

# **Guide to responding to a formal grievance**

April 2024

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This basic guide covers:

- receiving a grievance;
- appointing a person to hear the grievance;
- identifying overlap with other internal procedures;
- inviting the employee to attend the meeting;
- preparing for the meeting;
- opening the meeting;
- covert recording;
- questioning techniques;
- dos and don'ts of grievance meetings;
- witnesses;
- timescales;
- is an outcome meeting necessary?;
- drafting an outcome letter;
- dealing with other employees;
- the importance of an appeal;
- failure to deal with a grievance; and
- moving on after the grievance process has been completed.

## Receiving a grievance

When a grievance is received, employers should always consider whether it could be resolved informally. If an early (informal) meeting with the employee has taken place to discuss their concerns, this should be documented, or an e-mail sent to the employee confirming what informal steps were followed.

If a formal process is required, a manager should be appointed to hear the grievance. The grievance manager should familiarise themselves with the employer's grievance policy to ensure that any relevant timescales are followed. It may be appropriate to send a holding response to acknowledge receipt of the employee's grievance if it is going to take some time to appoint someone to hear the grievance and invite the employee to attend a grievance meeting.

# Appointing a person to hear the grievance

Unlike a disciplinary investigation and hearing process, a grievance manager will normally hold both the formal grievance meeting and carry out the investigation. Ideally, this person will have been trained in handling such procedures. They should also be sufficiently senior to reach a decision on the subject matter of the complaint, and ideally they should have had no involvement with the issue and work in a separate area of the organisation. In smaller organisations, it may not be possible to appoint an entirely independent person. However, they should have had no prior involvement with the issue. Remember that the perception of bias to an employee can be just as important as actual bias.

## Identifying overlap with other internal procedures

The grievance manager, together with assistance from HR, should consider whether the subject matter of the grievance brings it within scope of any other HR procedures that the employer operates such as a speak up or whistleblowing procedure or a bullying and harassment procedure.

## Inviting the employee to attend the meeting

The grievance manager should invite the employee to attend a grievance meeting and offer them the right to be accompanied at the meeting. It is good practice to send a copy of the employer's grievance policy with the invitation. In most grievance situations a meeting is held first and any further investigation takes place after the grievance hearing. However, the grievance policy should always be checked as sometimes this approach may vary.

## Preparing for the meeting

The grievance manager should carefully review the employee's grievance and identify a list of issues or points of clarification to discuss at the meeting. While there is an element of a formal grievance meeting that requires preparation, ideally it should only be the opening and closing remarks that are scripted. If the entire grievance meeting becomes scripted then it loses authenticity. If HR is supporting the grievance manager, they will normally have a meeting template, which gives the manager the correct wording to refer to when opening and closing the meeting. A grievance manager should familiarise themselves with this template and the grievance policy.

# Opening the meeting

The grievance manager should open the grievance meeting by:

- introducing themselves, explaining their role and the role of HR;
- explaining the fact that the meeting is a formal one under the employer's grievance policy and that minutes will be taken, although they will not be verbatim minutes;
- explaining that the employee has been offered the right to be accompanied (taking a note of the companion's name); and
- outlining that the role of the companion is to fully participate in the meeting, and that they may make opening and closing statements on behalf of the employee. However, making it clear that when it comes to a direct question, the employee should answer this rather than defer to their companion.

It is also worth the grievance manager explaining that breaks may be taken at any stage.

It is then standard practice for the grievance manager to ask the employee to set out what the key issues are and what their ideal outcome would be.

# Covert recording

A grievance manager should be alive to the risk of covert recordings of grievance or grievance investigation meetings. A grievance manager should advise an employee at the outset of the meeting that it should not be recorded, and similarly that the organisation will not make a recording.

There have been a number of cases where employees have successfully relied on covert recordings taken at meetings, particularly when smartphones have been left in a room during an adjournment. A grievance manager should ensure that during any adjournment, any confidential discussions take place outside of the room and that all coats and bags are taken out of the room to avoid covert recordings.

# Questioning techniques

In most situations, a grievance manager will need to ask further questions to understand all the background issues and clarify facts, times and places. An understanding of the employee's 'motives' may help the manager significantly in dealing with the grievance. A manager should:

- Ask open-ended questions to encourage the employee to talk, such as: "Tell me about..."
- Avoid asking questions at the beginning that can be answered with a "yes" or "no"
- Ask simple questions that address one fact at a time, rather than combining more than one issue into the same question
- Not ask leading questions that prompt for the answer they might want, such as: "Isn't it true that you did not meet the performance standards?"
- Proceed in chronological order

- Probe for detail using the 5 Ws - who, where, what, why, when
- Ask about witnesses
- If it is alleged that a specific statement was made by a witness, record this accurately and summarise and check key points as part of the investigation
- Identify the source of knowledge
- Ask yes or no questions towards the end of the meeting to pin down specific facts that were revealed during it

## Dos and don'ts of grievance meetings

### Do

- Be courteous and polite and set the employee at ease
- Explain to the employee that this is their opportunity to give their version of events, and that prior to the meeting, all that you have done is read their grievance
- Pause the meeting if the employee needs a break, or adjourn if the employee becomes very upset
- Record all pertinent facts, e.g. dates and times, names and context of behaviour
- Keep calm and focused
- Ask the employee about their preferred outcome

### Don't

- Offer your own opinion
- Draw hasty conclusions or prejudge the outcome
- Disclose any confidential information
- Don't promise anything to the employee during the meeting that is not within your gift to resolve
- Overpromise in terms of timescales for dealing with the grievance and carrying out further investigation. If people are on holiday or out of the office then timescales can slide. It is important to manage expectations

## Witnesses

In some situations, an employee who has raised a grievance will ask for witnesses to be interviewed. In these circumstances, a grievance manager will need to take a view on what is reasonable in the context of that particular issue, and this is an issue where they would commonly seek advice from HR. There is no obligation to interview every witness named by the employee. An employer's obligation is to act reasonably and to investigate the employee's concerns.

# Timescales

Timescales in grievances are very important. When a meeting is finished a grievance manager should outline the next steps in relation to an investigation and keep the employee up to date in writing. A written record of correspondence is essential to demonstrate that an employee was kept up to date.

Once the investigation begins, the grievance manager will need to:

- interview all relevant witnesses, and keep notes from these meetings; and
- review all relevant and appropriate documents.

## Is an outcome meeting necessary?

Some grievance policies stipulate that a further meeting should be convened to deliver the grievance manager's decision and/or explain the results of any investigation carried out by the manager.

## Drafting an outcome letter

A grievance manager must decide on an outcome to the grievance and communicate that decision to the employee in writing. It is important that the decision is drafted carefully, dealing with factual findings but also detailing any lessons that have been learnt, and any recommended action to be taken, by the employer. Often the manager's decision will not be as straightforward as simply upholding or rejecting the grievance. There will usually be a lot more subtlety involved in the decision and a manager must not feel under pressure to find 'for' or 'against' an employee. Conducting a full investigation, reaching a reasoned outcome and supplementing this with any lessons learnt/ recommended actions are more important than the label given to the decision. It is very important to ask the employee what their preferred outcome might be in a grievance. There needs to be a separate analysis between the facts of the situation and the recommendations. Both issues need to be dealt with in the outcome letter.

## Dealing with other employees

Employees who are aggrieved about another employee's behaviour or conduct will often want to know what action has been taken against them. Disciplinary or other sanctions imposed on an employee are confidential between them and the employer, and the fact that an employee brought certain behaviour to an employer's attention does not give them the right to know what sanction, if any is imposed. It is best to use the phrase that "appropriate action has been or will be taken."

# The importance of an appeal

Remember that the employee should be offered the right to appeal against the grievance outcome. Any timescales for appeal set out in the grievance policy should be drawn to the employee's attention.

Where an employee raises an appeal, a grievance appeal manager should be identified. The appeal manager should be more senior than the person who heard the grievance and be independent from the issue. Case law has determined that failing to provide an independent person to hear an appeal can be grounds for a constructive dismissal claim.

## Failure to deal with a grievance

Dealing with a grievance properly is important as it gives an employer an opportunity to identify workplace issues and, where necessary, take steps to resolve them as soon as they come to light.

Failing to deal with a grievance properly could have a number of ramifications, as follows.

### Constructive dismissal

Failing to deal with a grievance properly or at all could give rise to a breach of the implied term of mutual trust and confidence between the employer and the employee, and any such breach would entitle the employee to resign and claim constructive dismissal. Case law has determined that this includes an implied duty to respond to an employee's grievances promptly, and to properly investigate all relevant facts. Where an employee's behaviour contributed to their dismissal, there is scope to make a deduction to any compensation awarded in the event of a successful constructive dismissal claim for contributory fault.

The potential maximum compensatory award for an unfair constructive dismissal claim after 6 April 2024 is the lower of £115,115 or 52 weeks' pay (although it is important to note that in some cases there will be no cap in compensation that may be available).

Any compensatory award can be increased or reduced by up to 25% if the employer or the employee has unreasonably failed to follow the [Acas Code of Practice on disciplinary and grievance procedures](#).

### Discrimination and whistleblowing complaints

Employees who have raised a grievance can feel that they are being persecuted and perhaps also that they are being treated less favourably than others. An employer is therefore at risk of complaints of discrimination, stress-related personal injury, harassment and/or victimisation and/or whistleblowing-related detriment or dismissal. Furthermore, employees who feel that their grievance is not being dealt with properly by their employer may be prone to higher absence levels and/or disruptive behaviour.

# Moving on after the grievance process has been completed

Many grievance procedures concerning an employee's behaviour towards another will not result in the dismissal or redeployment of either of the people involved and HR will often be asked: "How can we work together now that we have been through the grievance procedure?"

Even in the absence of any finding of misconduct it might be sensible to consider whether or not voluntary moves or changes to reporting lines are possible. This will depend on the business size and relevant job roles. Employers should be aware of being seen to, or accused of, "punishing the victim" where, for example, the person who raised the grievance is moved away from their team or to another part of the business. If appropriate changes cannot be made then professional behaviour is expected from all parties and the employees will have to work through their difficulties. One option to consider where such difficulties remain is workplace mediation. This can allow the parties to address those difficulties and focus on how they can work together in the future.

Very rarely a conclusion may be reached at the end of a grievance procedure that the grievance was malicious. In this situation, an employer's disciplinary procedure may be invoked against the employee who raised the grievance. Simply because a grievance has not been upheld does not mean that the grievance was malicious. An employer would require positive evidence of malicious behaviour before taking this approach.

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## Further resources

Acas [Code of Practice on disciplinary and grievance procedures](#)

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