

MANAGERS GUIDE – Managing A Grievance

This checklist sets out the key steps that we should consider when handling a grievance matter. Remember the 3 Step Process required by the Statutory Grievance Process.

Purpose

Grievances are concerns, issues or complaints that employees raise with their employers. The grievance procedures allow employers to deal with grievances fairly, consistently and speedily. This document sets out a guide for managers to refer to in case of grievances, although it does not replace the advice from HR.

Any grievance raised by an employee must be taken seriously and should be investigated. The initial steps to resolve any workplace grievance is to use the informal procedure, if the issue is not resolved at this stage the formal procedure should be applied.

Informal Grievance Procedure

Employees should aim to resolve most grievances informally with their line manager. The employee should be encouraged to speak to their line managers and keep the communication open. Issues arising should be reported verbally to the line manager in the first instance.

This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly.

Do

- Encourage open communication.
- Take any issues/ concerns/ complaints seriously.
- Take file notes of conversations and witness statements where appropriate.

Don't

- Assume it is a formal grievance, check with the colleague.
- Ignore the subject.

If a grievance cannot be managed informally, the employee should raise it formally, in writing, with management, where the grievance is against the manager it can be sent the next management level.

Investigative Meetings

An investigative meeting with the employee must be used to establish facts. There is no need to offer a witness as the meeting is not part of the formal grievance procedure. An investigative meeting can provide evidence that can be used subsequently in the grievance process.

Investigating the allegations- Be clear about the complaint

Gather all the relevant facts promptly before memories fade. The purpose of the investigation is to gather information about the allegations from the relevant parties.

At this stage it is not appropriate to make recommendations as to what action, if any. The investigation should only be used to gather all the relevant facts.

Do

- A full and thorough investigation into the allegations.
- Identify and obtain all relevant documentation.
- Identify and interview all relevant witnesses.
- Obtain witness statements, in writing.

Don't

- Make any decisions regarding the grievance at this stage.
- Change the investigation meeting into a grievance hearing.

Suspension

In certain circumstances, it may be necessary to suspend the employee/s from work to ensure that an unhindered investigation is carried out or it may be in the interests of the employee's own safety to remain at home during the investigation or any subsequent disciplinary process. Reasons for suspension should be explained to the employee and confirmed in writing within 3 days.

It is important to confirm the reasons for the suspension in writing to the colleague and to explain that the period of suspension is paid.

Do

- Explain to the employee that suspension is not a disciplinary action and does not involve any pre-judgment
- Follow up the suspension decision in writing within 3 working days.
- Review the period of suspension and keep the colleague informed of any required extension, e.g. if some witnesses are unavailable
- Remember that the employee should be allowed access to their chosen representative

Don't

- Automatically suspend an employee who faces an allegation of misconduct, only suspend if there is a good reason to do so. Consult with HR if you are unsure.

FORMAL GRIEVANCE PROCESS

Invite to Grievance Meeting

The Manager receiving the grievance letter must invite the employee to attend at least one meeting to discuss the grievance. The manager must formally invite, in writing, the colleague to the meeting giving them at least 24 (but ideally 48) hours notice, allowing sufficient time for them to prepare. If the Hearing is to proceed earlier at the employee's request, the Manager must ensure that he/she has had sufficient time to carry out a full investigation.

Do

- Reply to the grievance, in writing, within 28 days where possible. If the investigation takes longer than anticipated the employee must be informed of this delay, again in writing.
- Ensure, where possible, a copy of all the relevant documents are to be given to the colleague, in particular witness statements before the hearing.
- In appropriate cases, protect the identity of the statement makers.
- Inform the colleague in writing of the right to be accompanied at the Grievance Hearing by a work colleague or trade union representative.
- Ensure you have checked the provision of any special needs, under the DDA, at the hearing.

Don't

- Forget to include all the relevant documents in the invite letter.
- Make a decision on the outcome prior to the completion of the hearing.

If the employee's proposed companion is unavailable on the date scheduled for the Grievance Hearing and a suitable date is put forward which would take place within 5 working days of the original date, the Grievance Hearing must be postponed until the later date.

Conducting the Hearing

Managers should ensure they are fully prepared to conduct the hearing, questions prepared and all documentations considered.

Please follow the following steps when conducting a meeting:

1. **Introduce** everyone and explain why they are present (e.g. the person who will take notes).
2. **If the employee is unaccompanied, confirm that they were aware of their right to be accompanied** and that they have chosen not to be.
3. **Explain** that the purpose of the hearing.
4. **Do not prejudice the matter.** Conduct the hearing in a spirit of inquiry and good faith.
5. **You might wish to use 'closed' questions** (e.g. those which require a 'yes' or 'no' answer) to follow up on points brought out through open questions or to establish/clarify particular facts, e.g. What happened then?'; 'What were your reasons for ...?'
6. **Remain polite, formal and aware of the employee's right to a fair hearing** throughout.
7. **If emotions are getting out of hand** on either side, call a short adjournment and resume the hearing after a break.
8. **After the facts of the issue have been discussed, summarise** your view of what has come out of the hearing and invite the colleague to comment on and possibly agree with your version. Any disagreement by the colleague should be noted and may need further consideration or possibly further investigation.
9. **The person taking notes during the hearing should record:**
 - the start and end time of the hearing
 - the start and end time of any breaks or adjournments
 - important points that arise
10. **If it is clear that further investigation is necessary,** tell the employee this and adjourn the hearing. An estimated date, time and location for a follow up meeting can be either discussed on the day or the manager can inform the employee of arrangement in writing as soon as it is reasonably practical.
11. **If new facts emerge during further investigations, after the grievance interview was adjourned.** Details of the new evidence are to be given to the employee before the follow up meeting and must be given the chance to comment on them.
12. **In cases where all the evidence is available to discuss adjourn the hearing,** giving the employee your best estimate of when a decision is likely to be reached. If you expect it to be soon (e.g. within 30 minutes), arrange for the colleague to wait in a comfortable area nearby, perhaps with some refreshment. You may want to discuss the details of the case with HR.

During the adjournment

1. Decide whether or not there is a grievance issue to answer bearing in mind that the standard of proof required is that you have reasonable grounds for your beliefs and that your decision is a reasonable response to the situation. You may choose to consult HR at this point.

2. Depending on the particular case, you might also need to discuss with HR whether further investigation is needed.

After reconvening

1. Re-summarise the key facts and issues.
2. Inform the employee of the outcome of the hearing, e.g. upholding the case or there is no case.

Do

- Make sure that you have full notes of the hearing (Please refer to guidance on taking notes of grievance).
- Retain these notes on the employee's file along with any other paperwork related to the grievance hearing, such as copies of the letters sent to the employee.
- Seek advice from HR on each case
- Every case must be decided on its merits, taking into account all the circumstances, including any extenuating circumstances.
- Confirm the outcome in writing as soon as reasonably possible.
- Inform them of their right to appeal and the appeal procedure

Don't

- Ever issue a sanction without following the correct grievance procedure
- Forget to be consistent in your approach, should you have two similar situations.

THE APPEAL

The employee has the right to appeal the outcome of the grievance meeting. This must be made, in writing, to the manager within 5 working days of the decision being made.

What should an Appeal procedure contain?

It should:

- wherever possible, provide for the Appeal to be heard by an authority higher than that taking the grievance action.
- provided that the employee, or a representative if the employee so wishes, has an opportunity to comment on any new evidence arising during the Appeal before any decision is taken.
- the appeal should be a re-hearing. If it is, any procedural deficiencies, which have occurred previously, will be cured. A re-hearing involves considering all the evidence afresh, holding an interview with the employee and interviewing the original witnesses.

During the Appeal hearing

- Inform the employee of the arrangements for the Appeal Hearing and his or her rights under the procedure, i.e. as in the case of grievance meeting, the employee should be offered the opportunity for a work colleague or union representative to witness or represent the colleague.
- Ensure that the relevant records are available and study them prior to the Appeal Hearing

The Appeal Hearing

- Introduce those present to the employee
- Explain the purpose of the hearing, how it will be conducted and what powers the Appeal panel has.
- Ask the employee why he or she is appealing against the grievance penalty.
- Pay particular attention to any new evidence that has been introduced and ensure the employee has the opportunity to comment on it
- Once all the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider what decision to come to
- Do not be afraid to overturn a previous decision if it becomes apparent that this was not soundly based and do not regard such action as undermining authority. In practice, it should help ensure that a correct decision is made next time.

- Inform the colleague of the results of the Appeal and the reasons for the decision and confirm it in writing. Make it clear, if it is the case, that the decision is final.

Do

- Invite the employee, in writing, for a meeting.
- Inform the employee the right to be accompanied.
- Ensure the employee is informed of the decision, in writing
- Highlight that the decision is Final.

Don't

- Repeat the disciplinary issues from the disciplinary; the appeal is a fresh hearing.

Taking Notes during a Grievance Meeting

Notes should be taken at every grievance meeting as a permanent record of exactly what has been said and decided, as well as evidence of the events of the meeting for later reference. It is important that the notes are as accurate and comprehensive as can be, using verbatim quotes wherever possible. A copy of the notes should be given to the employee who will have the opportunity to challenge anything he/she feels is inaccurate.

Before the proceedings start, the note taker should remind the manager to advise everyone that a record of the meeting is being made and that it would be helpful to speak clearly and slowly. It is also useful to remind everyone that they may be asked to repeat comments, should the note taker not have obtained an accurate record. The notes should also record the date of the meeting, the start and finish time and everyone present at the meeting, their position/role and when they entered and left the room.

If the notes are legible then the employee should be asked to read through them and countersign to agree that they are an accurate reflection of the conversation. If this is not possible send out a set of typed notes to the colleague for the same purpose.

Dos and Don'ts

Do

- Remember to bring an adequate supply of lined paper, a number of pens and an accurate watch
- Ask for the name and position of all visitors to the encounter if these are not asked for by the manager or the persons are not known by the note taker
- Clarify the role of the representative/ witness.
- If representative not present offer to postpone the meeting or confirm that the right to be accompanied is declined.

Don't

- Include anything other than the facts of the case and statements made, unless both parties agree that this should be the case for a particular reason which should also be stated in the record
- Display any bias when taking notes or allow the record to come across as slanted which would display the employee in either a good or bad light or in some ways justifies actions or sanctions. Notes should always be an impartial, plain statement of the facts of the meeting