

GUIDANCE NOTE

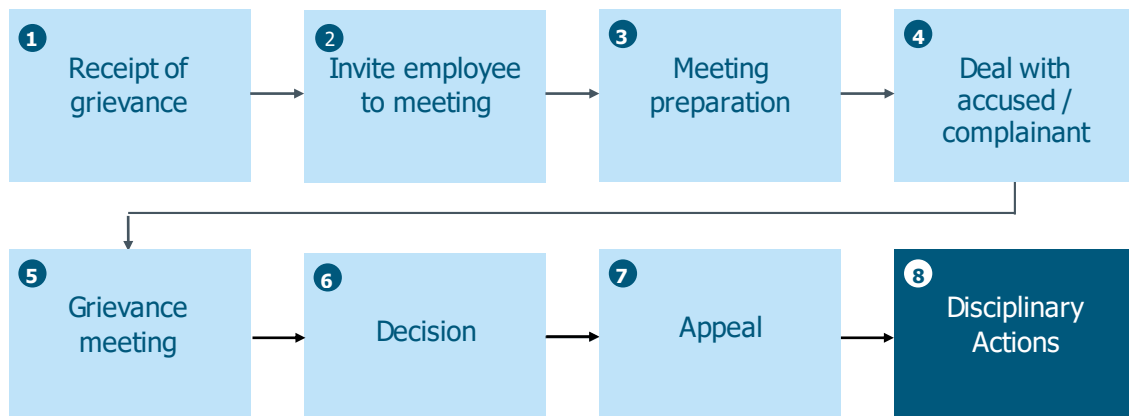
Grievance procedure

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HOW TO HANDLE A GRIEVANCE PROCEDURE



1 Receipt of a grievance

- Check whether the complaint is a grievance. To comply with the Acas Code of Practice on Disciplinary and Grievance Procedures, the employee should raise a grievance in writing, but failing to do so does not prevent an employee from bringing a tribunal claim about the subject matter of the grievance.
- Consider whether mediation is appropriate or whether it could be resolved informally.
- Follow the grievance policy, or the Acas Code and Guide if there is no specific policy in place.

2 Invite employee to meeting

- Acknowledge receipt and invite the employee to a meeting. (According to the Acas Code this meeting should be held without unreasonable delay. According to the Guide this should be ideally within five working days of receipt.)
- Inform the employee of their right to be accompanied to the grievance meeting.

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Meeting preparation

Commence any relevant special procedures, e.g. whistleblowing, bullying and harassment.

Find out and identify:

- whether similar grievances have been raised in the past, how these were resolved and any follow-up action that has been necessary;
- key issues and evidence.

Consider the following:

- should a note-taker be present?
- are any reasonable adjustments necessary if the employee/companion is disabled?
- is any immediate action required? (e.g. suspend/transfer accused in serious cases). The Acas Code states that where suspension is necessary, the period should be as brief as possible, it should be kept under review, and it should be clear that this suspension is not considered disciplinary action;
- can any witnesses be anonymous if they wish to remain so?

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Deal with accused/complainant

- Consider whether it is appropriate that the complainant and accused stay in their positions, whether suspension is necessary or whether they should be transferred to a different position/reporting line.
- Consider whether the complainant and/or the accused needs counselling or other assistance. (A duty of care is owed to all employees – the accused may be put under substantial stress).

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Grievance meeting

The employee raising the grievance is entitled to be accompanied by a colleague/trade union representative. If the employee is disabled consider, as a reasonable adjustment, extending this right to be accompanied to a member of their family/a friend for support.

Attendees

Decide who should attend from the Company, e.g.:

- decision maker;
- HR representative (to advise on procedure);
- a note-taker (if appropriate).

Meeting format

- Invite the employee to outline their grievance and how they would like to see it resolved.
- Consider whether it is appropriate to adjourn the meeting for any investigation which may be necessary.
- Sum up the main points.
- Make allowances for an employee "letting off steam".
- Ask for comments and representations from the employee.
- It is good practice to adjourn the meeting before a decision is taken.
- Let the employee know when they may receive a response or inform them that you will update them on this.

→ Keep a record of the meeting.

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Decision

- Give decision and brief reasons (without unreasonable delay).
- Consider whether the decision and reasons should be given in writing or at a meeting. If given at a meeting, the decision should be confirmed in writing without unreasonable delay.
- Explain the right of appeal.

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Appeal

- The employee should let the employer know the grounds of the appeal without unreasonable delay and in writing.
- Decide who is the appropriate manager to hear the appeal. This should be a manager not previously involved in the case. If possible it should be a more senior manager than the one who dealt with the original grievance.
- Invite the employee to a meeting (reminding them of their right to be accompanied).
- Set out the decision in writing without unreasonable delay.
- Consider whether to allow a further appeal to a higher level of management. If not, inform the employee that this is the final stage of the procedure.

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Disciplinary action

If the grievance is upheld

Consider whether disciplinary action against the accused is appropriate.

If the grievance is not upheld

Consider the following:

- was the complaint raised in bad faith? If so, should the complainant be disciplined?
- is mediation appropriate?
- is the transfer of the complainant or accused appropriate?
- should reporting lines be changed?
- is any training needed?
- do any of the Company policies or procedures need to be changed?

Prepare a written record of the grievance. This should include:

- the nature of the grievance;
- what was decided and the actions that were taken;
- reason(s) for the actions;
- whether an appeal was lodged;
- the outcome of the appeal; and
- any subsequent developments.

Any issues which arise out of the grievance should be dealt with promptly.

Records are required under the Acas Code. Bear in mind data protection storage and retention obligations.

Overlapping disciplinary and grievance cases

A disciplinary process may be temporarily suspended to allow a grievance to be heard or, if the grievance and disciplinary matters are related, the issues may be dealt with concurrently.

Typical situations where there is a potential overlap are:

→ **Employee has a grievance about a disciplinary sanction**

This should be dealt with as part of the disciplinary appeal process. If the right to appeal has been utilised, the employee has no further recourse to have the decision reviewed internally.

→ **Employee has a grievance about the integrity or motives of the manager dealing with the disciplinary (e.g. a complaint of victimisation)**

It may be prudent to deal with this grievance as a separate issue before continuing with the disciplinary process: a failure to consider this grievance appropriately could jeopardise the fairness of the disciplinary process.

→ **Disciplinary action against another employee arises out of a grievance process**

These should be treated as separate issues, but it may be wise to keep the employee who raised the grievance informed of the disciplinary process, as part of addressing the original grievance (e.g. in cases of bullying or harassment).

→ **Employee raises a grievance about the issue about which disciplinary action is to be taken (e.g. a grievance in relation to performance targets, or appraisal issues)**

Here the issues are heavily interlinked, in that the employee's grievance is essentially their justification or defence to the disciplinary issue. In this case, it would be sensible to deal with the issues together, making it clear that the meetings are both part of the disciplinary and the grievance process.

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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