

FACT SHEET

GRIEVANCE PROCEDURE

This fact sheet sets out guidance in relation to how a grievance procedure should be conducted. It is intended as a summary of the issues that may need to be considered and is not intended to be a detailed analysis of the law in this area.

The Acas Code of Practice on Disciplinary and Grievance Procedures gives guidance on carrying out a fair grievance procedure. Where a grievance concerns dismissal and the employee goes on to bring a successful claim for unfair dismissal, unreasonable failure to comply with this Code is likely to result in an increase of up to 25% in the amount of compensation awarded by a tribunal, or a decrease of up to 25% if the employee is the party who has failed to comply. For grievances that do not concern dismissal of the employee, a well conducted grievance procedure should help prevent Tribunal claims arising in the first place. This fact sheet takes account of the key requirements of the Acas Code.

An employer should also ensure that it complies with the company's own internal grievance procedure, since failure to do so may also potentially lead to a claim.

Preliminary considerations

Before deciding to hold a formal grievance hearing, the employer should first consider whether or not the employee wants the employer to follow a formal procedure or whether they have just raised an informal grievance. If the employer is unsure, they should confirm with the employee. An

informal discussion with the employee may resolve the problem if there has simply been a case of miscommunication, for example. If not, and the employee wants to raise a formal grievance, then the employer should follow a formal procedure as detailed below. An employee must raise the grievance in writing to invoke the formal grievance procedure.

Hearing and Investigation

Once a formal grievance has been raised the employee should be invited to a meeting to discuss the grievance and the resolution that they want. The hearing should be held at a reasonable time and place, in a private meeting room during the employee's normal working hours.

The grievance hearing should ideally be conducted by a single manager who is not implicated in the grievance, unless this is unavoidable. In more complex matters it may also be appropriate for a member of the HR department to be present.

There should be someone present who can make notes of the hearing. The employee should be provided with a copy of these notes following the grievance hearing.

At the start of the hearing, the manager chairing the meeting ('the Chair') should introduce those present, explain the purpose of the meeting and, if the employee is unaccompanied, remind them again of their right to be accompanied.

The Chair should ask if the employee is satisfied with the arrangements for the hearing. The Chair should then outline what they believe the issues raised by the grievance letter to be sent and ask the employee to confirm that their understanding is correct.

The employee should then be given the opportunity to expand upon the matters raised in their grievance letter, ask questions and produce or discuss documentary evidence. They should also have the opportunity to say how they think the grievance could be resolved.

The employee's representative (if any) can make statements and ask questions on the employee's behalf. The representative will not be permitted to answer questions that have been put to the employee directly, although they may confer privately with the employee before any reply is given.

At this stage, the employer should consider whether it is necessary to carry out any further investigation of the grievance. Issues that have been raised by the employee may require further investigation and witnesses may need to be interviewed. If so then it will be necessary to adjourn the hearing to carry out this investigation.

If this is the case then the employee should be given a chance to respond to any new findings at a reconvened hearing. If new information has come to light then this should be given to the employee in writing, with sufficient time to consider it before the reconvened hearing.

Employers should have regard to the fact that employees may be under significant stress as a result of the hearing. The Chair should be sensitive to this and, if necessary, make sensible use of adjournments for "time out".

Once the employee has presented their case the Chair should summarise the information put forward on both sides and request any necessary clarification from the employee.

Postponement or failure to attend hearing

If an employee fails to attend a grievance hearing through unforeseen circumstances such as illness, or wishes to adjourn due to their own or their companion's unavailability, a further meeting should be arranged within a reasonable timescale.

If the employee persistently seeks to postpone the meeting or fails to attend without good reason then it may be possible for the employer to take a decision in the employee's absence. The employer should consider the reason for a requested postponement and any other relevant circumstances. If the employee is unwell, consideration can be given to conducting a hearing at or near their home or by telephone, or postponing until a medical certificate has been obtained to give a better picture of the likely prognosis.

Adjourning the hearing

When all parties have presented their case and there are no further questions, the hearing should then be adjourned for the Chair to consider what the employee has said. Issues that have been raised by the employee may require further investigation and witnesses may need to be re-interviewed if they have not been present to give evidence at the hearing. If this is the case then the employee should be given a chance to respond to any new findings at a reconvened hearing. If new information has come to light then this should be given to the employee in writing, with sufficient time to consider it before the reconvened hearing.

It is always good practice for the employer to adjourn at the end of the hearing to take time for consideration of the decision. If the employer does not do so this may be an indication that the grievance decision has been pre-judged.

The length of any adjournment will depend on the complexity of the issues to be considered and whether further investigation is needed. It is helpful for the employer to give the employee an

indication of how long it is likely to be before the meeting is reconvened. If the adjournment is only for a short period the Chair may ask the employee to wait in the meeting room whilst they consider their decision. However, in most cases it will be necessary to adjourn at least until the following day.

The decision

Once the Chair has reached a decision, the meeting should ideally be reconvened and the decision explained to the employee. The decision must be given in writing in any event, but it is usually better done face to face and then confirmed in writing.

The employee should be advised whether or not the grievance has been upheld, the reasons for reaching that decision and if any part of the grievance has not been upheld then the fact that they have a right to submit a written appeal. If the grievance has been upheld then the employer should also set out what action the company is going to take to resolve the matter.

Instructions on how to appeal should also be provided, including the name of the person to whom the appeal must be submitted and the timescale for appeal. Five working days is generally considered reasonable but there is no specific time limit in the Acas Code of Practice, so the employer should take legal advice before rejecting an appeal as being out of time.

Appeal

So far as possible any appeal should be heard or chaired by someone who has not been previously involved. Ideally, they should be more senior than the Chair of the grievance hearing and, where possible, outside their direct reporting line.

The manager conducting the appeal should have access to the evidence compiled during the investigation and copies of the notes from the grievance meeting. However, they should not confer with the initial decision-maker before the

appeal meeting, as this may lead to a biased view being taken before the employee has presented their arguments.

There is no set format for the appeal, provided the employee is allowed adequate opportunity to present their arguments. The person chairing it should aim to be as impartial as possible. If the original hearing was procedurally flawed, the appeal should be conducted as a full rehearing of all the evidence. In other cases, it may be acceptable to simply review the original decision based on the paperwork and any representations the employee may make.

Employees have the same right to be accompanied at an appeal hearing as at a grievance hearing.

Lees Solicitors LLP provide this fact sheet free of charge.

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