



# An overview of the Grievance process

presented by:

**Birkett Long LLP**

in conjunction with:

**Casanovas Recruitment Solutions**

## Table of Contents

<b>Introduction .....</b>	<b>3</b>
<b>Grievance process steps .....</b>	<b>3</b>
<b>What is a grievance? .....</b>	<b>3</b>
Identifying a grievance.....	4
<b>Why it is important to follow a fair process .....</b>	<b>4</b>
Claims for unfair dismissal .....	4
Claims of discrimination.....	4
Breach of contract .....	5
Acas Code and guides .....	5
<b>Steps on receipt of grievance .....</b>	<b>5</b>
Informal resolution .....	5
No prior involvement.....	6
Grievances involving allegations of discrimination.....	6
Grievances after employment has ended (or in resignation letter) .....	6
<b>Initial grievance meeting - identify the issues .....</b>	<b>6</b>
<b>Grievance investigation.....</b>	<b>7</b>
Overlapping disciplinary and grievance matters.....	7
<b>The grievance meeting .....</b>	<b>7</b>
<b>The grievance decision .....</b>	<b>7</b>
Unfounded, vexatious or malicious grievances .....	8
Notifying the individual.....	8
<b>Appeals.....</b>	<b>8</b>
Review or rehearing? .....	8
The appeal meeting .....	8
The appeal decision .....	8
Notifying the individual.....	9
<b>Notes and record keeping .....</b>	<b>9</b>
<b>Companions at grievance meeting.....</b>	<b>9</b>
Unavailability of companion .....	10
Role of companion .....	10
<b>Wellbeing during grievances .....</b>	<b>10</b>
<b>Useful links .....</b>	<b>11</b>

# Introduction

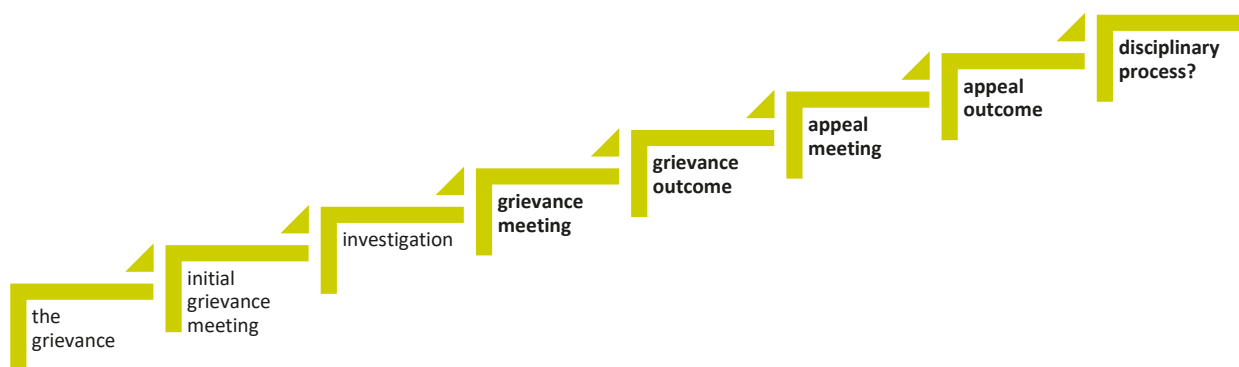
These overview notes provide general guidance only and specific legal advice may need to be obtained.

In this overview session we consider:

- Grievance process steps
- What a grievance is
- Identifying the issues
- Investigation
- The grievance meeting
- The grievance decision
- Appeal

## Grievance process steps

---



## What is a grievance?

---

There is no legal definition of a 'grievance'. The Acas Code of Practice on Disciplinary and Grievance Procedures (the Code) defines a grievance as:

---

*concerns, problems or complaints that individuals raise with their employers*

---

The Employment Relations Act 1999, which deals with the right to be accompanied, defines a 'grievance hearing' as:

---

*a hearing which concerns the performance of a duty by an employer in relation to a worker*

---

In this overview a 'grievance' is a *concern, problem or complaint* raised by the individual and which is considered under the grievance policy.

## Identifying a grievance

A grievance does not need to be labelled a grievance. Usually, a grievance is raised in writing but can be raised verbally.

A grievance can relate to anything within the individual's work: for example, the terms and conditions of their employment, an issue relating to health and safety, relationships in the workplace, alleged bullying and harassment, proposed or new working practices, the working environment or discrimination. It could be about a colleague, the organisation itself or a third party.

## Why it is important to follow a fair process

---

### Claims for unfair dismissal

Individuals with two or more years' service are protected against unfair dismissal. In some limited exceptions, individuals are protected even if they do not have two years' service. This means employers need to be as sure as they can be that the grievance process and decision involving an individual with two or more years' service is **fair and reasonable**.

### Claims of discrimination

No minimum service is needed for a claim for discrimination.

A claim or claims for discrimination could relate to the initial issue that prompted the grievance but it may relate to the grievance process and/or the grievance decision.

A key aspect of minimising the risk of allegations of discrimination is ensuring the approach taken consistent with policies and procedures and, where appropriate, what has been done in the past.

## Breach of contract

It is rare that grievance policies are contractual. Any employer who has a contractual handbook or a contractual standalone grievance policy and procedure risks a breach of contract claim if they do not follow the procedure.

## Acas Code and guides

The Code sets out “**the standard of reasonable behaviour**” for both the employer and individual in a grievance process. The Code is supplemented by a non-statutory guide 'Discipline and grievances at work: The Acas Guide'.

Failing to follow the Code and Guide in a grievance process will not, alone, give an individual grounds to successfully appeal a decision, resign or bring a claim in the employment tribunal. However, breaches of the Code and Guide are considered by employment tribunals when deciding if an approach was reasonable and not following them increases risk. Not following the Code can result in an increase of compensation for an individual by up to 25%. There is not potential for penalty for not following the Guide. Equally, following the Code and Guide does not mean an employer is 'safe' from successful challenge.

Links to the Code and Guide, and other useful guidance, are below under useful links.

## Steps on receipt of grievance

---

On receipt of a grievance:

- relevant policies and procedures identified
- options to resolve
- roles and individuals identified
- the grievance should be acknowledged
- invite to a first grievance meeting to discuss, clarify and outline next steps
- provide information about any internal and external support
- query if any additional support is needed

Some of these points are considered below.

## Informal resolution

Where a grievance is raised the option of approaching the matter informally should be considered.

## No prior involvement

Who will conduct a grievance meeting and any appeal should be identified early in the process to ensure they have no (or little) involvement in earlier stages. Ideally, seniority should increase at each stage. This ensures, so far as possible, independence and the ability to make unbiased decisions.

In a grievance process, the role of grievance investigator and decision maker can be undertaken by the same person.

## Grievances involving allegations of discrimination

Acas has produced a guide for dealing with grievances that allege discrimination. A link to the guidance is below. The guidance says, when handling a grievance alleging discrimination, anyone involved should:

- **Keep an open mind.** Discrimination is often very individual; what is felt to be discriminatory can change over time and from person to person
- **Be aware of sensitivities.** It is hard for an individual to make an allegation of discrimination and they may be worried about how they could be treated because they have made a complaint

## Grievances after employment has ended (or in resignation letter)

It is not clear whether there is an obligation to consider grievances raised by individuals after employment has ended. We recommend the points raised are not ignored, especially if a resignation is with notice. If nothing else, completing a grievance process could resolve the matter and, potentially, avoid a future claim.

## Initial grievance meeting - identify the issues

---

The initial meeting (and any subsequent grievance meetings) should be held without unreasonable delay. The individual should have appropriate notice of the meeting so they can prepare and make suitable arrangements to attend, including to be accompanied to the meeting if they wish.

The purpose of the initial grievance meeting is to establish in more detail or confirm the matters to be investigated. It can be used to discuss alternative approaches to resolve the points raised and to ask the individual what resolution they seek.

## Grievance investigation

---

An investigation may, but not always will, be required. It should cover all points raised and involve meeting with all appropriate witnesses and obtaining all appropriate evidence.

### Overlapping disciplinary and grievance matters

It is quite common for disciplinary and grievance issues to overlap. Where they do, it is important to keep an open mind about possible motives for raising a grievance during an ongoing disciplinary process. How you proceed will depend on the circumstances.

## The grievance meeting

---

The purpose of the meeting is to decide whether the grievance/s raised are well founded and, if so, to reach decision on any resolution.

During the grievance meeting:

- the grievance should be summarised
- the individual given an opportunity to:
  - to ask questions
  - present their version of events and produce any evidence in support
- the information received and points discussed summarised
- the individual given the chance to clarify anything

## The grievance decision

---

The grievance meeting should be adjourned for the decision to be considered.

The decision should be based on the specific allegations made and the information and evidence received as part of the grievance process.

A grievance decision will require two specific considerations:

- is the grievance upheld
- if so, what (if any) should the resolution be

Where a grievance is upheld, possible resolutions include workplace mediation, relocation of one or more individuals, change in line manager or disciplinary action against an individual/s.

If the resolution recommended is disciplinary action an appropriate disciplinary process should then be followed.

## **Unfounded, vexatious or malicious grievances**

If a decision is reached that a grievance is unfounded, vexatious or malicious, one resolution could be that disciplinary action is pursued against the individual who raised the grievance. This is rare and only likely to be reasonable where the individual is genuinely and reasonably believed to have acted dishonestly or maliciously rather than been mistaken about the matters they have raised.

## **Notifying the individual**

The grievance decision should be communicated without unreasonable delay once the decision has been made and the individual told of their right to appeal. This should be confirmed in writing if communicated in person (which is recommended).

## **Appeals**

---

### **Review or rehearing?**

Whether an appeal meeting is a review of the decision or a rehearing can be difficult and artificial. What matters is that the process followed as a whole and the decision reached, including at appeal, is fair.

If potential shortfalls are identified at the appeal stage, the appeal process should be more detailed and attempt to address the shortfalls.

### **The appeal meeting**

The appeal meeting should include:

- a summary of the grounds of appeal
- an opportunity for the individual to explain the grounds of appeal
- consideration of any new evidence
- a summary of the information received and points discussed
- an opportunity for the individual to clarify anything

### **The appeal decision**

The appeal meeting should be adjourned for the decision to be considered.



The decision should be based on the grounds of appeal and the information and evidence received as part of the appeal and grievance process overall.

An appeal decision will require two specific considerations:

- whether the appeal is upheld
- if so, what (if any) is the resolution

Where the earlier decision was sound, it can be upheld and conclude no action or further resolution is appropriate.

Where the earlier grievance decision was not sound, a substitute decision needs to be considered including consideration of the recommendations.

## **Notifying the individual**

The appeal decision should be communicated without unreasonable delay once the decision has been made. This should be confirmed in writing if communicated in person. There is, generally, no further right of appeal.

## **Notes and record keeping**

---

Notes and records should be made and kept during the grievance meeting, any investigations and the deliberations and reasons for a grievance or appeal decision.

Notes and records should be:

- as contemporaneous as possible
- detailed, accurate, clear and concise; they do not need to be verbatim

## **Companions at grievance meeting**

---

Individuals have the statutory right to request to be accompanied at a grievance meeting. The right to make a request is generally notified to the individual in the written invite to the grievance meeting.

The right is to request to be accompanied by a work colleague or trade union representative. It may be beneficial to allow the individual to be accompanied as well (or instead) by, for example, a family member or friend. This could provide reassurance to them, result in the individual being more willing to co-operate and allow the meeting to progress in a timelier way. This should be considered, particularly, if the individual is disabled or their native language is not English and/or the matters are complex and a subject matter expert could assist.

## Unavailability of companion

If the individual has indicated they wish to be accompanied, and they are unavailable for the grievance meeting, the individual can be limited to an alternative date not more than five working days later.

## Role of companion

Where the legal right applies, the companion:

- is permitted to address the meeting including
  - put the case
  - sum up
  - respond on the individual's behalf to any view expressed
  - confer with the individual
- may **not**:
  - answer questions on behalf of the individual
  - address the meeting contrary to the individual's express wishes
  - act in a way that prevents:
    - the employer explaining its case
    - any other person contributing to it

The Guide recommends that the companion is able participate as fully as possible in the meeting, so the legal position should not necessarily be applied too rigorously.

## Wellbeing during grievances

---

Individuals involved in a grievance meeting may find the process stressful. It is important the wellbeing and mental health of the individuals involved are considered and kept under review. Individuals should be advised and reminded of any support that is available to them which could include:

- Counselling through an employee assistance programme
- Internal staff support networks, for example, employee representatives
- Trade union representatives.
- Specialist external organisations and charities that provide the appropriate support

## Useful links

---

<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures>

<https://www.acas.org.uk/sites/default/files/2022-04/discipline-and-grievances-at-work-the-acas-guide.pdf>

<https://www.acas.org.uk/investigations-for-discipline-and-grievance-step-by-step>

<https://www.acas.org.uk/sites/default/files/2021-03/conducting-workplace-investigations.pdf>

<https://www.acas.org.uk/handling-a-bullying-harassment-discrimination-complaint>

<https://www.acas.org.uk/dealing-with-a-problem-raised-by-an-individual>

<https://www.acas.org.uk/grievance-procedure-step-by-step>

<https://www.acas.org.uk/appealing-a-disciplinary-or-grievance-outcome>

