

# An overview of the grievance process

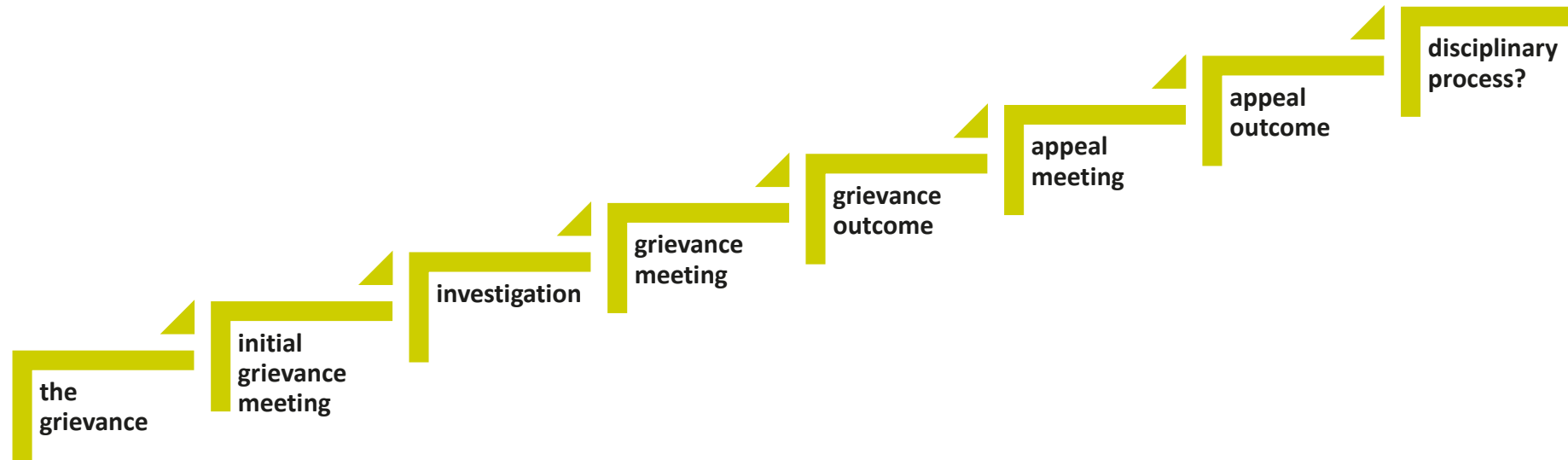
in conjunction with Casanovas Recruitment Solutions  
Rianna Billington Purvis & Karen Morovic



# Agenda

- Welcome and introductions
- An overview of the grievance process
- Case law review
- Breakout group session
- Feedback

# The grievance process



# What is a grievance?

*Usually in writing,  
but doesn't have  
to be*

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

*Does not need  
to be labelled a  
grievance*

*Can relate to  
anything within an  
individual's work*

# Steps on receipt of a grievance



Identify relevant policies and procedures

Options to resolve – informal or formal?

Identify relevant individuals

Acknowledge the grievance

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

# Initial grievance meeting



Establish in more detail/confirm matters to be investigated



Should be held without "unreasonable delay"



Appropriate notice needs to be provided



Ask the individual what resolution they seek

# Grievance investigation



Purpose → to find out all you reasonably can about the issue(s)



May be, but not always required



If a reasonable investigation is not carried out, any decisions made thereafter may be unfair



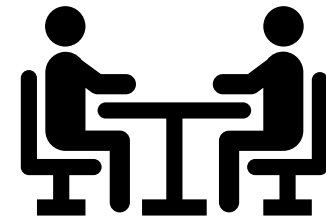
Investigations are covered by the Acas Code of Practice on disciplinary and grievance procedures, which is the minimum an organisation must follow

# Grievance meeting

Purpose → 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





# Grievance outcome

- Should be adjourned for the decision to be considered
- Will require two specific considerations:
  - ✓ If grievance is upheld
  - ✓ If so, what (if any) resolution
- Possible resolutions include workplace mediation, relocation of one or more individuals, change in line manager or disciplinary action against an individual/s
- If disciplinary action is recommended, a **disciplinary process** should then be followed



# Grievance appeals – a way to correct past mistakes?



# Key points

- Consider the appeal grounds carefully
- Have mistakes been made?
- Rehearing or reconsideration?

# Blackburn v Aldi Stores [2013]

David Blackburn worked at the Chelmsford depot as an LGV driver

David used to be a police officer, vehicle examiner and health and safety trainer





# Blackburn v Aldi Stores Ltd cont.

- Incident with his manager led to grievance
- Grievance procedure referred to in the handbook as contractual
- Raised concerns re abusive treatment by line manager as well as health and safety and training concerns
- Grievance hearing by MD for the region
- Some parts upheld but not the abuse by the line manager



# Blackburn v Aldi Stores Ltd cont.

- Employer's failure to provide an impartial appeal may be a breach of the implied duty of trust and confidence
- Implied term of trust and confidence:
- An employer must not (Malik v BCCI, per Steyn LJ)  
**“[...] without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.”**



# Blackburn v Aldi Stores Ltd cont.

EAT held:

- Appeal should have been dealt with by a manager not previously involved in the case
- Not all breaches of the grievance procedure will amount to a breach of the implied term of trust and confidence eg failure to meet a timetable

“The right to an appeal in respect of a grievance is important both as a feature of the ACAS Code of Practice and Aldi’s own grievance procedure”

“..not easy to see why an organization the size of [Aldi] should have been unable to make provision for an impartial hearing by a manager not previously involved.”

## **Right to an appeal – key feature of employment law**



# De Souza v Vinci Construction [2017]



- Unreasonable failure to follow the ACAS Code
- DELAY by previous employer!
- Court of Appeal held that there had been unreasonable delay by the previous employer (before a TUPE transfer) in addressing the employee's grievances and holding an appeal hearing
- Underhill LJ emphasized that the Code requires that each step in handling grievances must be undertaken without unreasonable delay

# Grievances post termination

- Harkins v Department for Work and Pensions [2013]
- ACAS Code held to NOT apply where grievance raised after employment has ended
- No uplift for unreasonable failure to follow
- However – caution – refusal to handle the grievance will inevitably carry the risk re allegations of discrimination or harassment – refusal could be subject of a victimization complaint

# Breakout groups

- Grievance invite letter
- Grievance hearing
- Grievance appeal invite letter

# Questions?



Let us know what you think!  
Please follow the QR code to  
complete a short survey:



**Birkett Long is going green! Please help support our NetZero initiative and use the following link to access the notes/slides from today:**



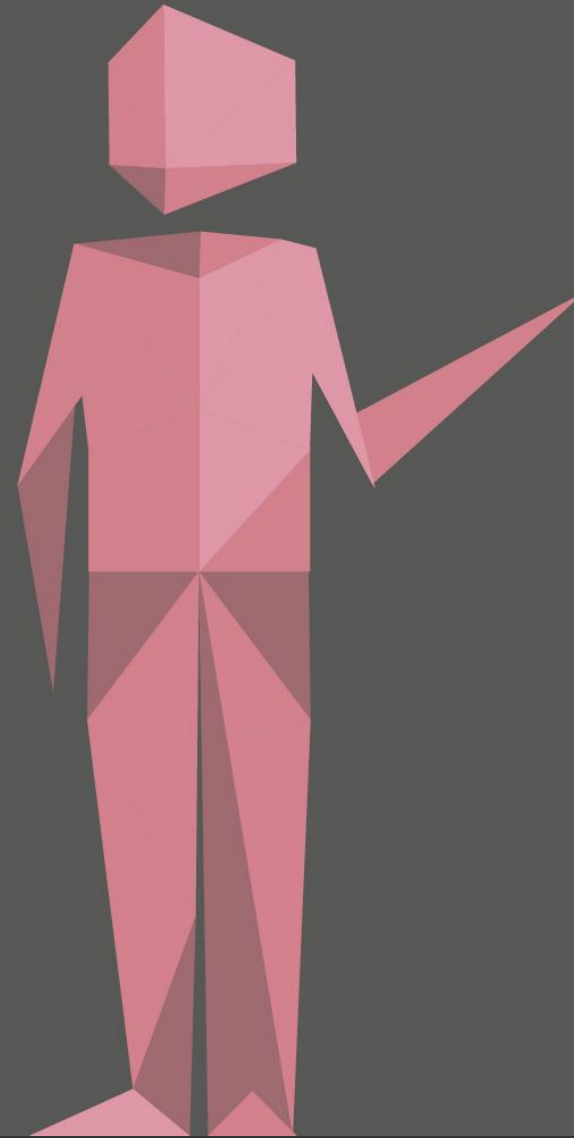
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**Thank you!**

