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| Midlothian Negotiating Committee for Teachers  **MNCT 16/XXX** |



Grievance Procedure

**Grievance Procedure**

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1. **Introduction**

As a Council we are committed to encouraging a positive working environment and good working relationships, leading to better performance, improved employee retention and reduced stress-related absence. While the Council recognises the need for a formal procedure, it is considered preferable to reach a solution by informal discussion and agreement as quickly as possible.

The Council strives to be resolution focussed whilst continuing to comply with the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures and the ACAS Guide on Discipline and Grievances at Work.

The agreed timescales are intended to ensure that, while the issues raised are given proper consideration, grievances are progressed without undue delay. At each stage therefore every effort should be made to respond to grievances as quickly as possible. These timescales may, however, be varied in certain mutually agreed circumstances.

The Council’s Employee Code of Conduct encourages colleagues to be respectful, to collaborate, take pride in what they do and take ownership for their actions. It also encourages a culture of flexibility, ambitiousness, creativity and excellence.

1. **Scope of Procedure**

This Procedure applies to all Teachers, and associated professionals on SNCT terms and conditions of employment.

Occasionally a collective complaint may be raised. It is agreed that this Procedure may be used to consider issues of a collective nature.

This Procedure can only be used by current employees, not by those who have left the Council’s employment. In this case the Council’s Complaints Procedure should be referred to.

Allegations of harassment or bullying will be addressed under this Procedure and for this purpose Appendix 2 details bullying and harassment as defined by the Equality Act 2010.

To resolve issues this procedure starts with informal resolution and then has four further formal steps:

* + Stage 1 - Formal;
  + Stage 2 - Formal;
  + Stage 3 – Appeal;
  + Stage 4 – SNCT (on issues relating to national terms and conditions only).

**3. Types of Workplace Issues**

We recognise that employees may wish to raise concerns from time to time. This procedure would be used to resolve issues. Examples of issues would include those detailed below, with the understanding that this is not an exhaustive list:

* Issues with terms and conditions of employment;
* Changes to working practice;
* Working relationship issues;
* Working environment issues;
* Allegations of bullying, harassment or discriminatory behaviour;
* Unfair treatment as a result of disclosing a gender based violence incident.

Conflict and disagreements at work should be dealt with quickly and effectively, with sensitivity and respect regardless of whether the allegation is raised individually or collectively.

This Procedure cannot be used to raise a grievance about the following for which there are separate appeal processes within the relevant policies and procedures:

* Disciplinary outcomes;
* Organisational restructuring;
* Flexible working requests;
* Expiry of fixed term contracts.

The Council is confident that the majority of workplace issues raised by employees are genuine and made in good faith. However, if it is found that an issue raised is deliberately vexatious or malicious this will be subject to the Council’s Disciplinary Procedure.

**4. Informal Stage**

If an employee has an issue that they are dissatisfied with, they should firstly have a discussion with their line manager to try to resolve it. Only if this has been unsuccessful should this procedure be utilised to take appropriate further steps to try to reach a resolution.

Where the Head Teacher or line manager is the subject of the grievance or is the aggrieved party, a discussion should take place with the Executive Director, Children, Young People and Partnerships. The Executive Director may nominate another senior officer to assist in resolving the grievance.

The Council strongly supports informal resolution as a means of resolving workplace issues as it normally results in a more positive outcome for all concerned avoiding the need to go through formal processes. When utilising this procedure to resolve an issue, there is an expectation from ALL parties involved that a positive contribution will be made with a focus on addressing issues in a timely manner.

There are two options available to try to informally resolve issues in the workplace issues:

* Case conference; and/or
* A facilitated conversation.

To determine the most appropriate approach to take to try to resolve the issue, the manager must discuss the available options with the aggrieved employee and his/her representative.

Case Conference

A case conference is a meeting of all appropriate individuals to the case being raised e.g. the employee, their representative, the manager and a HR representative if required. In all but exceptional circumstances, and taking into account the nature of the workplace issue(s) being raised, a case conference must be held right at the outset. This would involve an early discussion regarding the issue(s) and coming to an agreement about what the best resolution would be. The employee has the right to be represented at this discussion.

Facilitated Conversation

# Most workplace disagreements can be resolved at an early stage given the right environment for open, honest and forward looking dialogue. Often formal processes can be avoided by an effective informal intervention carried out at the right time in the right way.

A facilitated conversation is an informal process where parties meet and discuss issues in an attempt to reach resolution, gain mutual understanding and move forward in a working relationship positively.

If the conflict has been ongoing for a relatively short period of time and parties are committed to “early resolution” then this process is beneficial. Further information on ‘facilitated conversations’ is available in Appendix 5.

The facilitated conversation can be conducted by a senior manager, by one of the Council’s investigating officers or by a relevant individual as determined by the Nominated Officer.

The approach has proven to be successful in helping to minimise any long term damage to working relationships.

Further Interventions

As a result of the case conference and/or the facilitated conversation, further interventions maybe required such as:

* Coaching/mentoring;
* Mediation;
* Training;
* Relocation;
* Transfer to other policies/procedures.

Coaching/Mentoring

As part of informal resolution, coaching or mentoring could be identified as an action that will help support either or both of the parties.

Normally the coach or mentor will be identified from within the Council. The selection of the most appropriate person will depend on the individual needs and circumstances.

Coaching can help develop a greater self-awareness and appreciation of individual circumstances in a learning environment.

These situations would be on a one-to-one basis and could include the employee’s trade union representative to provide support if it is deemed appropriate by all parties.

Mediation

Mediation is a means of resolving issues and is normally effective at the early stages of a dispute. It is completely voluntary and confidential with an overriding aim of restoring and maintaining the employment relationship. Its focus is about looking forward and not determining who was right or wrong in the past.

The nominated officer will establish the most appropriate external party to carry out mediation.

The mediator will agree a safe environment where all parties can communicate and work towards restoring the working relationship.

Mediation is on a one-to-one basis and would not normally include the employee’s trade union representative.

Training

It may be that the issue can be resolved quickly by a suitable learning and development intervention that has been identified. HR can assist with this option.

Relocation

A transfer to another area within the Council can be considered on a trial basis and if deemed appropriate to the situation. This will be dependent on the availability of suitable vacant posts in other areas of the council. Any trial period would initially last for a maximum of 3 months. If successful, the employee may be offered the post on terms and conditions applicable to their existing contact. Any transfer would be by mutual agreement of all parties involved.

**Concluding the informal stage**

* A swift conclusion is anticipated to any informal grievance which is submitted and a commitment to commencing this within 7 working days is agreed between management and trade unions;
* A list of agreed actions, the owner of each action, and the timescales involved will be communicated to all parties at the end of the process for the avoidance of doubt;
* An agreed timescale to review the progress of the actions will be agreed;
* If the informal stage is not concluded to the satisfaction of the employee, the formal stage can be utilised.

Support

At all stages of this procedure it is recognised that ALL interested parties may require support. We recognise the impact participating in this policy may have on individuals and are committed to ensuring a duty of care to all parties involved and providing relevant support.

**5. Formal Procedure**

The Council and Trade Unions recognise that formal procedures must also exist. Therefore, this Procedure provides guidance on raising a formal workplace issue and details how the Council will investigate the matter, the formal hearing process and the stages of appeal.

It is recognised that some employment issues cannot be resolved informally and would immediately require to be addressed formally.

The aggrieved employee will have the right to be represented at all stages of the process by a trade union representative or workplace colleague. Legal representatives are not permitted to represent employees in grievance matters.

Formal Investigation

If deemed necessary to conduct an investigation, an investigating officer (internal or external) will be appointed by the Executive Director, Children, Young People and Partnerships or their nominee in consultation with HR.

The purpose of carrying out an investigation is to fully establish the facts. A record will be made of the responses given during investigatory interviews which will be produced as a typed statement and will be sent electronically or in hard copy to the interviewee as a record of the interview.

The parties involved will receive written correspondence from the Executive Director or their nominee confirming the nature of the investigation, supports that are available during the process and the next steps.

A full report will be prepared by the Investigating Officer for the Executive Director, or their nominee to consider at the appropriate stage of the grievance process.

Investigation reports should be written in such a way as to clearly set out the recommendations with the rationale for each recommendation. This set of recommendations can be issued to the aggrieved employee.

Stage 1 - Formal

The employee should submit a formal written statement of grievance, using the form at Appendix 1, to the Head Teacher or line manager (where Head Teacher is not the line manager). This should clearly state the nature of the grievance and the resolution sought.

Where the Head Teacher or line manager is the subject of the grievance or is the aggrieved party, the formal statement of grievance should be submitted to the Executive Director, Children, Young People and Partnerships. The Executive Director may nominate another senior officer to hear the grievance.

There may be circumstances where it would be appropriate for the grievance to be submitted directly to the Executive Director. The Executive Director may nominate another senior officer to hear the grievance. On occasion this may be a Head Teacher from another school.

The Head Teacher, line manager or nominated senior officer will convene and chair a formal grievance hearing within 10 working days (or otherwise by mutual agreement) on receipt of the written statement of grievance.

It may be necessary to appoint an investigatory officer to explore the grievance in more detail in advance of any hearing.

In advance of the hearing and where an investigation has taken place, the aggrieved employee will be issued with a set of recommendations from the investigation.

The chair of the hearing will confirm the outcome of the grievance in writing within 5 working days of the date of the hearing.

Stage 2 - Formal

Should the employee be dissatisfied with the outcome of the hearing, they have the right of appeal to the Executive Director, Children, Young People and Partnerships. In these circumstances, a statement of appeal, clearly detailing the reasons for continuing dissatisfaction, should be submitted in writing within 10 working days of receipt of outcome of the Stage 1 hearing.

The Executive Director or nominated senior officer will convene and chair a formal appeal hearing within 10 working days of receipt of the written statement of appeal. The appeal hearing will not be chaired by the same officer who chaired the Stage 1 hearing.

The chair of the appeal hearing will confirm the outcome of the appeal in writing within 5 working days of the date of the appeal hearing.

Stage 3 - Appeal

Should the employee be dissatisfied with the outcome of their appeal hearing, they have a further right of appeal to the Appeals Committee of the Council*.*

In these circumstances, a statement of appeal, clearly detailing the reasons for continuing dissatisfaction, should be submitted in writing to the Executive Director, Place, with a copy to the Executive Director, Children, Young People and Partnerships within 10 working days of receipt of outcome of the Stage 2 hearing.

A formal appeal hearing will be convened within 20 working days of receipt of the written statement of appeal.

The outcome of the appeal will be confirmed in writing within 10 working days of the date of the appeal hearing.

With the exception of the circumstances detailed in Stage 4 below the decision of the Appeals Committee will be final.

Stage 4 – SNCT Appeal

Where the employee is dissatisfied with the final decision of the local authority can be submitted to the Joint Secretaries of the Scottish Negotiating Committee for Teachers for consideration through its appeals process **if** the subject matter of the original grievance relates to the interpretation or implementation of a national agreement promulgated by the SNCT (see Appendix 2.14 of SNCT Appeals Procedure.) [click on this link](https://www.snct.org.uk/wiki/index.php?title=Appendix_2.14)

**6. General Provisions**

Status Quo Ante

In the event of a formal grievance being lodged in response to a proposed change to terms and conditions of employment and when practicable where a grievance has been lodged in response to changes to working practices or organisational structures, no change shall be made to the relevant terms and conditions of employment until the agreed grievance procedures have been exhausted.

Withdrawal

The aggrieved employee may at any stage withdraw from these procedures by giving notice in writing. In these circumstances the employee will be deemed to have abandoned the grievance and the matter will be closed.

Collective Grievances

Two or more employees who share a common grievance arising from the same circumstances shall be entitled to pursue their grievance in common by means of the procedures outlined above.

**7. Sources of Support**

Employee Assistance Programme

The EAP is a dedicated information and counselling support service available to all employees and their immediate family members on practical issues such as harassment and bullying. The number for free confidential support is 0800 243 458.

Harassment Support Officers

The Council has established a network of Harassment Support Officers (up to date list available from HR Services) across all Directorates who will be available to advise and support employees who feel that they have been harassed or bullied, or who have had a complaint of harassment or bullying made against them. The same Harassment Support Officer will not provide support to both the complainant and the alleged harasser.

Where possible both female and male Harassment Support Officers will be identified in each Directorate of the Council. Employees may choose to seek support from a Harassment Support Officer in a Directorate other than their own.

The role of the Harassment Support Officer is to:

1. Listen sympathetically to the concerns of employees and help them to identify whether the offending behaviour is in breach of this Policy;
2. Advise on the possible courses of action;
3. If requested, support the complainant in pursuing a harassment complaint; and
4. Is required to make any referrals to occupational health if deemed appropriate.

Harassment Support Officers will be employees of the Council with appropriate personal qualities who volunteer with the support of their Director to undertake this role in addition to their normal duties. No payment will be made for undertaking this work but full training is given.

Support offered by Harassment Support Officers does not replace other forms of support such as counselling, conflict resolution or training which may be offered to an employee who experiences harassment in the workplace.

Chaplaincy Service

The Council also has a Chaplaincy Service which is free to employees. A professional and confidential service of pastoral care, listening and providing supporting to staff who are facing difficult times.

To make an appointment phone 0131 441 2271 or email [info@wpcscotland.co.uk](mailto:info@wpcscotland.co.uk)

The Chaplain can also arrange to visit staff outwith the workplace.

Work Place Chaplaincy Scotland are an independent Christian organisation and offer non-religious pastoral support regardless of belief, race, gender, age or sexual orientation.

Occupational Health

The Council has procured the services of an Occupational Health provider to provide occupational health and wellbeing services to the Council. Occupational health professionals provide valuable advice and guidance to managers in relation to the impact of work on health and health on work.

A referral to occupational health can be carried out at any stage of the grievance process by the line manager or a member of the HR team if more appropriate. The referring manager must share the content of the referral form with the employee, including the questions being asked of the medical professional.

A useful guidance document has been produced which gives details of other employee supports click [here](http://hrportal/OpenDocument.aspx?id=22924149&name=Employee%20Supports%20Booklet.docx) to access this.

**8. Review & Publication of Procedures**

This document shall be available to all Teachers, and associated professionals on SNCT terms and conditions of employment. This will be available on the intranet and published on SNCT website.

The procedure shall be reviewed as required to ensure best practice and continued compliance with legislation.

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| **Name of Document** | Grievance Procedure |
| **Author** | Louise Bell, HR Business Partner |
| **Policy Ownership** | HR Manager |
| **Unit Responsible** | HR |
| **Approved by and date** | MNCT – March 2022 |
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| **Policy Lead** | HR Manager |

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**APPENDIX 1 - Formal Grievance Form**

**STRICTLY PRIVATE & CONFIDENTIAL**

Name (in caps) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Post Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Location \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| Statement of Grievance (provide full details of the issue and concerns you have and any witnesses you may have to the issue you are raising – use separate sheet if required) |

|  |
| --- |
| Action being requested (i.e. what do you want to happen as a result of raising the issue/concern?) |

|  |
| --- |
| What supports do you believe would be beneficial to you? |

# I have attached supporting documentation to this form: yes/no (delete as appropriate)

**Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**APPENDIX 2**

**The Equality Act 2010**

This Procedure aims to prevent discrimination, bullying, harassment, victimisation, intimidation and other unacceptable behaviour in relation to the following protected characteristics under the Equality Act 2010. These are:

* Age
* Sex
* Sexual orientation
* Pregnancy and maternity
* Gender reassignment
* Race
* Religion or belief
* Disability
* Marriage and civil partnership

Definition of Harassment

Harassment is defined under the Equality Act 2010 as *‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual’ .*

Harassment can take many forms, including violence, bullying and intimidation as well as more subtle forms such as ignoring an individual, undermining her/his confidence, jokes or suggestions that may be viewed as demeaning and unacceptable to the recipient. It is behaviour which hurts a person’s pride or is offensive.

Is Sexual Harassment Different?

Sexual harassment is one of the most common forms of harassment and is specifically prohibited by the Equality Act 2010, as is harassment of a sexual nature related to gender reassignment.

Definition of Bullying

Bullying is not specifically defined in law but ACAS give the following definition:

*Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.*

Bullying can be clearly distinguished from legitimate and fair criticism of an employee’s performance and behaviour at work. Criticism made after taking all the circumstances into account, if applied fairly and consistently, can be a constructive management tool. Bullying is, however, destructive rather than constructive.

Definition of Cyber Bullying

Cyber bullying is a form of bullying which is conducted via social networking e.g. the sending of detrimental texts via mobile devices or posting images of work colleagues on social media sites following work events. As this would be seen to have its origins in the workplace, the Council could be deemed to be liable.

What Is NOT Termed Workplace Bullying & Harassment

Managers are expected to lead and manage their team and this involves setting performance standards and ensuring employees understand the standards which are expected of them. However, the setting of standards which are unfair or unachievable could in itself constitute bullying and/or harassment.

# APPENDIX 3

**Model Procedure for Grievance Hearing – Stage 1 & 2**

In advance of the Hearing the employee will receive a letter inviting them to attend the Grievance Hearing. The letter will notify the employee of:

* The issue being considered at the Hearing;
* The date and time of the Hearing;
* Who the Nominated Officer and HR representative will be;
* The right to be represented by a Trade Union colleague;
* A copy of the recommendations from the investigation;
* The possible outcomes of the Grievance Hearing; and
* A copy of the Grievance Procedure

Employees will be given ten working days’ notice of the Hearing date (it can be reduced if mutually agreed), 2 days prior to the hearing the employee can make additional submissions.

At the Hearing the following process will be followed:

* The "Nominated Officer" should introduce those present. Normally the other people in attendance will be the officer who conducted the investigation, if an investigation occurred, a representative of Human Resources, the employee concerned and his/her representative).
* The Nominated Officer should explain the purpose of the Grievance Hearing and refer to the issue being raised by the employee. The Nominated Officer should also explain the procedure to be followed during the Hearing.
* The employee and/or his/her representative should present their case to the Hearing, indicating the basis of their workplace issue and referring to any documents previously circulated.
* All parties may ask questions of the employee and his/her representative.
* The Investigating Officer should present his/her findings to the Hearing, indicating the evidence gathered and referring to any documents previously circulated.
* All parties may ask questions of the Investigating Officer.
* Throughout the process the HR representative may question the Investigating Officer, or the employee to clarify anything in relation to the law, policy or procedure.
* On completion of the presentation of the evidence, the Investigating Officer, the employee and his/her representative should withdraw, leaving the Nominated Officer to deliberate with the HR representative. If the Nominated Officer considers that any points raised by either party require further clarification, both parties should be recalled even if only one of the parties is concerned with the point(s) giving rise to doubt.
* If the Nominated Officer considers that more than a short break for deliberation is necessary, he/she should formally adjourn the Hearing.
* Normally the Nominated Officer shall call back the employee and his/her representative to announce the decision (where this is not appropriate, the decision shall be notified in writing within 5 working days).

# APPENDIX 4

**Model Procedure for Appeal Hearing**

1. **Introduction**

If an employee remains dissatisfied with the outcome of their grievance following a Stage 2 appeal, they may appeal to the Appeals Committee of the Council. With the exception of the circumstances detailed in Stage 4 of the procedures, the decision of the Appeals Committee will be final.

1. **Attendees**

The Appeals Committee is a standing committee of the Council and shall comprise nine members and will be supplemented by one Church representative from the Cabinet who will have full voting rights. Three elected members and one lay member shall form a quorum at meetings of the Appeals Committee, one of whom will chair the appeal hearing. The Sub-Committee will be supported by a clerk from Democratic Services who will provide procedural advice, administrative support and record the proceedings.

The committee may also have the services of the HR Manager (or representative) and/or a Council Solicitor. These parties will be present throughout the hearing and during the deliberation.

The parties to the appeal, namely chair of the Stage 2 appeal hearing and the Appellant, may each have one representative of their choice, if they so wish. They will be present during the whole of the hearing, except when the Appeals Committee is deliberating.

Witnesses on behalf of either party may also be present. They will only be present to give their evidence and will leave the hearing after any questioning by the other party and/or the Appeals Committee members and their advisers.

1. **Prior the Hearing**

Following submission of a written Notice of Appeal, the appellant or his/her representative shall submit the following information to Democratic Services normally within five working day:

* + a written statement indicating the nature of the appeal;
  + copies of any documents submitted by the appellant at the original grievance hearing;
  + a copy of any other documents to be placed before the Appeals Committee; and
  + the names of any witnesses to be called on behalf of the appellant.

The chair of the Stage 2 hearing shall submit the following information to democratic services normally within five working days of being notified of the appeal:

* a written statement indicating the response to the appellant’s appeal;
* copies of any documents submitted by the Council to the original grievance hearing;
* a copy of any other documents to be placed before the Appeals Committee; and
* the names of any witnesses to be called on behalf of the Council.

The Clerk of the Appeals Committee will issue the agenda for the meeting which will contain all the documents submitted by the appellant and by the chair of the stage 2 hearing, at least five days and in any event not less than three clear days in advance of the appeal hearing.

1. **Appellant’s Case**

The appellant will put his/her case to the Appeals Committee in the presence of the chair of the Stage 2 appeal hearing, calling any witnesses he/she may wish.

The appellant should explain why he/she continues to be aggrieved and what

remedy he/she is seeking.

The Stage 2 chair will then have the opportunity to ask questions of the

appellant and of any witnesses.

Members of the Appeals Committee and their advisers will also have the

opportunity to ask questions of the appellant and of any witnesses.

**5. Stage 2 chair’s case**

The chair of the Stage 2 appeal will then put her/his case to the Appeals Committee in the presence of the appellant, explaining the reasons for their decision, and calling any witnesses he/she may wish.

The appellant will then have the opportunity to ask questions of the Stage 2 chair and any witnesses who may have been called.

Members of the Appeals Committee will also have the opportunity to ask questions of the Stage 2 chair and of any witnesses.

**6. Summing up**

The Stage 2 chair and thereafter the appellant will sum up their respective cases, introducing no new material.

**7. Withdrawal of parties**

The appellant and the Stage 2 chair will then withdraw.

**8. Deliberation**

The Appeals Committee, together with the Clerk and any other adviser(s) to the Committee, will deliberate in private, only recalling either the appellant or the Stage 2 chair, or any witnesses, to clarify points of uncertainty on evidence already given.

If such recall is necessary, both parties will return, notwithstanding only one is

required to clarify points of uncertainty.

**9. Adjournment**

The Appeals Committee may adjourn the proceedings at any stage, if they consider it to be in the interests of either party, for an appropriate period.

**10. Possible decisions**

If practicable, the Appeals Committee will announce its decision to the appellant and the Stage 2 chair at the conclusion of the hearing. In any event, the decision will be confirmed in writing to both parties by Democratic Services within 10 days of the hearing.

The form of the decision of the Appeals Committee will be one of the following, as appropriate:

* “that the grounds of the appeal have been substantiated and the appeal be upheld”; or
* “that the grounds of the appeal have been substantiated in part and the appeal be upheld to the extent that ……”; or
* “that the grounds of the appeal have not been substantiated and that the appeal be not upheld”.

**11. Time limits**

The time limits in this procedure may be varied by mutual agreement.

# APPENDIX 5 – Facilitated Conversation Guidance

# Introduction

# Most workplace disagreements can be resolved at an early stage given the right environment for open, honest and forward looking dialogue. Often formal processes can be avoided by an effective informal intervention carried out at the right time in the right way.

A facilitated conversation is an informal process where parties meet and discuss issues in an attempt to reach resolution, gain mutual understanding and move forward in a working relationship positively.

Facilitated conversations are useful when there have been misunderstandings or miscommunication. If the conflict has been going for a relatively short period of time and parties want to “nip things in the bud” then this process will be beneficial.

It provides a safe environment in which parties can have open and honest discussions, explore the issues and try to reach a mutual and manageable agreement as to how they will work better together in the future. This is achieved through a series of facilitated and structured meetings, which can take place over the course of one day, or may require a few days to allow reflection time to take place. It is an informal process which can be used at any stage of a dispute, although the earlier the better. Informality is important in order to create the right environment for openness and trust in the process. All parties must be willing to enter into the process voluntarily.

The facilitated conversation does not focus on the reasons for conflict, it does not try to apportion blame or necessarily resolve issues; it concentrates solely on the future and how the parties can co-operate when they are back in the work place.

## **The Role of the Facilitator**

## The facilitator takes the parties through a process which is a bit like a structured negotiation. However they will need to have a high degree of empathy, they need to be able to withhold personal judgement, to reflect on the reality of the situation and to keep discussions future focussed.

Facilitated conversations are part of day to day management and so facilitators can be line managers, often from a different area of the organisation to the parties who are in dispute or HR professionals.

## **Confidentiality**

What is said in a facilitated conversation is confidential and should not be repeated outside of the conversation. Even if the dispute is not resolved through the facilitated conversation and it leads to a formal procedure the content of the facilitated conversation will not be used to inform the formal investigation. However if in the facilitated conversation either party discloses some information of a serious nature e.g. makes an allegation of gross misconduct then the facilitator must indicate that they will have to take advice from their HR Business Partner and depending on the nature of the allegation it may be appropriate to end the facilitated conversation until that issues is addressed.

## **Possible Outcomes**

In facilitated conversations outcomes are flexible. The solutions must come from the parties involved and usually involve a commitment from both parties to specific changes in their behaviour which relate directly to issues discussed e.g. if the issue is communication it may be that part of the agreement is to specify how they will communicate in future i.e. we will email a brief description of the issue and then meet to discuss it. Other possible outcomes are:

* An apology
* An agreement to review policies/procedures
* An agreement to review distribution of work/duties/responsibilities
* A commitment to periodically review the agreement reached.

## **The Process of a Facilitated Conversation**

There are usually three stages in a facilitated conversation:

1. Separate meetings
2. Together meeting
3. Agreement

Each stage is described in more detail below.

1. **Separate meetings**

The facilitator meets the parties separately. In this first contact with the parties involved the facilitator should:

Set the scene - explain what a facilitated conversation is, run through the process and possible outcomes, that it is a voluntary process that it is confidential (explain the boundaries of confidentiality) and so nothing will be passed on without their permission.

* Explain the role of the facilitator – that they are impartial, non-judgemental and supportive of the process
* Find out what the parties want to get out of the process
* Listen to their story and identify their key issues and concerns
* Identify any key events which have triggered the dispute i.e. “flashpoints”
* Get their permission to proceed with the next stage.

1. **Together meeting**

The facilitator brings the parties together. These meetings can be tiring for all parties and people usually need a bit of down time afterwards so consider holding this meeting at a time when the parties can have some breathing time after the meeting e.g. in the afternoon so that they can go home straight after the meeting.

It is the role of the facilitator to create a safe environment where the parties feel comfortable enough to speak openly and honestly. Choose your venue with this in mind.

Set the scene

Remind the parties that they are there to discuss the issues and concerns that they both have in a safe environment, that what is said in the room will remain confidential (only the agreed actions may be shared with their manager if appropriate) and that if they want a break at any time or a one-to-one talk with the facilitator at any time they should say so, that we will try to be respectful of each other and not raise voices.

Explain that the process for this session will be that each party will be invited to put their side of the story during a period of uninterrupted time. Ask that each party listens and tries to see the other point of view. That they may not agree with the other party but that they should try to accept and understand the other person’s issues and concerns.

Take turns to speak

While the parties are taking their turn to talk the facilitator should begin to summarise the main issues and concerns. To do this, the facilitator should use summarising and reflecting and should remain non-judgemental and objective at all times.

Once the first party has spoken and has expressed all of their issues and concerns the facilitator should check with them that they have said everything that they want to say. They may then want to invite the other party to ask any questions of clarification to ask the first speaker. This is not an opportunity for the parties to challenge or to debate, the facilitator should ensure that this remains objective and is about understanding and clarification. The issues and concerns are real to the speaker and this part of the conversation is about both parties listening to each other, understanding and accepting each other’s points of view.

The second party is then asked to share their issues and concerns.

Once both parties have spoken and had the opportunity to clarify, both parties should now be calm and engaged as they have been listened to and understood and their issue has been accepted.

The facilitator may wish to thank both parties for speaking openly and frankly and to re-establish that the parties are willing to work together towards a resolution.

Discuss possible solutions

Having identified the issues to explore, the facilitator’s role is to encourage communication between the parties, promote understanding and empathy and change perceptions. The aim of this part of the meeting is to begin to shift the focus from the past to the future and begin to look for constructive solutions.

A useful question to ask at this stage is “Now that you have heard X’s perspective on this do you accept that though they differ from yours, these are X’s issues and concerns?” “What part don’t you understand?”

This part of the discussion focuses on the issues raised and the facilitator should invite the parties to discuss possible solutions. It may be useful to write up on a flipchart the core issues of concern for both parties and give them equal weight in the discussion.

1. **Agreement**

As the process develops the facilitator will encourage and support joint problem-solving by the parties, ensure the solution and agreements are workable and record any agreement reached. A template is provided for this purpose (See Appendix 1).

Closing the conversation

Once an agreement has been reached, the facilitator will bring the meeting to a close, provide a copy of the agreed statement (Appendix 1) to those involved and explain their responsibilities for its implementation. In some cases no agreement is reached and other procedures may later be used to resolve the conflict. However, nothing that has been said during the facilitated conversation can be used in future proceedings. The facilitator will agree with the parties what information can be shared outside the conversation and with whom.

Follow up meeting

It is often relevant to arrange a follow up meeting with both parties to check in on progress. This is an opportunity to find out whether the working relationship(s) have improved or whether further intervention is necessary.

## When Emotions are Running High

If there is too much emotion from either party it is likely to hamper the effectiveness of any communication. In that case it is worth considering re-scheduling and perhaps having a one-to-one with the one or both parties to help to defuse the emotion. A useful exercise in defusing emotion and helping the person to become more objective about a situation is as follows:

*Ask the individual to imagine themselves watching themselves talking to the individual who they are in conflict with. In other words, ask them to move their perspective across the room to imagine what it would look like to watch yourself in this interaction. That simple shift will give you a more objective stance.*

It is important to get behind the emotions to the real issue as emotions will mask the real issue and will hamper the individual’s ability to think creatively about solutions.

## Difference Between a Facilitated Conversation and Mediation

Sometimes despite the best efforts of the facilitator the parties are unable to move forward and remain at an impasse. It may be that it is not possible to resolve the dispute using informal intervention and one or more party may decide to move to a formal procedure. If this is the case then you should discuss the next steps with your HR Business Partner.

## Facilitated Conversations with Groups

Where the facilitated conversation is with a group of people you may have to adapt the steps a little. Step 2 - the together meeting will be slightly different due to the number of people in the room. It may not be practical to give everyone uninterrupted time to speak and that may or may not be an appropriate approach if for example there are a group in dispute with one person. The together meeting may be adapted to acknowledge the common issues raised in the one-to-ones and to focus on the future and agreeing how to move forward. The outcome being an agreement that everyone signs up to.