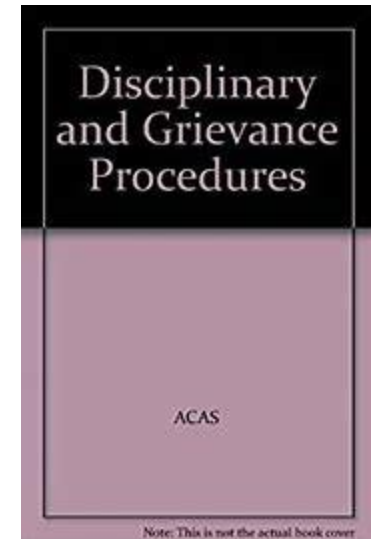




Grievance and Discipline Training

David Di Paola - Solicitor

Church of Scotland Law Department



What to do if you have a grievance?

- If an employee has a problem ('grievance') at work it is usually a good idea for them to raise it informally first.
- The employer should respond even if the problem is raised informally.
- A grievance procedure is a formal way for an employee to raise a problem or complaint to their employer.

When can an employee raise a formal grievance?

- The employee can raise a grievance if:
- They feel raising it informally has not worked
- They do not want it dealt with informally
- It is a very serious issue, for example sexual harassment or 'whistleblowing'

Following a formal procedure

- When an employee raises a formal grievance, their employer should follow a formal procedure.
- This should be set out in the workplace's grievance procedure.

The employee should always:

- 1) raise the grievance as soon as they can;
- 2) take any actions expected of them as soon as they can.

Duty on the employer

- All employers should follow a full and fair grievance procedure.
- They should:
 - 1) make clear they'll deal with grievances fairly and consistently;
 - 2) investigate to get as much information as possible;
 - 3) Allow the employee to bring a relevant person to a grievance meeting;

Duty on the employer (2)

- 4) give everyone a chance to have their say before making a decision;
- 5) take actions and make decisions as soon as they can;
- 6) allow the employee to appeal against the grievance outcome.

Mediation to resolve a grievance

- You can use mediation at any stage. Mediation involves an independent, impartial person working with both sides to find a solution.
- The mediator can be someone from inside or outside your business. If they're from outside your business, you might need to pay.
- Both sides will need to agree to mediation.

How an employee can raise a grievance

- The employee with the grievance should put it in writing to whoever is most appropriate – this could be their line manager, HR manager or employer.
- The letter or email should include:
 - what the grievance is about;
 - any evidence, for example a payslip or employment contract;
 - what they want their employer to do about it.

Responding to a formal grievance

- The employer should keep written records of what takes place during the grievance procedure. This includes:
 - what the grievance is about;
 - any decisions and actions taken, and why;
 - whether the employee appeals the grievance outcome.

If the grievance is about someone at work

- Before getting more information and evidence, the employer should:
 - 1) avoid assuming anything about the grievance or the people involved;
 - 2) be sensitive to the circumstances and needs of the person the grievance is about, as well as the person who raised the grievance.

Deciding on disciplinary action

- An employer should not discipline anyone involved in a grievance before getting all the information and evidence they can.
- If there are concerns about employees in a grievance case working together while the grievance is looked into, the employer should consider what else they can do in the short term.

Investigating the grievance

- The employer should investigate the grievance so that they can make a fair decision about the grievance.
- In a disciplinary or grievance investigation, the person investigating should do their best to:
 - be fair and objective;
 - follow any policies or guidelines your workplace might have;
 - get as much information on the case as is reasonable;
 - not try to prove guilt, but get balanced evidence from both sides;
 - keep the case confidential.

If the grievance is raised while a disciplinary is taking place

- The employer can pause the disciplinary procedure and deal with the grievance first. If the disciplinary and grievance cases are related, the employer can deal with both at the same time.

If a grievance is raised by more than one employee

- If more than one person in a workplace has the same grievance, it might be best to raise it collectively.
- The employer and employees should follow your workplace 'collective grievance' policy. If your workplace does not have this, the employees could:
 - get more information from their trade union or workplace representative;
 - raise the grievance themselves, for example by agreeing on one person to raise it and communicate for all of them.

The grievance meeting

- When an employee raises a formal grievance, the employer should arrange to hold a meeting within 5 working days ideally.
- The employer should allow employees enough time to prepare for the meeting.
- The employer can arrange for someone not involved in the grievance to:
 - 1) take notes at the meeting;
 - 2) act as a witness if necessary;

The grievance meeting (2)

To keep the procedure fair, the employer should:

- 1) consider information or evidence from all sides;
- 2) see if a similar grievance has happened before and aim to follow the same fair procedure.

The grievance meeting (3)

- Employers should keep a confidential record of:

- 1) the meeting;

- 2) evidence they have gathered;

- 3) any decisions or actions taken.

The grievance meeting (4)

- The employee:
- should do their best to attend the meeting on the date set;
- can bring any evidence about the grievance (for example, relevant emails) to show and discuss at the meeting.

The right to be accompanied

- any employee or worker can bring a relevant person ('companion') to a grievance meeting, if it is about a legal or contractual issue. This is known as 'the right to be accompanied'.
- The person must choose their companion from one of the following:
 - a colleague;
 - a trade union representative;
 - an official employed by a trade union;

The right to be accompanied (2)

- Under discrimination law the employer needs to consider a disabled employee's request to bring someone else for additional support, such as a carer.
- It is up to the employer to agree if the person wants to bring anyone else. It can depend on the contract – for example, some employment contracts might allow for a spouse or legal representative.

What happens in the grievance meeting

- The meeting is the chance for the person who raised the grievance to:
- explain the grievance;
- show any evidence they have;
- It is also the chance for the employer to ask questions, so that they know what steps to take.

What happens in the grievance meeting (2)

What the employer should do:-

- In the meeting the employer should ask the person who raised the grievance to:
 - provide more information about it;
 - discuss how it could be resolved.

What happens in the grievance meeting (3)

- The employer should also:
- remain impartial;
- do their best to understand the feelings of the person raising the grievance;
- take notes or appoint someone else to take them;
- go through the evidence;

What happens in grievance meeting (4)

- take care in deciding on any actions (usually the employer will not need to make an immediate decision);
- consider ending the meeting and resuming it at a later date, if they need to investigate statements and facts from the meeting;
- sum up the main points at the end.

What happens in the grievance meeting (5)

- They should give the person who raised the grievance the chance to:
- explain their side;
- express how they feel – they might need to ‘let off steam’, particularly if the grievance is serious or has lasted a long time;
- ask questions;

What happens in the grievance meeting (6)

- show evidence;
- provide details of any witnesses the employer should contact.

Deciding the outcome

- After following a fair grievance procedure, the employer should decide on the best outcome based on:
- the findings from meetings and investigations;
- what is fair and reasonable;
- what their workplace has done in any similar cases before.

Deciding the outcome (2)

- The employer should tell the employee of the outcome as soon as possible and in writing.
- If the grievance involved other people in the workplace and it was upheld, the employer might need to start a disciplinary procedure.

Employee's right of Appeal

- The employer should offer the employee the right of appeal.
- This is so the employee can raise an appeal if they feel:
 - 1) the outcome does not resolve the problem;
 - 2) any stage of the grievance procedure was wrong or unfair.

Disciplinary Procedure: what options?

- A disciplinary procedure is a formal way for an employer to deal with an employee's:
- unacceptable or improper behaviour ('misconduct')
- performance ('capability')

Dealing with capability issues

- Capability or performance is about an employee's ability to do the job.
- Some employers might have a separate procedure for dealing with capability or performance issues that should be based on:
 - Support;
 - Training;
 - encouragement to improve.

What counts as misconduct

- Misconduct is when an employee's inappropriate behaviour or action breaks workplace rules.
- Some misconduct examples include:
 - Bullying;
 - Harassment;
 - refusing to do work;
 - being absent without permission.

Where there is gross misconduct

- Some acts count as 'gross misconduct' because they are very serious or have very serious effects.
- If an employer finds there has been gross misconduct, they should still carry out an investigation and the full disciplinary procedure. They might then decide on dismissal without notice or payment in lieu of notice.

Following a fair procedure

- If the employer has considered trying to resolve the issue informally but feels they need to start a disciplinary procedure, they must tell the employee straight away.
- This should be done in writing and should include:
 - sufficient information about the alleged misconduct or poor performance;
 - possible consequences, for example a written warning.

Following a fair procedure (2)

- The employee should have this information in time to prepare for a disciplinary meeting.
- The employer must make sure they follow a full and fair procedure throughout.

Carrying out an investigation

- The employer must carry out an investigation to get as much information as they reasonably can about their employee's alleged misconduct or poor performance.
- They should:-
 - 1) Meet with the employees concerned;
 - 2) Take statements.

The Disciplinary Hearing

- The hearing should be held as soon as possible after the investigation, while giving reasonable time for the employee to prepare.
- In good time before the hearing, the employer should put in writing to the employee:
 - the alleged misconduct or performance issue;
 - any evidence from the investigation;
 - any other information they plan to talk about;

The Disciplinary Hearing (2)

- the date, time and location of the hearing;
- information on the employee's right to be accompanied to the hearing;
- the possible outcomes.

The right to be accompanied

- An employee or worker can bring a relevant person ('companion') with them to a disciplinary hearing. This is called 'the right to be accompanied'.
- The employee should tell their employer as soon as possible who they want to be their companion so arrangements can be made in good time.

Who the employee can bring with them

- The employee must choose their companion from one of the following:
- a work colleague;
- a workplace trade union representative who's certified or trained in acting as a companion;
- an official employed by a trade union.

What happens in the disciplinary hearing

- The hearing is the chance for both the employer and the employee to state their case. The employer, employee and employee's companion should make every effort to attend.
- The employer should:
 - explain the employee's alleged misconduct or performance issue;
 - go through the evidence;
 - make sure someone takes notes.

What happens in the disciplinary hearing (2)

- The employee should be given the chance to:
 - set out their case;
 - answer any allegations;
 - ask questions;
 - show evidence;

What happens in the disciplinary hearing (3)

- call relevant witnesses (with good notice);
- respond to any information given by witnesses;
- choose if their companion can speak for them at the hearing.

At the end of the disciplinary hearing

- It's a good idea for the employer to take some time after the hearing to consider the case carefully before making a decision.
- The employer should:
 - 1) tell the employee what happens next and give a timeframe;
 - 2) take a written confidential record of the hearing.

Deciding on the disciplinary outcome

- After following a fair disciplinary procedure, the employer should decide on the best outcome based on:
 - the findings from the investigation and meetings;
 - what is fair and reasonable;
 - what their workplace has done in any similar cases before.

Deciding on the disciplinary outcome (2)

- For a disciplinary outcome that's not a dismissal, it is a good idea for the employer to give the employee specific goals and timeframes for improvements.

Telling the employee the outcome

- The employer should tell the employee of the outcome as soon as possible and in writing.
- If the employee's conduct or performance has not improved in the timeframe set, the employer should repeat the disciplinary procedure until improvements are made or until dismissal is the only fair and reasonable option.

Informal warnings

- If the misconduct or performance issue was found to be small and not serious, the employer might just have an informal talk with the employee. Your workplace might call it a 'verbal warning'.
- It is a good idea for the employer to still keep a confidential written record of informal or verbal warnings for future reference.

Written warnings

- A written warning is a formal warning that the employer can give the employee at the end of the disciplinary procedure.
- A first or final written warning should say:
 - what the misconduct or performance issue is;
 - the changes needed, with a timescale;
 - what could happen if the changes are not made;
 - what could happen if there is further misconduct or no improvement to performance;

Written warnings (2)

- how long the warning will stay in place;
- in performance cases, any support or training the employer will provide.

Dismissal

- The employer might end the employee's contract ('dismissal') in either of these cases:
- gross misconduct;
- the disciplinary procedure has had to be repeated and the employee previously had a final written warning;
- Dismissal should only be decided by a manager who has the authority to do so.

Dismissal (2)

- The employee should be told as soon as possible:
- the reasons for the dismissal;
- the date the employment contract will end;
- the notice period;
- their right of appeal.

Employee's right of appeal

- The employer should offer the employee the right of appeal.
- This is so the employee can raise an appeal if they feel:
 - the outcome is too severe;
 - any stage of the disciplinary procedure was wrong or unfair.

Keeping the record

- No matter what the outcome, it is a good idea for employers to keep a written record of all disciplinary cases to help with any questions or similar cases in the future.
- In line with data protection law, records should be:
 - Confidential;
 - only be kept for as long as necessary.

ANY QUESTIONS???