



Grievance Guidance

This Content is applicable to both Teachers and Support Staff

Summary

This section includes an introduction to the use of grievance procedures for employees and gives links to the model procedure and supporting documents.

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The law

The School Staffing (England) Regulations 2009 require the governing bodies of schools with delegated budgets to establish procedures by which staff may seek redress for any grievance relating to their work at the school (Regulation 7(1)(b)). Similar duties were imposed by earlier legislation. The governing body must formally adopt a grievance procedure.

There are also requirements under general employment law, which have been followed in the authority's model grievance procedure.

The procedure also takes into account the ACAS Code of Practice on disciplinary and grievance procedures (the Code), which replaced the statutory dispute resolution procedures in April 2009 and which sets out principles for handling grievances in the workplace guidance. ACAS has also issued guidance on handling grievances at work which complement its Code. The guidance urges employers to remember that a grievance hearing

is not the same as a disciplinary hearing, and “is an occasion when discussion and dialogue may lead to an amicable solution”.

Employment tribunals are legally required to take the Code into account when considering relevant cases. Tribunals can also adjust any compensatory award made in these cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code. This means that if the tribunal feels that an employer has unreasonably failed to follow the guidance set out in the Code it can increase any award it has made by up to 25 per cent. Conversely, if a tribunal believes that an employee has unreasonably failed to follow the guidance set out in the Code, it can reduce any award it has made by up to 25 per cent. Whilst tribunals are not legally required to have regard to the guidance that does not form part of the Code, it contains good practice and advice for employers who are handling grievances.

The Employment Act 2008 abolished the statutory dispute resolution procedures from 6 April 2009. Employees are no longer required to raise grievances in writing with their employer before initiating a claim to an employment tribunal. However, employment tribunals will have regard to the Code, which provides for a formal grievance to be put in writing, and to the employer's own grievance procedure. As the model procedure provides for a formal grievance to be put in writing the repeal of the statutory dispute resolution procedures is unlikely to make any difference in practice.

(The statutory dispute resolution regulations still apply in the following circumstances:

- Where the matter about which the employee has complained occurred wholly before 6 April 2009;
- Where the matter about which the employee has complained began before 6 April 2009 but continued on or after that date provided that the employee has submitted a written complaint to the School or to the Tribunal on or before 4 July 2009, or on or before 4 October 2009 in relation to a complaint about equal pay or a redundancy payment.)

What is a grievance?

The model procedure defines a grievance as a concern, problem or complaint that an employee or a group of employees might raise with their employer about their work, their terms and conditions of employment, their working environment or their relationship with colleagues. The grievance could be in relation to an action which has been taken, or is contemplated.

The right to be accompanied

Employment law (s.10 Employment Relations Act 1999) and the ACAS Code provide that an employee has the right reasonably to request to be accompanied at any formal grievance hearing or appeal. The chosen companion may be a fellow worker, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by his or her union as being competent to accompany a worker; certification may take the form of a card or a letter. However, as union representatives do not always carry cards, the accredited status of a union representative (whose name may not be familiar) may be ascertained before the day of the meeting either with the Employee Relations Team or with the union itself. A ‘school representative’ of a teacher association, as distinct from a local officer of the association, is unlikely to have been

certified as having the experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings, but may nonetheless be chosen to act as a companion in the capacity of a fellow worker. Where an employee chooses to be accompanied or otherwise assisted by a representative in accordance with the legislation, the head teacher, or the clerk to the governing body as the case may be, should seek to arrange hearings etc. in consultation with the chosen trade union officer or official or chosen employee.

The chosen companion will be allowed to address the meeting, respond on the employee's behalf to any view expressed during the hearing, confer with the employee during the hearing and sum up the case on the employee's behalf. However, the employer is not required to permit the companion to answer questions on behalf of the employee, address the hearing if the employee does not wish the companion to do so, or to use his or her powers in such a way as to prevent the employer explaining his or her case or any other person at the hearing from contributing to it.

A failure on the part of the school to allow an employee the rights set out in s.10 may lead to a tribunal complaint under s.11 Employment Relations Act 1999. Compensation is limited to two weeks' pay, but the more serious consequence is that a failure to respect this right may amount to a fundamental breach of contract allowing the employee to resign and claim constructive unfair dismissal.

Section 10 of the Employment Relations Act 1999 requires employers to permit a worker to take time off during working hours for the purpose of accompanying another of the employer's workers at a grievance hearing.

It is good practice for a mutually agreed time to be arranged for meetings under this procedure, in order to avoid having to re-arrange meetings because the employee's chosen companion is not available. Section 10 of the Employment Relations Act 1999 provides that where the employee's chosen companion is unavailable on the day or time for which the employer has called the hearing, the employer must postpone the hearing to the time proposed by the employee. However, the alternative time and day proposed by the employee must be reasonable and within five working days of the original suggested date. In exceptional circumstances the five working days can be extended by mutual agreement.

Model grievance procedures – local authority

The Authority has recommended a [model Grievance Procedure for schools](#). It is supported by a toolkit

The local authority recommends that governing bodies should provide for grievances to be dealt with according to the type of grievance as follows:

- Allegations of bullying or harassment should be dealt with under the dignity at work procedure. unless the employee chooses to use the grievance procedure.
- Concerns under the Public Interest Disclosure Act should be dealt with under the [whistle-blowing procedure](#).
- Concerns over pay or grading, including performance management, should be dealt with under the [governing body's pay policy](#).
- Concerns about actual or contemplated disciplinary action should be dealt with under the [disciplinary procedure](#)

- Concerns about an actual or contemplated dismissal should be dealt with under the relevant [dismissal procedure](#)
- Concerns about recruitment and selection should be dealt with under the [recruitment and selection complaints procedure](#).
- Concerns over national insurance, income tax or rules of pension schemes which should be raised with the relevant public bodies.
- All other grievances should be dealt with under a general grievance procedure. The authority commends a model grievance procedure to community, voluntary controlled, community special and maintained nursery schools. The procedure can also be used by voluntary aided and foundation schools, in which the governing body is the employer, although denominational voluntary aided schools may prefer to use the procedures recommended by their respective church authorities. This model grievance procedure was published in 2015. The previous model, dating from 2010, is available to those schools which have not yet adopted the 2015 model or for cases which were started under the old procedure and must be concluded under that procedure unless all parties have agreed to use the new procedure.

Concerns about conditions of service (as distinct from alleged mis-application of such conditions by the school) or other matters outside the control of the governing body cannot be a matter of grievance with the school.

Model grievance procedures - denominational

Roman Catholic and Church of England schools may have adopted procedures recommended by their national educational bodies or local dioceses and [Catholic Education Service](#).

Church of England schools may use the procedure recommended by [the National Society](#).

Adoption of procedure and delegation of powers

Procedures can only apply when formally adopted by the governing body. Any case begun under previous procedures must continue under those procedures and the governing body's resolution should reflect that requirement.

The head teacher should ensure that all employees are aware of the grievance procedure adopted by the governing body and have ready access to it, either electronically or in the form of a paper copy in the school office. Copies should also be displayed on notice boards in school staff rooms or other areas in the school where employees meet together.

Collective disputes

Collective disputes are not the same as grievances, but may arise out of them. The authority's model grievance procedure includes a short section on collective disputes.

Model letters Toolkit

Model letters and other documentation, including procedures for the conduct of hearings, have been prepared to support the authority's model grievance procedure. . These letters have been prepared to conform to the timescales in the authority's model procedure and should not be used to support other procedures unless the timescales are checked to ensure that they correspond.

Investigations

Appended to the model grievance procedure is detailed [guidance on how to conduct an investigation](#). Proper investigation is essential to the good management of a grievance. The service level agreement between schools and the authority's human resources services specifies that if a full investigation is required a school should ensure that it is undertaken promptly seeking advice from Employee Relations if necessary.

Conduct of hearings

Appended to the [model grievance procedure](#) are detailed procedures for the conduct of hearings, one for the first hearing and another for [appeals](#)

Guidance on behaviour in meetings and hearings

The authority has produced guidance on [behaviour in meetings and hearings](#) which should apply to grievance proceedings.

Old model procedure

The old model procedure for use until the governing body adopts the Post November 2015 procedure and for cases already begun under the Pre November 2015 grievance procedure.

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