust may refuse to allow the matter to be considered further under a formal grievance procedure.
- 6.4 Where serious allegations are made about the circumstances that led to a disciplinary procedure being initiated, rather than the process itself, it may be appropriate to suspend disciplinary proceedings and to consider the grievance first.
- 6.5 Where a complaint is unrelated to the disciplinary process there should be no need to postpone a disciplinary hearing if it would not be affected by the unrelated grievance.
- 6.6 If employment with the Trust has ended, there is no right for formal grievances to be raised or dealt with under the grievance procedure.

## 7. GRIEVANCES ALREADY RAISED

- 7.1 If the employee's grievance appears to restate a complaint that the Trust is already dealing with, or that it has dealt with in the past, the employee will be asked to explain how the new grievance differs from the previous one, and what new incident has occurred or what new evidence has come to light.

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- 7.2 Where it is clear that there is nothing new being raised, and if the Trust can establish that the grievance has in fact already been addressed, the Trust can reject the grievance without a hearing.
- 7.3 In rejecting the grievance without a hearing, the Trust should write to the employee and explain that no further action will be taken because the grievance has already been dealt with. It may be appropriate at this stage to refer the employee to the previous correspondence and the outcome of the original grievance. The employee should be informed that the matter will only be considered again if new incidents occur, or if new facts and information come to light.
- 7.4 The decision to reopen a previous grievance and hold a fresh hearing is based upon whether the new evidence sheds additional light on the allegations originally made by the employee, so that the Trust needs to revisit its original conclusions.

## **8. GRIEVANCES RELATED TO AN ONGOING COMPLAINT**

- 8.1 Where the employee submits a new grievance that is closely related to an ongoing issue, the Trust should inform the employee that, because the issues are linked, the new grievance will be dealt with as part of the existing process.

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## GRIEVANCE AND DISPUTES PROCEDURE

### 9. INTRODUCTION

- 9.1 Most concerns can and should be resolved quickly through day to day discussion between employees, or an employee and their manager or through mediation. Where an employee has a concern about their conditions of service, banding, working practice or working conditions they should initially seek advice from their manager, trade union representative, or a member of the HR department. Prior to a grievance being raised consideration should be given to a facilitated meeting or mediation, which can be accessed through HR on extension 6660. Where the matter has not been resolved the employee may use the grievance procedure.
- 9.2 On most occasions, it will be appropriate and desirable to commence the procedure informally at Stage 1. Managers should act promptly when a grievance is raised to try to resolve the matter as quickly as possible. Where this is unsuccessful the formal grievance procedure may be invoked. In some cases it may be appropriate to invoke the procedure at Stage 2 from the outset.
- 9.3 The grievance procedure sets out various timescales and any steps under this procedure will be taken promptly. However, the time limits in this procedure may be extended if it is reasonable to do so e.g. when investigating complex issues. Where this is necessary, the employee will be informed of the delay and the reasons for it.

### 10. RAISING A GRIEVANCE

- 10.1 When raising a grievance the aggrieved party must state clearly from the outset, the details of the grievance. They should also state the precise nature of the outcome they seek to achieve from the process.
- 10.2 As far as is reasonably practicable, the grievance must be raised within one calendar month of the aggrieved party becoming aware of the issue about which they are aggrieved.
- 10.3 A manager with whom the grievance is first raised may, following discussion with the aggrieved party; pass the grievance to a more senior manager to handle, if they consider it outside the scope of their authority to resolve.
- 10.4 It is acknowledged that even at an informal stage some staff may find it difficult to approach their line manager directly and should seek advice from a trade union representative or HR Adviser on how to proceed. Exceptionally a manager can agree for a companion, as provided for under paragraph 5.2, to attend a Stage 1 meeting as a supportive measure for the employee.

### 11. INFORMAL STAGE

#### 11.1 Stage 1

- 11.1.1 In the first instance, an employee with a grievance should first raise the matter informally with his/her line manager who in many cases will be best able to

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respond to the complaint. If the grievance is against the employee's line manager they may discuss the matter with the next more senior manager. This manager will then discuss the matter with the employee's line manager.

- 11.1.2 The manager should meet with the employee within 5 working days of the informal grievance being raised. Where a group of employees are aggrieved, a meeting should be arranged between the relevant manager, representatives from the aggrieved group and a local staff representative. At the meeting the employee should inform their line manager of the details of the grievance and their desired outcome. There is no requirement to state the grievance in writing at this stage. However, it may be helpful, particularly in complex matters if a written statement is available for future reference. The manager may need to ask questions to obtain further information or to clarify specific points.
- 11.1.3 If the issue is relatively straightforward, open and constructive discussion at this informal meeting may result in a satisfactory resolution being achieved immediately.
- 11.1.4 If the issue is more complex, the line manager may need to investigate the matter further including speaking to other parties and examining paperwork and records.
- 11.1.5 The line manager should respond to the employee within 10 working days of the first meeting. The response should be given face to face and include:
- The nature of the grievance
  - The outcome of the discussion and if appropriate, details of any remedial action which may be taken and within what timescale
  - The process for raising a formal grievance or collective grievance if they are not satisfied with what is proposed
- 11.1.6 The above details should be confirmed in writing by letter or by using the Informal Grievance Report Form within 5 working days. If using the Informal Grievance Report Form, it must be completed by the line manager, signed and dated by both parties and kept on the employee's personal file. See Appendix 1.

## 12. FORMAL STAGE

### 12.1 Stage 2

- 12.1.1 If the issue is not resolved at the informal stage, an employee may lodge a formal grievance within 10 working days of the informal (Stage 1) level decision. All written requests should be addressed to the Director of Workforce and should include a written statement headed 'formal grievance' for the sake of clarity. This should make clear the reason for the grievance and how the employee would like the matter resolved. This will form the basis of the formal hearing and any related investigations. If the reason for the grievance is unclear the employee may be asked to clarify their complaint before any hearing is arranged or takes place.
- 12.1.2 The manager of the employee's line manager or HR will write to the employee inviting him/her to a Stage 2 grievance hearing. The aggrieved employee must

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take all reasonable steps to attend any meetings arranged under the grievance procedure. The employee will be advised of their right to be accompanied to the hearing by a trade union representative or an official employed by a Trade Union, or Professional Association, or by a work colleague who is an employee of the Trust. The employee will be given 10 working days notice of the hearing date. The manager will be supported by a HR representative.

- 12.1.3 The line manager or other manager who heard the grievance at the informal stage of the procedure will be asked to provide a management statement of case describing the steps taken to resolve the grievance. Where the grievance commences at the formal stage, the aggrieved employee's line manager will be responsible for providing a management statement of case in response to the formal grievance. Evidence gathered during an investigation, which will be used and relied upon at a grievance hearing, may be presented as part of a management statement of case for the Chair of the hearing to consider.
- 12.1.4 The management statement of case and other evidence should be submitted to the HR representative at least 5 working days before the hearing. If the employee wishes to refer to any written documentation at the hearing this should also be submitted to the HR representative at least 5 working days before the hearing. The HR representative will arrange for all documents to be circulated 2-3 days prior to the hearing.
- 12.1.5 In more complex cases it may be necessary to investigate any allegations made to establish fact or balance of probability before proceeding to a full grievance hearing. Guidance on the conduct of investigations is provided separately and can be found on the Trust Intranet. Confidentiality regarding the grievance and process will be respected, however, if it is not possible to investigate without compromising confidentiality the employee should be made aware of this. In exceptional circumstances witness statements gathered during an investigation containing sensitive evidence may be made anonymous before being used.
- 12.1.6 In investigative interviews and grievance hearings where the information to be gathered requires questions about clinical or technical processes using medical terminology, it may be necessary for interviews to be recorded to ensure accuracy. Recording will not otherwise be allowed and non-verbatim notes will be used instead. An exception to this may be made with the express permission of the manager as a reasonable adjustment under the disability provisions of the Equality Act 2010. Any unauthorised recording may be treated as a misconduct matter under the Trust's disciplinary procedure.
- 12.1.7 All employees have a responsibility to cooperate in investigations as required.

In more complex cases where it has been necessary to carry out an investigation prior to a hearing and a report, including statements and/or other supporting evidence, is submitted on the investigation findings, it may not be necessary for witnesses to attend a grievance hearing unless requested to do so.

If it is found as a result of an investigation that there is a case for considering separate disciplinary action, witnesses may then be required to attend a separate hearing under the disciplinary procedure.

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In less complex cases it may be decided an investigation is not necessary but instead it would be more practical for a witness to attend a grievance hearing in order to provide specific information or explanation. If either side wishes to call witnesses at the hearing the names of the witnesses should be given to the HR representative prior to the hearing. Both sides are responsible for ensuring that their witnesses are available on the day of the hearing and for notifying them of the time and date.

12.1.8 The hearing will be conducted in line with the procedure detailed in Appendix 3.

Employees will be given the opportunity to explain their case fully but should confine their explanation to matters that are directly relevant to the complaint. Focussing on irrelevant issues or incidents that took place long before the matter in hand may hinder the effective handling of the grievance. The manager conducting the hearing will intervene if he/she thinks the discussion is straying too far from the key issue(s) or that additional issues are being introduced. The manager will need to ensure that the hearing can be completed within a reasonable timeframe depending on the nature and complexity of the complaint.

12.1.9 In the course of the hearing, if it becomes clear that the grievance is more complicated than it at first appeared, the manager chairing the hearing may, in accordance with the ACAS code, adjourn the hearing to carry out further investigations as may be necessary. However, where no further cause for concern arises, the grievance can be dealt with quickly.

12.1.10 Where the issue concerns professional or technical matters the manager chairing the hearing may seek additional advice from an appropriate person with specialist and professional knowledge. This person should have had no direct involvement in the case.

12.1.11 Wherever possible the employee should be verbally informed of the outcome of the hearing on the day, or as soon as is reasonably practical, and this should be confirmed in writing normally within 5 working days.

12.1.12 A copy of the grievance and formal response should be kept on the employee's personal file. The formal response can be in the form of an outcome letter or the Formal Grievance Report Form. If using the Formal Grievance Report Form it must be completed by the manager hearing the grievance, signed and dated by both parties and kept on the employee's personal file. Written records of the hearing which capture the main points of discussion will be kept and given to the employee if requested. See Appendix 2.

## 12.2 FORMAL STAGE – APPEAL

### Stage 3

12.2.1 An employee may appeal against a decision made at Stage 2 of the procedure by lodging a written report to the Director of Workforce within 10 working days of receipt of the letter confirming the Stage 2 outcome. The employee should state the grounds for the appeal i.e. the basis on which they believe the outcome of the

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Stage 2 hearing was wrong, or the action decided on was inappropriate, and how they would like the matter resolved.

12.2.2 The same procedure and timescales will be followed as outlined under Stage 2, 12.1.1 to 12.1.12.

12.2.3 The manager hearing the grievance at Stage 3 will be an appropriate senior manager, normally a Divisional Director, Head of Department or Assistant Director. They will be accompanied by a HR representative.

Those involved in the grievance appeal panel shall not include anyone who has been involved in the circumstances leading to the grievance. Anyone involved at an earlier stage of the grievance will not be present at the Stage 3 Appeal Hearing in any capacity, other than as a witness or as the management side or staff side representative.

The manager conducting the appeal hearing will consider the grounds put forward for appeal and assess whether or not the conclusion reached in the Stage 2 hearing was appropriate. It should not be a rehearing of the original grievance but rather consideration of the rationale for being dissatisfied with the outcome of Stage 2. The manager hearing the appeal may confine discussion to specific areas rather than reconsider the whole matter afresh.

12.2.4 The manager hearing the Stage 3 grievance should, wherever possible, verbally inform the employee of the outcome of the hearing on the day of the hearing. Where this is not possible the decision and rationale should be confirmed in writing normally within 5 working days. Written records, which will not be verbatim, capturing the main points of discussion will be kept and maintained in line with the Data Protection Act and will be available to the employee and trade union representative on request.

12.2.5 The decision at Stage 3 will be final i.e. there will be no other right of appeal.

### **13. POSSIBLE OUTCOMES OF FORMAL GRIEVANCE APPEAL HEARINGS**

13.1 The following are possible outcomes of a grievance appeal hearing; the list is not exhaustive and the decision made will depend upon the circumstances of each case:

- No change to the outcome of the Stage 2 decision
- Grounds for appeal upheld, either totally or in part
- Alternative or additional remedial actions imposed

### **14. GRIEVANCE HEARING PROCESS**

14.1 Contact Employee Relations for Appendix 3 - process to be followed at a grievance hearing.

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**15. DISPUTES**

- 15.1 A dispute may be initiated at Stage 2 of the procedure subject to mutual agreement.
- 15.2 In the case of a dispute, both parties may agree to refer the matter to ACAS for conciliation once all stages of the procedure have been exhausted. The terms of any reference will be subject to mutual agreement.

**16. POLICY REVIEW**

- 16.1 This policy and the associated procedure will be reviewed at the date stated and may be subjected to change at that time, or at an earlier date if necessary, subject to consultation with staff representatives recognised for that purpose.

**APPENDICES**

**Appendix 1** Informal Grievance Report Form

**Appendix 2** Formal Grievance Report Form

**Appendix 3** Grievance Hearing Process

**Note: The appendices are individual documents and have not been incorporated as part of the main body of the Grievance and Disputes Policy and Procedure.**

**The appendices are available from Employee Relations who can be contacted on [employeerelations@rmh.nhs.uk](mailto:employeerelations@rmh.nhs.uk) or on extension 6660 option 2.**

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