

Employee Grievance

This document outlines the Scottish Prison Service Policy in relation to Grievance

Published by Human Resources, Corporate Services

Published 17 February 2017

Unlocking Potential. Transforming Lives.

Policy Number:

HR0029/v001

Directorate Owners:

Corporate Services

Policy Scope:

All Scottish Prison Service Employees

Links to Other Policies:

[SPS Whistleblowing Policy](#)

[SPS Equality, Diversity and Human Rights Policy](#)

[SPS Disciplinary Policy](#)

Approved by:

Head of Human Resources

Effective date:

17 February 2017

Review Date:

17 February 2020



Policy Content

1.0 Introduction.....	1
2.0 Aim.....	1
3.0 Policy Statement.....	1
4.0 Scope.....	2
5.0 Types of Grievances.....	3
5.1 Working Conditions and Application of SPS Policy.....	3
5.2 Professional Relationships.....	3
5.3 Unacceptable Behaviour.....	4
5.4 Inappropriate Use of the Grievance Policy.	4
5.5 Number of Times a Grievance can be raised.....	4
6.0 Employee Support.....	4
6.1 The Right to be Accompanied.....	5
7.0 Mediation.....	5
8.0 In Advance of Entering the Formal Grievance Procedure.	6
9.0 Employee Grievance.	6
9.1 Timescales.....	6
9.2 Raising a Formal Grievance.	7
9.3 Employee Grievance Outcome.....	7
10.0 Appeals.	8
11.0 Disciplinary Action Arising from a Grievance.	10
12.0 Record Keeping and Documentation	10

1.0 Introduction

This policy and accompanying procedures sets out the manner in which the Scottish Prison Service (SPS) will respond to grievances from employees within the organisation.

A grievance is a concern, problem or complaint that an employee raises with their employer about a matter related to his or her employment. For example, unacceptable behaviour, working conditions, management decisions or the application of policies and procedures.

Other complaints may be considered public interest disclosures, which most likely should be dealt with under [SPS' Whistleblowing Policy](#). Such complaints include:

- A criminal offence;
- A failure to comply with a legal obligation;
- The endangering of an individual's health and safety;
- Damage to the environment; or
- Deliberately hiding information that might show any of the above.

This policy and accompanying procedures replaces the Grievance Policy and Procedure 2004 and SPS' Unacceptable Behaviour, How to Challenge & Change Policy 2002, and any other previous guidance.

2.0 Aim

The aim of SPS' Grievance policy is to address and, if possible, resolve employee grievances promptly at the earliest possible point, and at the lowest possible level.

3.0 Policy Statement

SPS believes that all employees should be treated fairly and with respect, and recognises that on occasion employees may want to raise a grievance relating to their employment.

The purpose of this policy is to encourage open communication between employees and their managers to ensure that issues arising during the course of employment

can be expressed and, where possible, resolved quickly, as close to the point of origin as possible and to the satisfaction of all concerned.

SPS is committed to taking the concerns of its employees seriously and will provide support for employees who feel genuinely aggrieved.

4.0 Scope

This policy has been developed by management and the Trade Union Side (TUS) working in Partnership. This policy applies to all employees regardless of the nature of their contract of employment.

This policy and procedure covers the requirements of the Employment Rights Act, Employment Relations Act, Employment Act, the Equality Act and the ACAS Code of Practice on Disciplinary and Grievance Procedures. It also draws on examples of good practice external to SPS. This policy is also compliant with the Data Protection Act.

Issues that are the subject of collective negotiation or agreement with the TUS will not be considered under the grievance procedure.

Where a grievance is concerned with an existing policy and procedure which contains an appeal mechanism, it will be passed to an appropriate manager to be dealt with using the relevant policy. Equally, a grievance that has previously been the subject of an appeal system under another policy will not be deemed competent to be heard as an employee grievance under this policy.

Non-SPS employees should raise grievances with their own employer. In the event that a non-SPS employee has a grievance which relates to a protected characteristic, reference should be made to SPS' Dignity at Work policy.

5.0 Types of Grievances

Grievances are generally concerned with:

- Working conditions and the application of SPS policy;
- Dignity at Work, which covers all complaints relating to discrimination, victimisation, harassment and bullying - refer to the [Dignity at Work policy](#) for further information;
- Professional relationships, which covers all other complaints relating to any other type of unacceptable behaviour not detailed in the Dignity at Work policy.

5.1 Working Conditions and Application of SPS Policy

Complaints regarding the interpretation and/or application of policies can be at a national and/or local level. If an individual disagrees with the principles of a policy or considers the policy to be flawed, the appropriate action would be to raise this with their Trade Union Representative or with the policy owner.

Where an individual believes that the policy has been wrongly applied to them, this could be the subject of an employee grievance.

Line managers are required to communicate with employees on a regular basis, and make decisions that affect them. They also have a responsibility to monitor and evaluate performance, attendance and conduct. These are important and legitimate management functions and it may be that sometimes decisions may not suit every individual concerned. Such decisions will nonetheless be legitimate as long as they are reasonable, objectively justifiable and do not discriminate unlawfully.

5.2 Professional Relationships

SPS is committed to ensuring that **all** instances of unacceptable behaviour, from any employee or manager at any level of the organisation, are challenged and addressed appropriately. However, it is acknowledged that sometimes things can go wrong and complaints or objections relating to the actions and/or behaviour(s) of workplace colleagues can be the subject of an employee grievance.

Many cases of professional relationship grievances can be satisfactorily resolved if the issues are addressed before they escalate. This is particularly so when the employee feels that their objective is to ensure a pattern of behaviour stops or a type of behaviour is not repeated.

5.3 Unacceptable Behaviour

Unacceptable behaviour can range from unintentional misunderstandings and lack of awareness to deliberate and malicious acts. Broadly speaking, unacceptable behaviour falls into four categories: discrimination, harassment, victimisation and bullying.

All employees are expected to conduct themselves in accordance with the Mission, Vision and Values of SPS. In short, this means we must all value everybody's individual contribution to our business, treating each other with dignity and respect and ensuring equality of opportunity irrespective of protected characteristics.

5.4 Inappropriate Use of the Grievance Policy

The process for managing employee grievances can be resource intensive. Employees therefore should be aware that any misuse of the Grievance policy may lead to disciplinary action being taken under SPS' disciplinary processes. For example, if a grievance is found to be vexatious or malicious or where there is a continued pattern of unfounded complaints by the same employee.

5.5 Number of Times a Grievance can be raised

An employee cannot raise an additional grievance related to the same specific matter once the grievance process has concluded and the right of appeal exhausted. Rewording the original point of concern will not be deemed a competent grievance. The line manager, in consultation with the Human Resource Business Partner (HRBP), will decide on this matter. An employee may appeal against this matter directly to the Head of HR Operations, who will reach a decision in consultation with the TUS Secretary or Chairman. This decision will be final.

6.0 Employee Support

It is recognised that grievances can be a difficult and upsetting experience for both the employee raising the grievance and also any other employees whom a complaint is made against. There are a number of support and advice avenues available such as:

- Human Resources Team,
- The TUS or Trade Union Representatives,
- Local Equality & Diversity Manager or Officer,

- Employee's line manager,
- A senior manager,
- [The Employee Assistance Programme](#),
- The relevant Employee Network (contact details are available from the [Equality and Diversity SharePoint site](#)).

6.1 The Right to be Accompanied

Employees have a statutory right to be accompanied by a workplace colleague, trade union official or certified trade union representative at a formal grievance meeting. It is an employee's responsibility to arrange the attendance of their chosen workplace colleague, however, employees should bear in mind the practicalities of this arrangement, and that it would be prudent and practical to designate a workplace colleague or trade union official/representative who is suitable, willing and available on site rather than someone from a geographically remote location.

Employees must provide the name of the workplace colleague or trade union official/representative. This does not have to be provided in writing or within a certain timeframe. However, employees should provide enough time for SPS to facilitate attendance at the meeting. If an employee's chosen workplace colleague or trade union official/representative will not be available at the time proposed for the meeting, SPS may postpone the meeting to a time proposed by the employee, provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

7.0 Mediation

Mediation is a powerful tool which proves very effective in resolving grievances in a positive manner and is strongly supported by management and the TUS as a means of resolving conflict. Mediation should be considered as early as possible after an issue is identified.

An independent third party or mediator can sometimes help resolve grievance issues. Mediation is a voluntary process and the mediator is not there to judge but to facilitate the process of seeking to resolve the problem.

The use of mediation is not suitable in all cases, particularly where the parties do not have the power to settle the issue, or one side is unwilling or feels unable to engage in the process and using mediation will only raise unrealistic expectations of a positive outcome. Mediation can be a positive route to address and resolve

relationship challenges without escalation into a formal grievance procedure or disciplinary processes.

The aim is to let everybody involved listen, be listened to, understand and respect the point of view and perspective of others. By talking through the identified issues or behaviours, comments and actions may be put into a more understandable framework and reasonable perspective.

Both parties must agree to enter into the mediation process and mediation is confidential to the participants. Mediation can be used at any stage of an employee grievance. See SPS' [Mediation Policy](#) for further information.

8.0 In Advance of Entering the Formal Grievance Procedure

Grievances are often easily resolved informally without the need for the formal procedure and employees are encouraged to discuss any concerns with their line manager and, where appropriate, their Trade Union representative or a colleague.

Employees should focus on the root cause of the grievance, identifying what steps could be taken to achieve resolution as quickly as possible. Potential grievances could be resolved at this point, once clarity about the issue has been achieved, and no further action may be necessary. Resolving grievances informally does not mean that they are not treated seriously.

9.0 Employee Grievance

9.1 Timescales

A grievance can normally only be raised on matters which occurred within the previous three months. Where a series of incidents form the basis of the grievance, the last incident must have occurred within the previous three months.

In exceptional circumstances, a grievance may be considered out with this period. For example, in circumstances where an issue has initially been raised informally with line management, and/or via the mediation process, which occurred within the previous three months and which have taken more than three months to move to the formal stage of the procedure. Also, a grievance regarding a failure to make

reasonable adjustments for an employee who has a disability can relate to issues occurring more than three months previously.

9.2 Raising a Formal Grievance

Where a grievance is not resolved informally an employee may wish to proceed to the formal process. Employees should complete a [Formal Grievance Notice \(FGN\)](#) and submit it to their local HR Department, who will forward it to the appropriate manager. The main purpose of the formal grievance procedure is to bring an employee grievance to a conclusion as quickly as possible. The FGN should set out the full grounds for the grievance and details of the resolution being sought.

Within three working days, the HR Department, subject to availability, will acknowledge receipt of the FGN and ensure the appropriate manager will arrange a formal grievance meeting with the employee to discuss the nature of the grievance. It is the aim to host the formal meeting within ten working days from the receipt of the FGN.

Where the grievance relates to the line manager, an appropriate alternative senior manager should arrange and facilitate the meeting. If the grievance relates to the HRBP in an establishment, a senior manager in the establishment will manage the process. In cases where the line manager is a Director, then the Director will be responsible for managing the formal stage of the procedure and appeals will be forwarded to the Chief Executive (or an appropriate nominee).

In some cases, it may be appropriate for an HR representative to be consulted and to participate in the meeting.

Employees who raise a formal complaint can expect that the necessary investigations are carried out to establish the facts of the case. The employee will be invited to attend a formal grievance meeting. At this meeting the employee will be given the opportunity to state his or her case and to present any relevant additional information and to answer any questions.

Where required, the manager will adjourn the meeting and progress an investigation to gather further information and ascertain the facts as appropriate.

9.3 Employee Grievance Outcome

Prior to reaching a decision, the line manager or nominee dealing with the grievance will give full consideration to the points raised during the formal grievance meeting and any findings from the investigation. The decision will be communicated to the employee and the matter shall be deemed to be closed, pending the implementation of any actions.

Decisions will normally be communicated by the line manager or nominee to the employee within seven working days if it is in relation to professional relationship grievances or dignity at work; or within ten working days, if it is in relation to SPS policy, subject to circumstances and availability.

Where the agreed resolution to a grievance is beyond the control of the manager hearing the grievance or the HRBP/ nominee, the most appropriate senior manager will decide the best way forward to ensure implementation of any recommended actions.

The employee will be provided with an explanation of the actions that will be taken and informed of the timescales involved. This will be recorded on the FGN.

Where, following a detailed explanation of the actions and decisions taken, the employee is dissatisfied with the outcome of the grievance, this will be recorded on the FGN, signed and dated by the manager hearing the grievance, the employee and the HRBP / nominee.

An employee has the right of appeal against the decisions taken.

The employee should prepare all necessary information required for the appeal as detailed in Section 10.

10.0 Appeals

An employee intending to appeal must do so in writing within ten working days of receiving the outcome by completing a [Grievance Appeal form](#).

Mediation can still be considered at this stage, if appropriate, and will not prejudice the right to appeal. This will remain as long as any appeal is received within ten working days of the conclusion of any mediation.

The appeal form will be submitted to the employee's Governor, Branch Head, Director or nominee, copied to the establishment HRBP. The appeal, subject to availability, will be acknowledged within three working days. Where the line manager is a Director, then the Chief Executive (or another Director not previously involved) will be responsible for managing the appeal stage of the procedure.

Depending on the nature of the issues raised, the Governor, Branch Head or Director will nominate an appropriate manager to chair the grievance appeal panel.

The Governor, Branch Head, Director or nominee will, subject to availability, send an invite to the employee to attend a grievance appeal meeting within five working days of receipt of the Grievance Appeal form.

The Governor, Branch Head, Director or nominee acting as Chairperson will be accompanied by an HR Representative from out-with the employee's home establishment and a national TUS official, who will form a grievance appeal panel. Should the employee have any objection to any member of the panel, they should notify (as appropriate) the Governor, Branch Head, Director or nominee with their concerns. In exceptional circumstances and where a substantial reason exists, a replacement Governor or nominee, HRBP/nominee, or national TUS Official will be introduced.

Membership of the panel will consist of those who have not participated in the grievance at an earlier stage in the process.

The employee has the statutory right to be accompanied at the meeting by a workplace colleague, trade union official or certified trade union representative. If the employee's chosen trade union official or work place colleague will not be available at the time proposed for the appeal meeting, SPS may postpone it, provided that the alternative time is not more than five working days after the date originally proposed.

The panel will invite the employee to present their points of appeal and any relevant evidence or documentation to support the appeal. An employee may not reveal any information that has emanated from any mediation session(s), unless the employee has received the written permission of the other party/parties.

In order to ensure the panel is satisfied that it has all the relevant information it needs to make a considered decision, it may be necessary to undertake further investigations or enquiries.

The panel will retire to consider its decision.

Where possible the employee will be informed verbally of the decision of the panel on the same day of the appeal hearing. If this is not possible, then the employee will normally be informed of the decision of the panel within three working days of the appeal hearing.

The employee will normally be given a full written account of the panel's decision within seven working days of the appeal hearing and this will be attached to the grievance appeal form.

The employee may notify the Chairperson in writing if they wish to abandon the appeal at any time, in the knowledge that the original decision will be implemented. No further appeal on the issue will be allowed.

When the panel has made its final decision and decided on the appropriate action, this will conclude the grievance procedure. There is no further right of appeal.

11.0 Disciplinary Action Arising from a Grievance

In the course of managing an employee grievance, should evidence emerge that would suggest that behaviours or actions have been committed which may breach [SPS' Values](#) or any rules relating to other SPS policies, this will be fully considered by management and the appropriate action taken.

12.0 Record Keeping and Documentation

Where an employee has raised a formal grievance or grievance appeal, they should be given a written response (part of the FGN and Grievance Appeal form) following the conclusion of the process. A copy of the outcome will be kept, in line with the data protection legislation, by the local HR department in the employee's career folder for five years and copied to the employee for his or her own records.

All supporting documentation, forms and letters, can be found [here](#).

Further Information:

SPS recognises that from time to time employees may have questions or concerns relating to the Grievance Policy. In certain situations employees' rights and obligations regarding management of grievances may change. In these circumstances PS will abide by any statutory obligations.

SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate line manager in the first instance.

Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with SPS' Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

Equality Statement

SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity and human rights and to ensuring our culture, working environment, policies, processes and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.

Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible and engaging for employees.

In formatting this document, good practice principles around engagement and inclusive communications have been adhered to.

If you require this document in an alternative format please contact Human Resources.

Review and Monitoring

This policy will be reviewed every three years or sooner where applicable to reflect changing business and legislative requirements.

Human Resources Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil
Service
Management
Code



UK Legislation



EU
Legislation



ACAS



CIPD Best
Practice
