



Grievances

Introduction

When an employee has a problem at work, they should be encouraged to first deal with this informally, by way of discussion with their manager. It is good practice for the employer to respond in writing (by email at this stage should be fine) even if the problem is only raised informally.

However, if informal discussion and initial attempts to resolve the problems fail, it may be necessary to follow a more formal grievance procedure. A grievance is a formal way for an employee to raise a problem or complaint to their employer. There is no legal definition of a grievance, but it is 'more than a grumble, a moan or general discontent' (Daniel Barnett, Barrister). An employee can raise a formal grievance if:

- they feel raising it informally has not worked
- they do not want it dealt with informally
- it concerns a serious issue, for example sexual harassment or 'whistleblowing'.

Where a formal grievance is made employers must follow a full and fair procedure when handling the grievance. Employers should have a Grievance Policy in their staff handbook setting out the procedure they should follow when they receive a grievance. The Grievance Policy must, as a minimum follow the steps in the Acas Code of Practice on disciplinary and grievance procedures ('the Acas Code'). Where there is no Grievance Policy the Acas Code should be followed which can be viewed [here](#) and includes the following essential elements:

- An initial acknowledgement letter providing a copy of any workplace grievance policy and confirming you will deal with the grievance fairly and consistently
- An investigation to get as much relevant information as possible

- A grievance meeting at which the employee is allowed to be accompanied by a colleague or Trade Union Representative
- Completion of the procedure, and delivery of the outcome, without any unnecessary or unreasonable delays
- An opportunity for the employee to appeal against the grievance outcome.

What to do when an employee raises a grievance

An employee can raise a grievance using the process outlined in any formal policy. Alternatively, an employer may become aware of a grievance by email or even as part of an employee's resignation.

Initially the grievance needs to be acknowledged and the next step outlined. At this point an informal meeting may be appropriate to find out more.

Conducting the investigation

An appropriate manager/senior member of staff, (or HR person) should be assigned to deal with the investigation and subsequent hearing relating to the grievance.

In a grievance investigation, the person investigating should do their best to:

- be fair and objective
- follow any policies or guidelines the workplace might have
- get as much information on the case as possible
- not try to prove guilt, but get balanced evidence from both sides
- keep the case confidential.

The investigating manager should identify what the main issues are and what information will be most relevant to those issues. The information gathered may take the form of documentary evidence, such as emails, pay-slips, or meeting notes, but it is also likely to involve meeting other members of staff who may have been present at an incident or discussion that the employee is complaining about.

At this stage, the investigator should assess how long it is likely to take to complete the investigation and inform the employee about the timescales. The investigation should be completed without delay, but it must be thorough and deal with the relevant issues. If more time is needed, ensure that the employee is informed of this, together with reasons, as soon as possible.

Inviting the employee to a grievance meeting

Once the investigation is complete, the employee should be invited by letter to a grievance meeting. The letter should identify the persons who will be present at the meeting, generally the investigation manager and a note taker. The employee must be informed that they have the right to be accompanied by a colleague or trade union representative.

How to conduct the grievance meeting

The meeting is the chance for the person who raised the grievance to:

- explain the grievance
- show any evidence they have.

It's also the chance for the employer to ask questions, so that they know what steps to take.

What the employer should do during the grievance meeting

In the meeting the employer should ask the person who raised the grievance to:

- provide more information about it
- discuss how it could be resolved.

The employer should also:

- remain impartial
- do their best to understand the feelings of the person raising the grievance
- take notes or appoint someone else to take them
- go through the evidence
- take care in deciding on any actions (usually the employer will not need to make an immediate decision)

- consider ending the meeting and resuming it later, if they need to investigate statements and facts from the meeting
- sum up the main points at the end.

They should give the person who raised the grievance the chance to:

- explain their concerns and how they feel
- ask questions
- show evidence
- provide details of any witnesses the employer should contact.

At the end of the meeting the employer should:

- give the employee copies of the meeting record and notes taken
- tell the employee when they will get a decision.

The amount of time needed for a decision should be in line with the employer's Grievance Policy if there is one. If there are delays, for example if further investigation is needed, the employer should explain how long the delays will be and why.

After following a full and fair grievance procedure, the employer should decide on the best outcome based on:

- the findings from meetings and investigations
- what is fair and reasonable
- what their workplace has done in any similar cases before.

The employer should tell the employee of the outcome as soon as possible in writing.

If the grievance involved other people in the workplace and it was upheld, the employer might need to consider disciplinary action against other employees.

If the employer decides no action is needed

To make sure there is no bad feeling, the employer may wish to talk privately with the employee.

It's a good idea for the employer to keep a note of how they carried out the procedure for future reference.

The employee's right of appeal

The employer should offer the employee the right of appeal. Generally, an employee may raise an appeal if they feel:

- the outcome does not resolve the problem or
- any stage of the grievance procedure was wrong or unfair.



Keeping a record

No matter what the outcome, it's a good idea for employers to keep a written record of all grievance cases to help with any questions or similar cases in the future.

In line with data protection law, records should be:

- confidential
- only be kept for as long as necessary in accordance with the employer's privacy policy.

FAQ's

Who should carry out the investigation?

Where possible, the employer should get somebody who's not involved in the case to carry out the investigation, for example another manager or someone from HR.

Is it acceptable for the same person to carry out the investigation and chair the grievance meeting?

Yes, for a grievance investigation, it is usually best for the person hearing the grievance to investigate the issue.

What happens if the employee lodges a grievance and goes off sick?

An employee who is signed off sick during this process may genuinely be unwell or may use this as a deliberate attempt to cause difficulties. This is particularly the case if the grievance is raised during a disciplinary or performance process. It is also not uncommon for an employee to be off sick and raise a grievance at that point.

If the issues raised in the grievance are causing the absence, it may be helpful to obtain a medical report (having obtained the employee's written consent). Part of this process is to find out if the employee is well enough to attend a meeting.

If the employee is well enough, the employer should proceed in the usual way. If not, it is advisable for the employer to maintain regular contact taking care not to harass or overwhelm the employee.

What are the potential consequences for the employer of not following the Acas Code?

The grievance procedure that the employer followed will be considered if the case reaches an employment tribunal. Further, if the employer unreasonably fails to follow the Acas Code it may result in an uplift of up to 25% in any compensation awarded to the employee.

NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.

Copyright © 2022 by Law Express - All rights reserved. This article or any portion thereof may not be reproduced or used in any manner whatsoever without the express written permission of the publisher.