

Contents

Rules and Principles

Individual Employee Complaints Procedure

[Introduction](#)
[Preliminary Information Process](#)
[Formal Procedure](#)
[Complaints Post Employment](#)
[Flowchart](#)

Guidance Notes

[General approach to considering employee complaints](#)
[Issues excluded from consideration under the employee complaints procedure](#)
[Representation](#)
[Timescales](#)
[Informal processes for resolving employee complaints](#)
[Interface between the employee complaints procedure and specific situations](#)
[Conducting a stage 2 appeal hearing](#)
[Record keeping and monitoring](#)
[Legal principles](#)
[Definitions](#)
[Manager's checklist](#)
[Modified Procedure](#)

Individual Employee Complaints

Introduction

The Council's procedure on individual employee complaints provides a structured mechanism for employees to raise concerns related to their employment. It aims to maintain good working relations between managers and employees and to resolve individual grievances as quickly and as close to the point of origin as possible in an equitable way which does not hinder the provision of effective and efficient service delivery.

It is essential that both managers and employees approach the process as an objective method of resolving differences and avoiding conflict rather than as a concept of "winning or losing". Effective communication is therefore key to the success of the process.

The Procedure is accompanied and supported by a series of [guidance notes](#). Further guidance notes will be issued as and when required.

What will be done for you

Human Resources (HR) will: -

- Periodically review the guidance notes and produce additional or updated guidance as appropriate and in the light of changes in employment law.
- Provide general advice on the application of the procedure.
- Ensure that appropriate training is available for managers and supervisors to properly equip them to manage the procedure.

What you must do

Ensure that all employees in your unit are aware of the individual employee complaints procedure and the rights and responsibilities contained therein.

Consider whether you can resolve the underlying cause of the complaint informally and outside the procedure in the first instance as part of normal good management practice, including exploring the use of mediation with the agreement of the employee.

Ensure that the employee is made aware of his/her rights to trade union representation or to be accompanied by a work colleague and ensure that such representation, if requested, is facilitated, including compliance with the statutory requirement to consider a postponement of the hearings in certain circumstances ([see guidance notes](#)).

Ensure that wherever possible you comply with the recommended timescales contained in the procedure and guidance notes and that where delays are inevitable all parties are kept fully informed.

Ensure that complaints are heard as set out in the Council's procedure or, where a complaint is raised post employment, heard in accordance with the modified procedure.

Be aware that a complaint alleging harassment could be a potential disciplinary matter and consider whether a full investigation under the Council's disciplinary procedure is required. Please refer to the Council's [Respect at Work Policy](#) for further guidance.

Structure and conduct all formal interviews and hearings to ensure that all relevant information is obtained, the facts established and all parties are afforded an opportunity to state their views.

Ensure that complete, accurate and contemporaneous records are maintained on employee complaints in a manner that is secure, confidential and accessible for monitoring purposes.

What you must not do

Allow complaints to be heard under the individual employee complaints procedure where they can be more appropriately dealt with under separate procedures set up for that purpose, e.g. collective bargaining, job evaluation/grading issues and appeals arising from the performance management scheme.

Allow employees to use the individual employee complaints procedure to simply complain against the Council's policies or procedures.

What you can do

Seek additional information from third parties to enable all the pertinent facts relating to a complaint are obtained.

Key information

Advice on managing the individual employee complaints procedure can be sought from The Human Resources Team.

INDIVIDUAL EMPLOYEE COMPLAINTS PROCEDURE

(Note: This Procedure is accompanied by a series of short Guidance Notes. Text printed in ***bold and italics*** within the Procedure indicates that a Guidance Note is available on that topic.)

[1] Introduction:

Southwark Council is committed to establishing and maintaining good working relations with its employees. This procedure is designed to ensure that employees' complaints arising out of their employment can be resolved in a fast, fair and consistent manner.

This procedure should be seen in relation to and is supportive of Southwark's wider commitment to diversity management/equal opportunities. Where a complaint of discrimination, harassment, victimisation or bullying is alleged the Council's disciplinary policy could be invoked. Please refer to the Council's [Respect at Work Policy](#) for further guidance.

This procedure applies to all Council employees, with the exception of those employed at schools with delegated budgets.

Southwark recognises that employee complaints can cover a variety of issues and circumstances and that as a result there are a variety of possible methods of resolving them. Some complaints are more appropriately dealt with under separate procedures set up for that particular purpose, e.g. collective bargaining, job evaluation/grading issues and appeals arising from the performance management scheme. In addition, employees may not simply complain against the Council's policies or procedures, although a complaint about the way those policies and procedures have been applied should be allowed to proceed.

As well as these ***specific exclusions*** and notwithstanding the fact that a complaint might have initially been raised formally under this procedure, there may be more appropriate methods of addressing an employee complaint. For this reason, a preliminary informal process has been provided within this procedure to afford both employees and managers an opportunity to explore whether the matter can be addressed through mediation.

Except when it can be established that an employee complaint is either deliberately false or malicious, there can be no retaliatory action taken against any employee for raising a complaint under this procedure. Any employee who feels unfairly treated as a result of raising a complaint should raise it as part of the original complaint and not as a new complaint, if possible.

[2] Preliminary Informal Process:

Even if an employee submits a complaint under the formal complaint procedure or if the matter is specifically excluded because appeals are contained within other procedures, managers should try to resolve the underlying cause as part of normal good management practice and not by merely taking a strictly procedural approach.

Many complaints can be resolved informally or through mediation and managers should be aware of, and be prepared to explore, these alternative methods of resolving the complaint with the employee, including re-setting standards of behaviour, considering transfers, conciliation and mediation. In some cases involving a potential serious breach of the Council's disciplinary rules, mediation may not be appropriate.

[3] Formal Procedure:

This procedure is intended to provide a structured mechanism to deal with individual employee complaints relating to their employment that require a formal process to resolve and where no other appropriate formal or informal mechanism for doing so has been identified. Where employee complaints meet the above criteria (as determined by the relevant Head of Service, having received advice from the local human resources practitioner) the following two-stage process will apply.

[a] Stage 1 (Meeting with line manager) –

Stage 1 of the procedure is designed to resolve individual employee complaints quickly and as close to the point of origin as possible. If the **immediate line manager is the specific subject of the complaint** it will be appropriate for another manager to undertake the stage 1 role. The line manager's immediate manager will decide this.

[A complaint raised by a Chief Officer, or a Head of Service within Strategic Services Department, will be heard at stage 1 by the Chief Executive unless this can be demonstrated as being inappropriate, in which case alternative arrangements will be made. Where such complaints proceed to stage 2 or should the Chief Executive raise a complaint, suitable arrangements will be made to ensure that the principles of the procedure, e.g. independence and appropriate authority, are maintained.]

A complaint alleging harassment should be treated as a potential disciplinary matter and a full investigation under the disciplinary procedure should be instigated. Please see Guidance Note No 6 ([Interface between the employee complaints procedure and specific employment situations](#)) and also the Councils [respect at work policy](#) for further guidance.

A complaint must be submitted no later than 28 days after the act or omission complained of or no later than 28 days after the last act or omission if the complaint relates to a series of linked events, although there may be some circumstances in which adherence to this time limit may not be applicable (e.g. sickness, late discovery).

To register a complaint an employee must submit the appropriate pro-forma to their line manager. As much detail as possible must be given on the pro-forma, including information which explains the nature of the grievance, what is alleged to have occurred, by whom and when and what outcome the employee is seeking by pursuing a formal complaint.

If it has not already taken place, the line manager will discuss with the employee whether it is appropriate to pursue any of the options in the **informal process** and try to seek agreement to a suitable way forward. If agreement cannot be reached, the line manager will immediately send a copy of the pro-forma to the local human resources team. The human resources team will advise whether it is appropriate to use the formal procedure (i.e. that it is not simply a complaint against Council policy or procedure or that no other formal mechanism exists to resolve it) and whether the line manager should arrange to meet the employee formally. This meeting should normally take place within five working days of receiving the complaint.

The meeting will comprise of the line manager, the employee and if appropriate a management note-taker. The employee will be encouraged to be **represented** or accompanied by a work colleague or an accredited trade union representative, who is recognised by the Council. A trade union note-taker will also be allowed to attend.

The employee should make their own arrangements to be represented or accompanied by a recognised trade union official or work colleague, including notifying them of the time and venue for the meeting. Managers should always endeavour, within reason, to reach a mutually agreed date for the meeting with the employee and his/her representative. However, where the employee's chosen work colleague or trade union representative is not available at the time proposed by the line manager, the employee may propose an alternative time. If the alternative time is reasonable to management and falls within five working days after the original date proposed, the line manager must postpone the hearing to that time. Postponements need not be agreed where the trade union note-taker is unavailable.

The line manager will try to establish all the facts in connection with the complaint. This may involve interviewing or taking statements from third parties. It is not necessary to do this in the presence of the employee. This investigation will normally be concluded within ten working days. At the end of the investigation the employee will be informed of the outcome in writing, normally within five working days. If the complaint is not upheld the employee will be informed of their right to take the complaint to stage two of the procedure.

All reasonable efforts should be made to meet the timescales set out in this procedure, but where there are valid reasons for doing so, the line manager may in exceptional circumstances vary them. Any such delays should normally not exceed ten working days and will be confirmed in writing to the employee, stating the reasons and giving the revised timescale.

[Back to top](#)

[b] Stage Two (Hearing before a Complaints Panel) –

Stage 2 is designed to resolve the complaint by a formal panel. The Chair of the panel will be of a higher or the same seniority than the manager hearing the complaint at stage 1 and have the appropriate delegated authority to hear such cases. When the employee is a member of a recognised trade union the panel will also include a trade union representative recognised by the Council. Neither the Chair nor the trade union panel member should have had any prior direct involvement in the case to ensure a fair hearing free of any bias. A management note-taker will also be present. A human resources practitioner may also attend in the capacity of an advisor.

To take a complaint to stage two an employee must submit, within five days of receiving the stage one decision letter, the appropriate pro-forma to their line manager. As much detail as possible must be given on the form. The pro-forma should contain information, which explains the specific grounds for appeal, why the employee is not satisfied with the outcome at stage one and what outcome s/he would wish to see by taking the complaint to stage two. The stage 2 hearing will be a review of the stage 1 decision on the basis of one or more specified grounds. It will not be an opportunity for the employee to re-run the original complaint.

The line manager will send a copy of the pro-forma to the local human resources team, who, in conjunction with the Business Manager (unless s/he is the subject of the complaint), will decide whether there are reasonable and legitimate grounds for appeal. If it is decided that there are no grounds for appeal, this will be communicated to the employee in writing by the Business Manager, together with the reason for the decision. If there are valid grounds for appeal a stage two complaints panel will be convened.

The employee will be encouraged to be represented or accompanied by a work colleague or an accredited trade union representative, who is recognised by the Council. A trade union note-taker will also be allowed to attend. The employee should make their own arrangements to be represented or accompanied by a recognised trade union official or work colleague, including notifying them of the time and venue for the hearing. Managers should always endeavour, within reason, to reach a mutually agreed date for the hearing with the employee and his/her representative. Where the employee's chosen work colleague or trade union representative is not available at the time proposed by the line manager, the employee may propose an alternative time. If the alternative time is reasonable to management and falls within five working days after the original date proposed, the line manager must postpone the hearing to that time. Postponements need not be agreed where the trade union note-taker is unavailable.

The manager who heard the complaint at stage 1 will become the management representative at stage two. It is the responsibility of the management representative to ensure that all relevant documentation is submitted to the panel and the employee, via the appropriate Human Resources team, at least five working days before the hearing. Any documents the employee wishes the panel to consider must be submitted, via the appropriate Human Resources team, at least two working days before the hearing, where possible.

The date for the stage 2 hearing should, wherever practicable, be mutually agreed. Normally this should be within ten working days of receiving the appeal notification.

The absence of a panel member other than the Chair should not prevent the hearing taking place on the arranged date. If the employee does not attend the hearing and does not provide a reason acceptable to the panel, this may be regarded by the panel as a withdrawal of the grievance.

The panel may require additional information or call third parties to attend the hearing. If further information is required the panel can adjourn the hearing, but any such adjournment should not normally last longer than ten working days and shall be confirmed in writing to the employee, stating the reasons and giving the revised timescale.

After hearing the appeal the panel will where practicable give an immediate response to the employee. If this is not achievable the employee will be given a written response, normally within a maximum time of five working days. If the panel cannot reach a consensus on the appeal, the management panel member's view will prevail. The trade union panel member may present a different view, which will be included in the written response.

This will conclude the formal internal process.

[4] Complaints Post Employment:

As far as practical, employee complaints should be concluded prior to the end of any employment, this is particularly important where the complaint relates to the termination of the contract itself, e.g. redundancy selection, the cessation of a fixed term contract. Where this is not practical the complaint will last beyond the end of employment. An employee's submission of a complaint and the employer's handling of that complaint will be considered in any employment tribunal claim made by the employee.

Where the employee has left employment the Council's standard procedure will apply unless the parties have agreed in writing that the modified procedure, (described below), rather than the Council's standard procedure shall apply. Typically, this will apply -

- Where it would be unreasonable to apply the standard procedure, including attending meetings, when no ongoing employment relationship exists.
- The Council was not aware of the grievance before employment ended, or the while the employer was aware of the grievance the standard employee complaint procedure had not started, or it was unreasonable for it to be completed by the time that the employment ended (i.e. if an employee had submitted a complaint pro forma but it would not have been possible to hear the complaints in the timescale within the Council's procedure).

In these instances the modified procedure will apply.

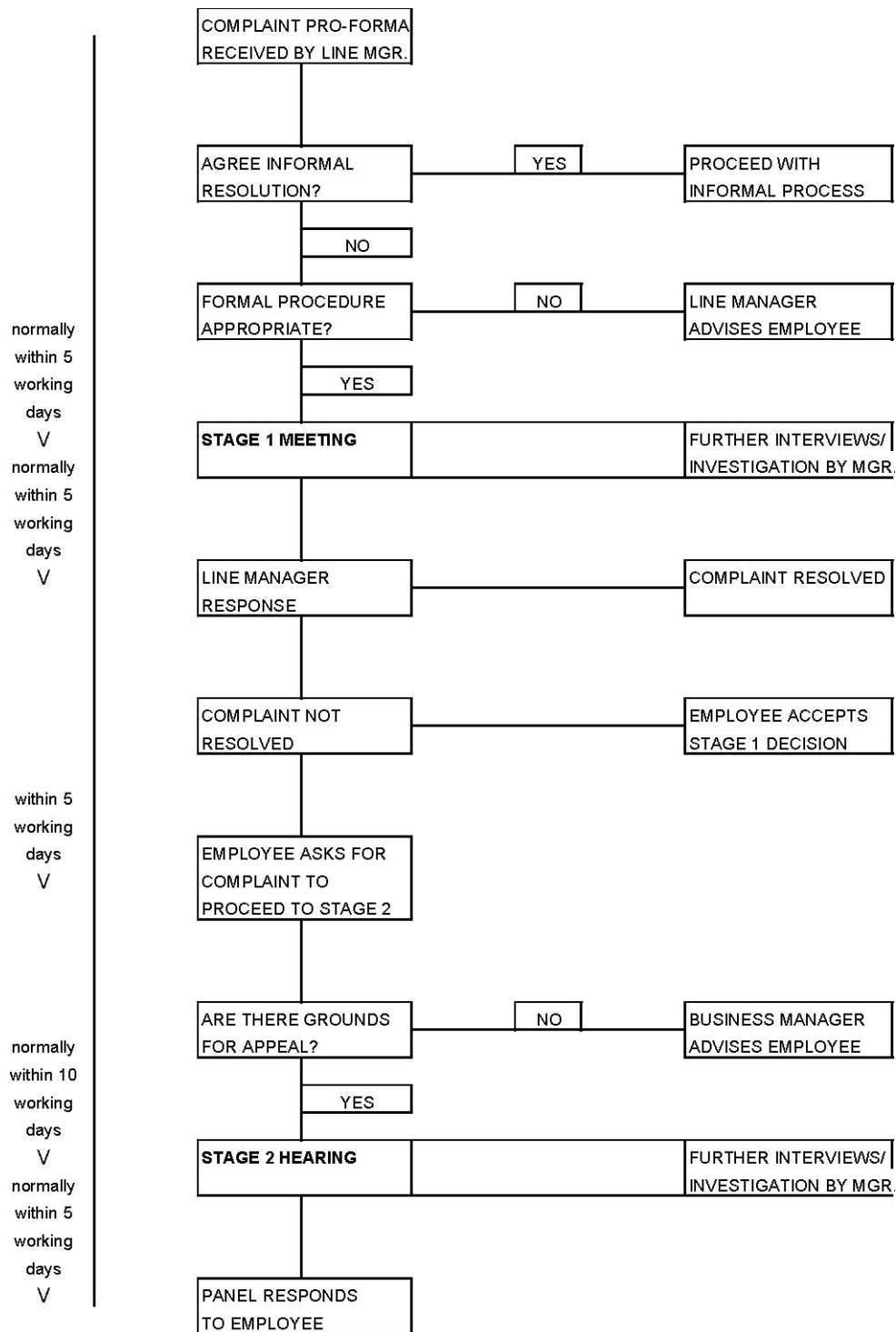
The modified procedure is: -

Step 1	Ex-employee details in writing nature of alleged grievance.
Step 2	The ex-employee's manager will respond in writing (unless this is a matter that is not normally considered by the employee's immediate line manager, see guidance note below).

It is essential that step 2 is completed within 28 days from when the alleged grievance was submitted. If the Council fails to complete the procedures, any award could be increased at an Employment Tribunal.

[5] FLOWCHART:

Special circumstances apply where a complaint extends beyond the end of employment or a complaint is raised post employment, see procedure above.



[6] Guidance Notes:

The following guidance notes have been prepared to accompany the Individual Employee Complaints Procedure:

1. [General approach to considering employee complaints](#)
2. [Issues excluded from consideration under the employee complaints procedure](#)
3. [Representation](#)
4. [Timescales](#)
5. [Informal processes for resolving employee complaints](#)
6. [Interface between the employee complaints procedure and specific situations](#)
7. [Conducting a stage 2 appeal hearing](#)
8. [Record keeping and monitoring](#)
9. [Legal principles](#)
10. [Definitions](#)
11. [Manager's checklist](#)
12. [Modified Procedure](#)

1: GENERAL APPROACH TO CONSIDERING EMPLOYEE COMPLAINTS

Each employee is different, with a unique set of values, needs and opinions. Managers and employees sometimes have different aims, expectations and standards. Inevitably there will be times when conflicts occur. If such a conflict is felt to a significant degree, it may lead to a grievance, which in turn could significantly impact on the smooth functioning of the business unit and the Council.

The potential that employees' unresolved complaints can have on performance means that they cannot be ignored. If not handled correctly and sensitively they may grow into a problem that is disproportionate to the original complaint. Complaints therefore cannot be ignored, and they are unlikely to go away.

Regardless of the perceived merits of a particular complaint, they usually reflect genuine dissatisfaction about some aspect of the employee's employment or perhaps a feeling that their expectations have not been met. Resolution must be about recognising and accepting that these feelings exist and working with the employee for a successful outcome.

Managers responsible for managing the employee complaints process should approach it as an objective method of resolving differences and avoiding or removing conflict. Concepts of "winning" and "losing" should be avoided. Meetings and hearings should be structured in such a way that the facts can be established and all participants have an opportunity to state their views.

2: ISSUES EXCLUDED FROM CONSIDERATION UNDER THE EMPLOYEE COMPLAINTS PROCEDURE

The procedure is available to employees who raise a complaint relating to their employment not later than 28 days after the act or omission complained of or no later than 28 days after the last act or omission if the complaint related to a series of linked events.

An employee cannot use the employee complaints procedure to complain about the Council's corporate policies and procedures unless s/he is alleging that the effect of a policy or procedure is discriminatory on the grounds of age, sex, race or disability. A complaint may be allowed, however, if it is a complaint about the way the relevant procedure has been applied.

Similarly, it is not appropriate for employees to use the employee complaints procedure to avoid attending management meetings (including disciplinary or capability investigations or interviews, sickness absence management counselling interviews and supervision or guidance interviews), which form part of the normal management process.

Neither is the employee complaints procedure available to employees where there are other formal mechanisms for resolving disputes. These include:

- matters covered by collective bargaining arrangements between the Council and the trade unions;
- appeals against job evaluation and grading issues;
- appeals against non-award of salary increment under the performance management process; and
- disciplinary or capability issues, including appeals.

In addition, any vexatious, trivial or otherwise excessively unreasonable complaint will not be heard under the employee complaints procedure. If necessary, the line manager should take specific advice from the local human resources team on whether a complaint falls within this category. In the event of a dispute the final decision will rest with the Head of Human Resources.

Managers should note that many complaints, even when raised formally, may be capable of being resolved informally or through mediation. Employees should therefore be encouraged to consider the use of such informal processes in the first instance as an alternative to invoking the formal employee complaints procedure.

3: REPRESENTATION

Throughout this process employees raising a complaint have the right to be represented or accompanied by an accredited trade union official or a work colleague. An accredited trade union official has the right to be represented by an appropriate full-time official of that trade union if s/he raises a complaint.

The work colleague or trade union representative may also address the meeting or hearing and confer with the employee but may not answer questions on their behalf.

Every endeavour will be made to release representatives to enable them to attend meetings and/or hearings. Securing a representative and informing them of the time and place of the meeting or hearing is, however, the responsibility of individual employee.

Although every endeavour will be made to facilitate the attendance of the representative, including if appropriate re-arranging the meeting or hearing date, the line manager or panel have the ultimate right to commence and continue with a meeting or hearing, even when a particular representative is not available, so long as the employee's statutory right (below) has been adhered to.

Where the employee's chosen work colleague or trade union representative is not available at the time proposed by the line manager or panel, the employee may propose an alternative time. If the alternative time is reasonable to management and falls within five working days after the date originally proposed by the line manager or panel, the line manager or panel must postpone the meeting or hearing to that time.

Employees are entitled to reasonable time off work to consult their trade union representative about their complaint. Prior permission must, however, be sought from their line manager before they absent themselves from the workplace.

4: TIMESCALES

It is important to deal with employee complaints in a timely fashion. Below are the optimum time scales for dealing with these issues and these should be adhered to in the majority of cases. Where, for legitimate reasons, they cannot be met, a revised time scale will be agreed with the employee.

Complaint received, investigation and response within	5 working days
Any investigation necessary within	10 working days
Formal written response within a further	5 working days
Application to appeal	5 working days
Appeal hearing	10 working days
Formal written response	5 working days

The timescale from receipt of a complaint pro-forma to confirming the outcome of the meeting with the line manager at stage 1 is thus normally up to ten working days. Whilst all reasonable efforts should be made to meet these timescales, the line manager may vary them when there are valid reasons for doing so. These may include:

- intervening rest days, holidays or sickness absence;
- the need to seek advice or further analysis of the facts;
- the need to interview witnesses or other third parties;
- the need to obtain and review additional documentation; and
- the need to undertake further investigation.

Any delay deemed necessary by the line manager should normally not exceed ten working days and will be confirmed in writing to the employee, stating the reasons and giving the revised timescale.

The timescale from notification by the employee for the complaint to proceed to stage 2 of the procedure to the outcome of the hearing at stage 2 is normally up to fifteen working days. Again, whilst all reasonable efforts should be made to meet these timescales, the panel at the stage 2 hearing may vary them where there are valid reasons for doing so (see above).

Similarly, any delay deemed necessary by the panel at the stage 2 hearing should normally not exceed ten working days and will be confirmed in writing to the employee, stating the reasons and giving the revised timescale.

5: INFORMAL PROCESSES FOR RESOLVING EMPLOYEE COMPLAINTS

Notwithstanding an employee's right to invoke the employee complaints procedure, managers should always try first to seek to resolve complaints informally.

A number of alternative methods exist for this purpose and managers should be aware of them and prepared to seek the employee's agreement to explore their use. The approaches outlined below are designed to constructively re-build working relationships, reduce the need to use formal processes and hopefully avoid any conflict escalating. The following list is not intended to be exhaustive but merely indicative of some of the options available to managers:

Re-setting Standards of Behaviour –

Many complaints involve the breakdown of inter-personal relationships. Sometimes colleagues or managers may not realise that their behaviour may be causing offence. In such circumstances it may be appropriate to arrange a meeting of team members when acceptable standards of behaviour can be discussed and re-set. Managers may wish to undertake such an exercise in a formal, facilitated session, in which case they should seek advice from their local human resources team.

Transfer –

Occasions may occur when it appears that a relationship has irrevocably broken down. In such circumstances it may be appropriate for consideration to be given to moving the affected employee to another post. It must be stressed, however, that any such transfer should only proceed with the agreement of the employee concerned. The individual must be advised that if a suitable alternative position cannot be identified and they decline to remain in their substantive post, the matter may be referred to a capability panel. If the manager's behaviour is a significant contributory factor, consideration may be given to appropriate action, including, if necessary, disciplinary, being taken against the manager.

Mediation –

The ACAS Code of Practice promotes the use of an independent third party or mediator to help with resolving disciplinary or grievance issues. ACAS view mediation as a voluntary process where the mediator helps those in dispute attempt to reach an agreement. The mediator leads in the process of seeking to resolve the problem, but any agreement comes from the two parties and not the mediator.

Whilst mediation has been part of the Councils approach to conflict resolution for some time, we have reached agreement with the Southwark Mediation Centre, a local independent service, to deliver this function through a contractual arrangement.

As an employer we are looking to focus on the future and on rebuilding relationships where disagreements and conflict occurs at work. Mediation should be seen as a safe, confidential, non-adversarial and non-confrontational approach to dealing with workplace difficulties. It is not suitable if there is a desire for someone to decide on the 'rights and wrongs' of an issue or there is a serious issue that should properly be addressed through the disciplinary process. The mediation service would help willing volunteers to find the best way forward without feeling compromised; it would not take sides, but instead help focus on the future rather than the past.

Where mediation is considered appropriate the HR team would approach the other parties seeking their agreement to the process which is voluntary.

The mediator acts as a facilitator in supporting the parties to reach their own solution or way forward. If mediation is considered appropriate, the manager should seek advice from their local human resources team.

6: INTERFACE BETWEEN THE EMPLOYEE COMPLAINTS PROCEDURE AND SPECIFIC EMPLOYMENT SITUATIONS

Redundancy -

Employees may raise an appeal at any stage of the redundancy or redeployment process. This is a contractual right and it is therefore essential to allow these appeals to go ahead. If these rights are infringed, any subsequent dismissal is likely to be unfair. In redundancy situations, once notice to terminate an individual's employment has been given, it is particularly important to abide by the timescales laid down in the employee complaints procedure. If a complaint is in connection with selection for redundancy the stage 2 panel Chair must be someone who is independent of the redundancy decision-making process. Further, it is essential that the manager who made the redundancy decision attends the stage 2 hearing to explain the basis for that decision. All reasonable steps must be taken to hear and conclude a complaint before the employee's last day of service. In very exceptional cases where this is not possible, arrangements should be made to hear and conclude the complaint as soon as is practicable after the employee has left the Council's service. It may be appropriate in some circumstances to extend the employee's contract of employment until the complaint has been concluded.

Fixed Term Contract / Limited Engagement

At the point at which the end of a fixed term contract is considered, or as a pre-determined end date approaches, the following procedure must be followed. The timing needs to be reasonable to allow the employee to raise a complaint/appeal (as described below) and for this to be considered in accordance with the [Council's standard employee complaints \(grievance\) procedure](#).

- Notify the employee in writing of the reasons for the termination of the contract. This should include inviting the employee to a meeting, at which they may be accompanied, to discuss the proposed termination.
- *(Notification will only apply to employees who will have 1 year's service at the point of termination, though staff can raise a complaint at any point in their employment)*
 - Following the meeting notify the employee of the decision and offer the right of appeal, via the standard employee complaints (grievance) procedure.
 - If the employee wishes to appeal they must raise an employee complaint and refer to their manager within 5 working days of receipt of the letter.

TUPE transfer -

If an employee transfers from or to another employing organisation under the TUPE Regulations, the individual retains the right to have access to an employee complaints procedure that is equivalent to that which applied in the previous organisation. The new employer must hear any outstanding complaint, although every effort should be made to determine outstanding employee complaints before the transfer takes effect.

Complaint against immediate line manager -

It is normal practice for the employee's immediate line manager to hear an employee complaint at stage 1. This would not be appropriate, however, if the complaint concerned alleged unacceptable conduct of the line manager towards the employee. In such circumstances another manager may be asked to carry out the investigation. Advice should be sought from the local human resources team.

Discipline and capability -

The submission of a complaint by an employee subject to disciplinary or capability action will not automatically suspend the application of the relevant procedures. Where appropriate, a complaint that is connected with disciplinary or capability action should be dealt with as part of that process and not pursued through the [employee complaints procedure](#).

Where the employee believes that disciplinary / capability action being contemplated, or taken, is unlawfully discriminatory or is motivated by reasons other than conduct or capability, the employee can raise a grievance. If the employee raises this grievance in writing at any stage before the appeal stage of a dismissal, this can be dealt with as part of the disciplinary/ capability procedure, thus avoiding confusing and unnecessary duplication. However, if the employee raises the complaint only after the disciplinary procedure has finished and it is on substantial new grounds then it will be necessary for the staff complaints procedure to be completed in full.

The employee complaints procedure, including any related investigations, is not in itself a part of the disciplinary or capability process. It should be noted, however, that the outcome of a complaint may lead to disciplinary action being taken where there are justifiable grounds for doing so.

Where a manager hearing a complaint considers that there is sufficient evidence to support an allegation of misconduct (which may include discrimination, harassment, victimisation or bullying) they can recommend that the matter is referred for further investigation and, if appropriate, to a disciplinary hearing. Any ensuing disciplinary action can only be taken in accordance with the Council's disciplinary procedure – the employee complaints procedure itself cannot deliver a disciplinary sanction.

The potential for disciplinary action to follow an employee complaint is greater when the complaint relates to discrimination, harassment, victimisation or bullying. Managers hearing such complaints should advise all employees involved that disciplinary action may be a recommendation.

[Back to top](#)

Whilst there can be no victimisation against any employee for making a complaint in good faith, malicious accusations against a work colleague or a manager may lead to disciplinary action.

Employment Tribunals -

Although employees can take alleged breaches of their employment rights directly to the Employment Tribunal, such tribunals would expect that before they do so internal processes are used and exhausted, some exceptions apply. Unless they are, tribunals may reason that an employee has not invoked their employment rights under the terms and conditions of their employment and exclude a claim.

Sickness absence management –

If an employee goes on long-term sickness absence after submitting an employee complaint it may in some cases be unrealistic to hear the complaint whilst the employee is absent, although all reasonable steps should be taken to do so. If necessary, these steps could include home visits or a request for a detailed written submission. Alternatively, and by agreement with the employee, their trade union representative may present their case. As there may be a link in some cases between the complaint and the sickness absence, a speedy resolution of the complaint may effect an earlier return to work. Advice on how to proceed in such cases should be sought from the human resources team

Recruitment and selection -

Complaints from internal candidates arising from recruitment and selection exercises will be heard and determined by the recruiting department/business unit.

Collective/Group complaints –

The employee complaints procedure is intended to be a mechanism where individual employees can raise concerns relating to their employment. There may be occasions, however, where a complaint pro-forma is submitted signed by several employees. In these circumstances the line manager needs to consider how to deal with the complaint. If one or more of the signatories has no direct involvement in the particular issue complained of, there should be no justification for allowing those employees to pursue the complaint but if more than one employee is affected by the complaint, the matter can proceed either as an individual complaint with the outcome being applied to the other employees or, if appropriate, through the collective bargaining arrangements.

An individual employee, however, may reserve the right to have his/her complaint dealt with separately.

Complaints of harassment –

When a manager receives a complaint alleging harassment s/he must treat it as a potential disciplinary matter. It is particularly important in such cases for appropriate standards of confidentiality to be observed and for the profile of the investigating manager to be sensitive to the nature of the complaint. The investigation must be completed within a reasonable timescale and feedback on the outcome of the original employee complaint given as speedily as possible. Where the investigation does not result in disciplinary action being taken and the employee who made the original complaint is not satisfied with this outcome, s/he will have access to the employee complaint procedure. Please refer to the [Respect at Work Policy for further guidance.](#)

7: CONDUCTING A STAGE 2 HEARING

The panel will:

- introduce themselves and ask others present to do the same;
- check that everyone has the same papers;
- explain the way the hearing will be conducted, including any time constraints;
- instruct that any questions must be put through the Chair;
- advise that in certain circumstances if the grievance is upheld, disciplinary action may be taken against the perpetrator and notes of this hearing may be used in support of the case;
- advise that should it become necessary to adjourn to undertake further investigation a target timescale for this will be determined at the hearing; and
- advise that if any other third parties have to be interviewed, this will not be done in the presence of the employee, with the exception of any managers who took relevant decisions in cases involving redundancy selection.

Procedure:

- the employee will introduce their submission, explain the relevance to the complaint and why they are dissatisfied with the stage 1 outcome;
- the panel may ask questions during or after the employee's presentation;
- the management representative may ask questions, through the Chair, at the end of the presentation;
- the management representative will respond and the panel may ask questions during or after the presentation;
- the employee (or representative) may ask questions, through the Chair, at the end of the presentation;
- the panel will have a final opportunity to clarify any points before adjourning the hearing to consider the complaint.

Panel's deliberations:

The panel will consider and examine what was said by both parties during the hearing and any written submissions (including the original complaint pro-forma, any statements from third parties and the stage 1 decision letter) and consider whether they have sufficient information to reach a decision. These deliberations and the conclusions drawn from them must be properly recorded.

If further investigation is necessary, the hearing will be resumed and the parties to the complaint so advised. The panel will agree what further information is needed and how it should be obtained.

This will be notified to both parties and a target date for the gathering of the additional information needed will be set, taking account of the optimum timescales contained in the procedure and guidance notes. If the panel are confident that they have sufficient information to reach a decision, that decision shall be given orally to the parties wherever possible and confirmed in writing within five working days. If the complaint concerns a third party, they must also be advised of the outcome.

8: RECORD KEEPING & MONITORING

It is essential that accurate and contemporaneous records of employee complaints are maintained at all stages of the process, including any initial informal process. These records may prove invaluable should the complaint progress through the procedure or move outside the Council or if an issue of consistency is raised.

Records should be secure and confidentiality must be maintained. Records should include:

- the original complaint pro forma;
- details of any informal action discussed, proposed or taken prior to the stage 1 meeting;
- details of any investigations and interviews undertaken by the line manager at stage 1;
- correspondence with the employee and/or trade union representative in respect of arranging a suitable date for the stage 1 meeting;
- full details and correspondence relating to any delays and re-arranged dates for the stage 1 meeting;
- an accurate note of the stage 1 meeting;
- any statements from third parties;
- any input from others, e.g. Human Resources, Legal or senior managers;
- the line manager's decision letter and how the decision was arrived at;
- correspondence with the employee and/or trade union representative in respect of arranging a suitable date for the stage 2 hearing;
- full details and correspondence relating to any delays and re-arranged dates for the stage 2 hearing;
- accurate notes of any stage two hearing (need not be verbatim);
- any statements from third parties;
- notes of the panel's deliberations;
- the panel's decision letter and how the decision was arrived at; and
- the employee's subsequent comments and any discussion if an oral response is given.

The notes of the stage two hearing should be agreed and signed by both panel members.

Formal notes of the stage 1 meeting and the stage 2 hearing will be kept and will be made available equally to both sides in a timely manner. Hand-written notes taken by the manager or other panel members, advisers, etc, if they exist, will not be disclosed to the employee, their trade union representative or any third party unless required by an authorised body, such as an employment tribunal.

Departmental HR Managers are responsible to Chief Officers for maintaining suitable monitoring records and reports and for keeping employee complaints activity within the department under review.

9: LEGAL PRINCIPLES

There is a legal requirement to provide employees with a statement of their written particulars of employment, the person the employee can seek redress from for any grievance relating to their employment, and the manner for doing so. By implication, employees have a statutory right to raise a grievance and have that grievance heard and dealt with. The Individual Employee Complaints Procedure is incorporated into the Council's contracts of employment and employees therefore have a contractual right to raise a complaint and to have it heard as quickly and locally as possible.

All forms of discrimination, including harassment and victimisation on the grounds of race, sex, disability, sexuality, age or religious beliefs contravene the Council's Equal Opportunities and Diversity Statement.

Additionally, a contract of employment places a duty of care on the employer to provide a suitable environment in which to work. To a great extent this refers to the physical environment, but it also includes freedom from stress and other obstacles to a reasonable working environment. Whilst such a duty on the employer is generally proactive, there is also a responsibility on the employer to react to concerns raised by employees.

Employers are vicariously liable for discriminatory acts, including harassment, carried out by employees unless the employer can show that they took all reasonable practical steps to stop the occurrence of the act. An employer can no longer necessarily rely on the defence that an employee was acting outside the course of their employment when carrying out an act of discrimination. Please refer to the [Councils policy on Violence, Aggressive Behaviour and Harassment towards Employees](#)

The Employment Act 2008 provides a statutory right for a worker to be accompanied by a work colleague or an accredited trade union official during certain grievance hearings (defined as hearings concerning the performance of a duty by the employer in relation to the worker). The work colleague or trade union official may also address the meeting and confer with the worker but may not answer questions on their behalf.

Companions must be permitted time off during working hours so as to accompany a fellow worker, and in respect of trade union officials, these functions are to be treated as trade union duties (for which there is a right to paid time off work under the Trade Union and Labour Relations (Consolidation) Act 1992. Where the worker's chosen representative is not available at the time proposed by the employer, the worker may propose an alternative time. If the alternative time is reasonable (to management) and falls within five working days after the date proposed by the employer, then the employer must postpone the hearing to that time.

10: DEFINITIONS

Harassment -

For the purpose of this policy, harassment is defined as:

Including any unwanted abuse, advances, or behaviour which causes an individual to feel threatened, humiliated, patronised, distressed or harassed. Action can also be considered harassment if it impairs an individual's job performance, undermines their job security or causes a threatening or intimidating environment. Harassment may be deliberate or unconscious, a repeated action or an isolated incident. In cases of harassment, the impact of the behaviour is the determining factor and not the intent behind it, e.g. was the dignity of the person affected? It is also worth noting that the conduct can be physical, verbal or non-verbal.

Managers should be aware that an employee's perception of whether or not they have been harassed is an important factor that must be accorded proper importance when dealing with allegations of harassment.

The fact itself that disciplinary or capability action is taken against an employee as part of legitimate management action would not construe harassment. Where a complaint of harassment is raised as part of or connected to disciplinary or capability action, the matters of complaint will be dealt with as part of the considerations of the case and not through a separate mechanism.

Please refer to the [Respect at Work Policy](#) for further guidance.

Discrimination -

For the purpose of this procedure, discrimination is where a person is treated less favourably than another on the grounds of race, gender, disability, sexuality, age, religious belief, marital status, class or trade union activities.

Indirect discrimination occurs where a requirement or condition applies equally to everyone but:

- the proportion of one racial group or gender who can comply with it is considerably smaller than the proportion of people not of that racial group or gender; and
- which cannot be justified: and
- which is to the detriment of that person because they cannot comply with the condition.

Victimisation -

Victimisation is a form of harassment that occurs when a person is treated less favourably than another person for asserting their statutory rights.

11: MANAGERS' CHECKLIST WHEN HANDLING AN EMPLOYEE COMPLAINT

Listen -

- Deal with the complaint on a one-to-one basis (although either side can be accompanied)
- Conduct the meeting in private, having ensured against interruptions
- Avoid inhibiting the free flow of information
- Interrupt only to clarify or bring out further information
- Avoid becoming involved in an argument or debate
- Demonstrate good listening skills and confirm that facts are understood
- Leave the employee feeling respected and valued
- Make notes, clarify and summarise so both parties are clear they are discussing the same issues
- Record feelings as well as facts
- Do not be judgmental

Explore -

- Is the complaint valid?
- Establish whether the complaint concerns discrimination, harassment, victimisation or bullying (please refer to the [Respect at Work Policy](#))
- Try to establish the root cause
- How did it come about?
- Explore whether the complaint can be resolved informally
- Look at the background and any relevant peripheral issues
- Examine the likely impact, both on the individual and team, and the effect on performance and costs
- Is further evidence or investigation required?
- Examine the possible solutions and ask what the employee is seeking as a solution

Response -

- A brief adjournment of the meeting before the decision is announced can sometimes create a good impression and offers time for reflection
- Respond within procedural time scales
- Responses should be clear and unambiguous
- Consider what the impact or repercussions of any decision might be
- A decision can uphold the complaint in full or part, or not uphold the complaint in full or part or offer some form of compromise
- Explain in detail any reasons for not upholding a complaint
- Follow up any oral response in writing
- If the complaint is not upheld, record in the decision letter the employee's right to take the complaint to stage two. Ensure that the employee is aware of the grounds needed for an appeal, i.e. an appeal cannot be a re-hearing of the original complaint

12. MODIFIED PROCEDURE

1. The modified (two-step) grievance procedure will apply in circumstances where the standard grievance procedure would otherwise apply **but where the employment has ended** and *either*:

- the employer was not aware of the grievance before the employment ended; or
- if the employer was so aware, the standard grievance procedure had not started or could not be completed by the time the employment ended¹; and
- the parties must have agreed in writing that the modified, rather than the standard, grievance procedure shall apply.

¹. In this instance the procedure will have deemed started but not completed if an employee had submitted a complaint pro forma but it would not have been possible to hear the complaints in a reasonable timescale in accordance with the Council's procedure.

2. The modified procedure is applicable in such cases as it would be unreasonable to oblige the parties to follow the standard procedure, including attending meetings, where there is no ongoing employment relationship and the parties have no interest in following the procedures, and where they are in mutual agreement on this point.
3. The modified procedure is: -

Step 1	Ex-employee details in writing nature of alleged grievance.
Step 2	The ex-employee's manager will respond in writing (unless this is a matter that is not normally considered by the employee's immediate line manager, see guidance note above).

It is essential that step 2 is completed within 28 days from when the alleged grievance was submitted. If the Council fails to complete the procedures, any award made in a tribunal case could be increased.