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DEALING WITH EMPLOYEE GRIEVANCES POLICY

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PREFACE

Staff Governance

Staff Governance is defined as “a system of corporate accountability for the fair and effective management of all staff”. The *Staff Governance Standard*¹, which is applicable to all staff employed in NHSScotland, sets out what each NHSScotland employer must achieve in order to improve continuously in relation to the fair and effective management of staff. The Standard requires that all NHS Boards must demonstrate that staff are:

- Well informed;
- Appropriately trained;
- Involved in decisions which affect them;
- Treated fairly and consistently; and
- Provided with an improved and safe working environment.

It is recognised that staff are central to achieving the principal aims of NHSScotland, namely to improve health and wellbeing, and to deliver high quality care to those with ill health. Achievement against the Staff Governance standard is therefore key to the effective and efficient delivery of services by providing an environment that is inclusive and conducive to employees giving of their best.

NHSScotland’s commitment to staff governance has been reinforced by its legislative underpinning within the *National Health Service Reform (Scotland) Act 2004*², which ensures parity with the other two governance pillars of clinical and financial governance.

PIN Policies

Partnership Information Network (PIN) policies define a minimum standard of best employment practice and are designed to achieve a consistent approach to the way NHSScotland deals with its employees. They have been developed in partnership between NHSScotland management, trade unions/professional organisations and Scottish Government. While local adaptations may be agreed in partnership to suit Boards’ own local needs, any such adaptations must still meet or exceed the minimum standards set out within the PIN policies.

Compliance with the Staff Governance Standard includes implementation of PIN policies. Boards will be expected to evidence adherence to the PIN policies as part of the annual SAAT and accountability review processes. Part 1: Principles and Partnership of the *Agenda for Change Terms and Conditions Handbook*³ incorporates PIN policies within the terms and conditions of employment of all NHSScotland staff and serves to further reinforce the fact that adherence to the minimum standards set out within them is mandatory for all NHSScotland Boards

1. <http://www.staffgovernance.scot.nhs.uk>

2. <http://www.legislation.gov.uk/asp/2004/7/contents>

3. <http://www.msg.scot.nhs.uk/wp-content/uploads/Agenda-for-Change-Handbook-Master-Scottish-Copy-Amendment-24.pdf>

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Board Partnership Forums therefore have a key role in ensuring that locally developed policies meet or exceed the minimum standards set out in the PIN policies; and in raising non-compliance in a positive and constructive manner.

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1. INTRODUCTION

This PIN policy sets out revised and updated guidance on the approach of NHS Highland to dealing with employee grievances, following the original publication of the Dealing with Employee Concerns PIN in 2001.

This PIN policy is designed to support a range of options for dealing with situations or circumstances where employees have grievances; this includes the use of informal approaches or alternative dispute resolution mechanisms such as mediation, where it is appropriate.

Underpinning this PIN policy are the statutory and regulatory requirements which NHS Highland have to comply with. These have been updated in this revised policy.

This PIN policy has been developed in partnership between management and trade unions/professional organisations and is built around the [Staff Governance Standard](#)⁴. The Staff Governance Standard states that best practice HR policies should be in place and communicated to staff and that PIN Policy and practice publications are met or exceeded.

It is recognised that in NHS Highland it is inevitable that situations or circumstances will arise that result in employees being concerned. It is important that employees are confident that NHS Highland acknowledges their right to raise such issues and has policies and procedures in place to resolve them fairly, promptly and locally.

2. MAIN REPORT

2.1 Principles & Values

- NHS Highland must have clear policies on how to deal with employee grievances. These policies must be driven by the principles of fairness, openness, integrity and promptness, setting out clearly the mechanisms that are available to staff;
- Employees should be encouraged to raise grievances without fear of penalty or victimisation. Key to this is a clear commitment by NHS Highland to operate in an open, consistent and fair manner with an aim to create a no-blame culture;
- Policies should be easily understood and should operate without detriment to any member of staff by virtue of their race, nationality, sex, sexual orientation, disability, age, religion or belief, marriage or civil partnership, pregnancy, maternity, gender recognition, political conviction, membership/non-membership of a trade union/professional organisation or work pattern;

⁴ <http://www.staffgovernance.scot.nhs.uk>

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- The approach to dealing with employee grievances should be founded on partnership at all levels within NHS Highland and should take advantage of local working relationships to achieve early and, if appropriate, innovative resolution;
- All employees have the right to be accompanied by a trade union/professional organisation representative or work colleague when raising grievances;
- The approach for dealing with grievances should always use the most appropriate best practice available – primarily internally, but also externally, to resolve or progress grievances most effectively;
- Where appropriate, the use of third party mediation – both formal and informal – is encouraged at every level and at every stage of the process. Employees and NHS Highland should be encouraged to make use of these mechanisms at any point, as agreed by the parties;
- NHS Highland should ensure that they communicate with their employees in writing without unreasonable delay, recognising that this will be dependent on the particular circumstances of each case, and that there may be a need for flexibility;
- Mechanisms for dealing with grievances must allow for early escalation to senior managers where this is required because of the seriousness of the issue;
- Any supportive documentation produced by NHS Highland for dealing with grievances must be clear and simple. Any forms that NHS Highland requires the employee to complete must be written in clear and simple language;
- Employees who have difficulty expressing themselves on paper, or, for example, whose first language is not English, are encouraged to seek help from a work colleague, trade union/professional organisation representative, or a representative from the HR department in accessing appropriate support to set out their grievance;
- An employee who raises a grievance should have access to appropriate personal support and advice. NHS Highland must ensure that this is available to all staff, including those who are not members of trade unions/professional organisations. Given the potential sensitivity of some issues and the stress created, NHS Highlands may consider providing confidential counselling for individuals involved;
- NHS Highland must establish systems for monitoring both the informal and formal mechanisms that are in place to deal with grievances. These should capture the numbers and the nature of the matters raised, and should record both those that are resolved, as well as those that are recognised but unresolved. A report should be presented annually to the Area Partnership Forum and/or Staff Governance Committee;

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- The Highland Partnership Forum should review the mechanisms for dealing with grievances at least annually. Review and evaluation will be required to ensure that the principles are being met and that any new standards or structures are incorporated where necessary; and
- Any investigation should be conducted in strict confidence. If a formal procedure ensues, the principles of confidentiality must be applied.

2.2. Legal Framework

Underpinning the approach to dealing with employee grievances are a number of statutory and regulatory requirements which Boards are obliged to comply with. This includes:

Employment Act 2008⁵

The Employment Act 2008 introduced new legislation pertaining to dealing with discipline and grievance. The Act is supported by the [ACAS Code of Practice – Disciplinary and Grievance Procedures](#)⁶.

ACAS Code of Practice – Disciplinary and Grievance Procedures⁷

The Code sets out the principles NHS Highland should follow when dealing with disputes in the workplace. The Code encourages NHS Highland to seek resolutions through informal means where possible.

The Code states that, whenever a disciplinary or grievance process is undertaken, the basic standards of fairness should still apply. For example, issues should be raised and dealt with promptly by both NHS Highland and employees, and NHS Highland should carry out any necessary investigations to establish the facts of the case.

Although a failure to follow the Code does not make a person or NHS Highland liable to proceedings, employment tribunals are legally required to take the Code into account when considering relevant cases.

More comprehensive advice and guidance on dealing with disciplinary and grievance situations is contained in the ACAS booklet, [Discipline and grievances at work: the ACAS guide](#)⁸. Unlike the Code, employment tribunals are not required to have regard to the ACAS guidance booklet. However, it provides more detailed advice and guidance that NHS Highland and employees will often find helpful both in general terms and in individual cases.

⁵ <http://www.legislation.gov.uk/ukpga/2008/24/contents>

⁶ <http://www.acas.org.uk/index.aspx?articleid=2174>

⁷ <http://www.acas.org.uk/index.aspx?articleid=2174>

⁸ <http://www.acas.org.uk/index.aspx?articleid=2174>

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Employment Rights Act 1996⁹

This legislation places a duty on NHS Highland to provide written particulars to an employee within two months of commencement of employment. These written particulars must include details of any grievance policy or procedures which are applicable to the employee.

Employment Relations Act 1999¹⁰

This legislation accords employees the right to be accompanied at any grievance hearing by a work colleague or trade union/professional organisation representative. If the chosen companion is not available at the time proposed for the meeting, NHS Highland must postpone the hearing to the alternative time suggested by the employee, provided that such alternative time is reasonable and falls before the end of five working days after the day proposed by NHS Highland.

2.3. Mechanisms for Dealing with Employee Grievances

NHS Highland recognises that, from time to time, employees may wish to raise grievances or problems with NHS Highland. NHS Highland must have local grievance procedures to address these issues as they arise and settle them at point of origin as far as is reasonably practical. These procedures must be consistent with statutory and regulatory requirements and in line with national terms and conditions.

NHS Highland should encourage staff to raise their grievances and wherever possible ensure these issues are dealt with promptly and as locally as possible. This will often involve a very informal approach to resolution. Where resolution is not reached, NHS Highland and employee(s) are encouraged to use third party mediation. In the event that there is still no resolution then the issue moves to a formal stage.

Work has been undertaken on behalf of NHSScotland by the Dignity at Work Steering Group who have examined the use and benefits of third party intervention to resolve conflicts. They recommend that initially this can be achieved through facilitated discussions led by highly skilled managers or HR professionals, with the need for use of external mediators only in the most complex of cases. The report produced by this group can be found on the [Staff Governance website](#)¹¹.

⁹. <http://www.legislation.gov.uk/ukpga/1996/18/contents>

¹⁰. <http://www.legislation.gov.uk/ukpga/1999/26/contents>

¹¹. <http://www.staffgovernance.scot.nhs.uk/>

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2.4. Induction & Training

- In line with the [Staff Governance Standard](#)¹², all employees have the right to equity of access to training and appropriate induction that covers, as a minimum, partnership; staff governance; health and safety; and equality legislation;
- All new employees must be made aware of the local policy developed in line with this Dealing with Employee Grievances in NHS Highland's PIN policy during induction;
- Current employees must be made aware of the local policy developed in line with this Dealing with Employee Grievances in NHS Highland's PIN policy through current communication channels, including awareness raising sessions where appropriate;
- NHS Highland should ensure that managers/supervisors are competent in handling grievances, and consideration should be given to joint training with staff-side representatives to ensure a consistent approach. Employees who manage staff must have appropriate training in handling grievances inbuilt to their KSF/Personal Development Plan; and
- NHS Highland should ensure an appropriate organisational training plan on handling grievances is in place. This will be reviewed and evaluated according to local arrangements and overseen by the relevant organisational committee.

2.5. Success Indicators

- All employees are aware of the formal and informal mechanisms, including processes such as mediation, that are available for dealing with their individual and collective grievances;
- NHS Highland has recorded statistics pertaining to grievances and such statistics are reviewed on a yearly basis by the relevant organisational committee(s). This must include all informal processes that have been initiated. This has to be done in accordance with [Data Protection Act 1998](#)¹³, and
- As an element of the review of its local policy developed in line with this Dealing with Employee Grievances in NHS Highland's PIN policy, NHS Highland undertakes an evaluation of its effectiveness, in both the application of, and the compliance with the legislation and principles set out within the PIN;

12. <http://www.staffgovernance.scot.nhs.uk>

13. <http://www.legislation.gov.uk/ukpga/1998/29/contents>

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- The application of this policy will be monitored jointly by the Director of Human Resources and the Highland Partnership Forum to ensure equitable treatment of employees.

2.6. Keeping Records

It is important, and in the interest of both NHS Highland and employee, to keep written records during ALL stages in the grievance process. Although it is not mandatory to formally document informal attempts to resolve the grievance, the outcome of the informal stage of the process should be noted so that details of the episode can be recorded for audit purposes.

Records are confidential and should be kept in line with the timeframes outlined in the [Data Protection Act 1998](#)¹⁴. Copies of meeting records should be given to the employee, but NHS Highland might withhold some information in exceptional circumstances (e.g. in order to protect a witness).

Records should include:

- The nature of the grievance raised;
- A copy of the written grievance;
- NHS Highland's response;
- What was decided and action taken;
- Reasons for action taken;
- Whether there was an appeal and if so, the outcome;
- Subsequent developments; and
- Equality and Diversity Monitoring Information where available.

¹⁴. <http://www.legislation.gov.uk/ukpga/1998/29/contents>

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APPENDIX 1

GRIEVANCE POLICY

1. Introduction

NHS Highland encourages open and honest communication at all levels. However, it recognises that from time to time employees may wish to raise grievances, problems or complaints with NHS Highland.

Employees and managers are encouraged to make every effort to resolve issues at the most local level possible and where appropriate before resorting to the formal procedure. Matters should be dealt with as they occur and be settled as near to the point of origin as possible and as quickly as it is reasonably practicable. However, it is recognised that a formal procedure is necessary to resolve some grievances quickly, to allow employees to pursue grievances relating to their working conditions without fear of recrimination, and to prevent conflict and maintain employee relations.

Victimisation as a result of an employee raising a grievance or assisting in the investigation of such a grievance will not be tolerated, and will be dealt with under the local policy developed in line with the Preventing and Dealing with Bullying and Harassment in NHS Highland's PIN Policy and, where necessary, the local policy developed in line with the Management of Employee Conduct PIN Policy.

2. Aim

To offer a constructive mechanism for all parties to air their differences and seek to find mutual agreement.

3. General Principles

- All grievances, problems, complaints and disputes, including collective disputes, concerning matters arising out of employment with NHS Highland will be dealt with in accordance with the undernoted procedure;
- It is the policy of NHS Highland that an employee(s) will receive a fair hearing concerning any grievance. The spirit and intention of this policy is to promote the best possible relations between all parties;
- Throughout the formal and informal stages of the procedure, the employee(s) has the right to be accompanied by a trade union/professional organisation representative or a work colleague;
- Where a particular manager is not available, the matter may be taken forward by a nominated deputy to ensure that the under-noted procedure is followed within reasonable timescales;

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- It is recognised that informal approaches can be an aid to resolving grievances. Therefore, the provisions outlined in this procedure can include informal discussions between management, the employee(s) and their trade union/ professional organisation representatives;
- In order to support early resolution of a grievance, mediation by an independent third party can be sought at any stage of the procedure by the agreement of both parties;
- It is recognised that all stages of the procedure may not be applicable to an individual and/or a group of employees, depending on the particular circumstances (for example, where the chain of command is short);
- Wherever possible, no person who has previously been involved in any way formally or informally should sit on the grievance appeal panel; and
- Employees who have difficulty expressing themselves on paper, or, for example, whose first language is not English, are encouraged to seek help from a work colleague, trade union/professional organisation representative or a representative from the Human Resources (HR) department in accessing appropriate support to set out their grievance.

4. Types of Grievance

Individual

This occurs when one employee raises a grievance, problem or complaint with NHS Highland.

Collective

Occurs when a group of employees share a grievance.

5. Procedure

5.1. ***Informal Stage***

When an employee(s) feels aggrieved about an issue it should be raised in the first instance with their immediate manager. The manager will meet with the employee as soon as possible, and within a reasonable timescale from the date when the grievance was notified. This timescale should take account of the nature and seriousness of the case.

Where the grievance lies with the manager, then the employee has the right to raise the matter informally with the next level of management.

If no resolution is achieved from the informal meeting, the employee may choose to initiate the formal procedure. The choice to progress to the formal stage of the process must be notified to the next level of management within a reasonable timescale from the date of the informal meeting.

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The actions and outcome of this stage of the process should be noted so that details of the episode can be recorded for audit purposes.

5.1.1. *Facilitated Meetings/Mediation*

Managers and employees should always seek to resolve grievance issues in the workplace. Where this is not possible informally, both parties should consider the use of an independent third party to help resolve the issue.

The third party need not come from outside NHS Highland, though, but could be an internal facilitator/mediator, highly skilled manager or HR professional not involved in the grievance process. However, the need for use of external mediators in the most complex of cases may be agreed between the parties.

Should the parties concerned wish to make use of third party intervention, this should be notified to the Human Resources (HR) department who will be responsible for making appropriate arrangements.

5.2. ***First Formal Stage***

In the event that the employee(s) remains dissatisfied after informal consideration of the grievance, the matter will be referred to the First Formal Stage. The employee will normally lay out the detail(s) of their grievance in writing using the Grievance Notification Form attached at Appendix 1: Annex A. It should be sent to the individual's manager who will be responsible for hearing the grievance. On receiving the notification, the relevant manager will arrange a formal grievance hearing within a reasonable timescale from the date of receipt of the notification of the grievance.

In the event that an Executive Director or other Board member raises a formal grievance, it will normally be heard by two non-executive members of the Board.

Guidance on Conduct at Formal Hearings is given at Appendix 1: Annex C.

A written reply detailing the manager's decision, the reasons for the decision and the action, if any, NHS Highland intends to take, will be given to the employee(s) within 10 working days of the hearing. The letter must inform the employee of their right of appeal and include details of who will hear the next stage of the process.

The decision to progress to the next stage of the process must be notified by the employee within a reasonable timescale from the date when the outcome of the first formal stage was received.

5.3. ***Second and Final Formal Stage***

In the event that the employee(s) remains dissatisfied after the first formal stage, the matter should be referred to the second and final formal stage. A hearing will be arranged as soon as possible and within a reasonable timescale of the notification of the appeal to the next appropriate level of management.

The HR department or designated manager will arrange for all sides to present

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written statements setting out their views on the grievance. These must be circulated to all parties at least five working days before the hearing.

Guidance on Conduct at Formal Hearings is given at Appendix 1: Annex C.

A written reply detailing the manager's decision, the reasons for the decision and the action, if any, NHS Highland intends to take, will be given to the employee(s) within 10 working days of the hearing.

Where appropriate, the letter must inform the employee of their right of appeal and include details of who will hear the next stage of the process. Except where the provisions of clause 5.3.1 apply, however, this represents the end of the internal process.

5.3.1 *Grievances with Wider Organisational Consequences*

Where the grievance relates to an issue where the outcome might affect more than one individual (examples include: the application of terms and conditions of service, the implementation of a Board-wide policy or matters which could become litigious, or the focus of an industrial dispute) and if the issue cannot be resolved at stage two, then it may be referred to the Director of Human Resources and Employee Director. They will be responsible for determining whether the grievance raised has wider organisational consequences beyond the aggrieved party. In some circumstances grievances may be referred, by agreement, to this stage at the outset of the grievance being raised.

If agreed as having wider organisational consequences, the Director of Human Resources will organise a formal hearing, which will normally be heard by one non-executive and one executive member, and other panel membership as appropriate as determined locally, supported by a senior member of the HR department not previously involved.

This exhausts the internal process for cases which fall into this category.

6. Grievances Not Concluded at the Time of Employment Terminating

If a grievance has been raised but not concluded by the time the employment terminates, where there are outstanding grounds of appeal, then whatever stage the grievance is at will be concluded with a paper review of the position and a written response.

7. Post-Employment Grievances

Should a previous employee raise a grievance within three months of the employment ending, the matter will be investigated and a response will be given in writing.

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8. Overlapping Grievance and Disciplinary Cases

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

9. Status Quo

Status quo is defined as the working arrangements in place prior to the change over which the grievance has been raised.

Wherever possible, the status quo should operate until this procedure has been exhausted. However, the status quo may be set aside where:

- Continuation of status quo will result in a breach of statutory or other mandatory regulations;
- Agreement is reached by both parties to do so; or
- The grievance is about action already agreed or taken through collective agreement.

10. Involvement of Human Resources Department

Advice on the application of this procedure should be sought from the HR department. A member of the HR department should normally be present at the hearing of all formal grievances.

11. Monitoring and Review

The effectiveness of this policy and procedure will be monitored and reviewed by the Highland Partnership Forum.

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ANNEX A:



GRIEVANCE NOTIFICATION FORM

Strictly Confidential

This form gives guidance to an employee(s) in setting out a grievance and may be used with or in place of a letter.

Employees who have difficulty expressing themselves on paper, or, for example, whose first language is not English, are encouraged to seek help from a work colleague, trade union/ professional organisation representative or a representative from the HR department in setting out their grievance.

Use of this form, or a letter, will be used as notification of the Grievance and as a record of subsequent discussion(s) and decision(s) during the stages of the Grievance Procedure.

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Name of employee(s) raising the grievance:

Post(s):

Department(s):

Name of employee(s) representative:

Details of grievance being raised:

Signed:

Name(s) (in block capitals):

Contact telephone number:

Date:

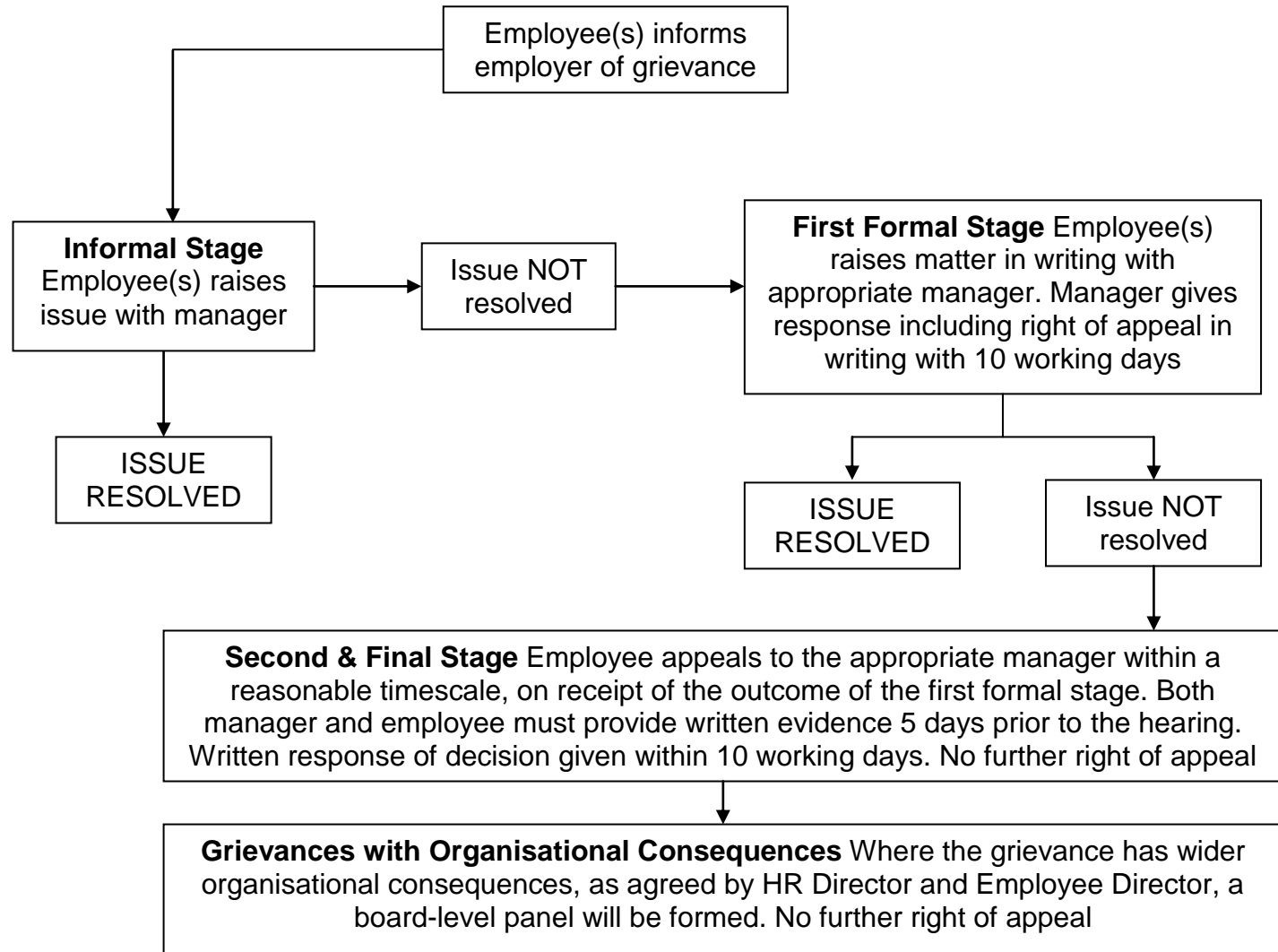
On completion, this form should be sent to the relevant member of management who will be responsible for hearing the grievance.

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ANNEX B:

GRIEVANCE PROCEDURE FLOW CHART



Third Party Mediation In order to support early resolution of a grievance, mediation can be sought at any stage of the procedure by either employee or manager

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ANNEX C:

GUIDANCE ON CONDUCT AT FORMAL HEARINGS

The main purpose of a formal hearing is to ensure that all present have a full understanding of the issue so that an impartial decision can be based on facts.

The hearing should adopt as flexible an approach as possible, while adhering to the following principles:

- Both parties must be given the opportunity to present cases orally and call any witnesses. It is the responsibility of individual parties to ensure they make arrangements for the attendance of witnesses;
- The employee or their representative shall state their case in the presence of the management representative and may call witnesses who shall remain present only when they are giving evidence;
- The management representative shall have the opportunity to ask questions of the employee/representative and witnesses;
- The manager hearing the grievance or members of the appeal panel shall have the opportunity to ask questions of the employee/representative and witnesses;
- The management representative shall state their case in the presence of the employee/representative and may call witnesses who shall remain present only when they are giving evidence;
- The employee/representative shall have the opportunity to ask questions of the management representative and witnesses;
- The manager hearing the grievance or members of the appeal panel shall have the opportunity to ask questions of the management representative and witnesses;
- Written evidence not previously circulated and presented before the hearing may only be admitted at the discretion of the manager hearing the grievance or members of the appeal panel;
- The management representative and the employee or their representative shall have the opportunity to sum up their case if they so wish. The employee or their representative shall have the right to speak last, having opportunity to sum up their case if they so wish. In their summing up neither party may introduce any new matter;
- The manager hearing the grievance or members of the appeal panel may, at their discretion, adjourn the appeal in order that further evidence may be produced by either party to the dispute or for any other reason; and

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- The manager hearing the grievance or members of the appeal panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt. Ensure that everyone present has a full understanding of the issue.

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APPENDIX 2

GLOSSARY

“Document”

Where this PIN policy refers to written records or documentation, this shall be interpreted as including any other additional format needed as a way of ensuring understanding by overcoming accessibility issues. Any documentation produced by NHS Highland for dealing with grievances and any forms that NHS Highland requires the employee to complete must be clear and simple. Employees who have difficulty expressing themselves on paper and in English are encouraged to seek help from a work colleague, trade union/ professional organisation representative, or a representative from the HR department in setting out their grievance.

“Employees”

For the purposes of this PIN policy, the term ‘employee’ shall apply equally to all persons in the employment of NHS Highland, irrespective of their role.

“Mediation”

Mediation is a voluntary and confidential form of alternative dispute resolution. It involves an independent, impartial person helping two or more individuals or groups reach a solution that is acceptable to everyone. The mediator can talk to both sides separately or together. Mediators do not make judgments or determine outcomes – they ask questions that help to uncover underlying problems, assist the parties to understand the issues and help them to clarify the options for resolving their difference or dispute. In this PIN policy, references to a third-party mediator include both mediators employed by NHS Highland as the parties, and also those employed by other NHS Boards and external organisations.

FURTHER READING

*‘ACAS Code of Practice – Disciplinary and Grievance Procedures’*¹⁵

*‘Discipline and grievances at work: the ACAS guide’*¹⁶

*‘Mediation: an Employer’s Guide’ (ACAS)*¹⁷

15. <http://www.acas.org.uk/index.aspx?articleid=2174>

16. <http://www.acas.org.uk/index.aspx?articleid=2174>

17. <http://www.acas.org.uk/index.aspx?articleid=1680>

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PIN POLICY REVIEW GROUP

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