

What exactly is a grievance?

A broad definition

Under the statutory grievance regime, employees are required to lodge a grievance as a pre-requisite to commencing legal proceedings against their employer. Broadly this means setting out the basis for their concern in writing, and sending it to the employer. Employment Tribunals have adopted a very broad brush approach to what constitutes a grievance, and in doing so have allowed claims to proceed that employers might have expected to be barred.

In the past the following have been held to be valid grievances for the purposes of the statutory grievance regime:

- a letter before action from the employee's solicitor
- a general resignation letter from the employee containing general complaints
- a discrimination questionnaire
- a flexible working application

The issue has been looked at again in the case of *Procek v Oakford Farms Limited* in which an employee lodged a grievance but stated that it was to be taken as an informal indication of his complaints and that it was not intended to be considered under the statutory grievance procedure. In addition, the employee stated that if matters were not resolved to his satisfaction informally, then he would lodge a formal grievance.

However, the employee did not in fact lodge a subsequent formal grievance but instead commenced proceedings in the Employment Tribunal. Unsurprisingly the Employer argued that the case should not proceed on the basis that the employee had failed to lodge the requisite statutory grievance. The Employment Tribunal agreed and ordered that it had no jurisdiction to hear the case.

On appeal the EAT considered (1) whether a complaint had been set out

in writing and sent to the employer and (2) whether 28 days had elapsed prior to the claim being issued. Although it had some sympathy for the Employer, the EAT held that a formal statutory grievance had been lodged, despite the fact that the employee had not intended that to be the case. In addition the requisite 28 days had passed.

The Employer had taken the view that such a finding would be unfair as it would result in an uplift of compensation should the employee's claims ultimately succeed. However, as the EAT pointed out, the Employment Tribunal has the power to determine whether such a percentage increase is just and equitable in the particular circumstances of the case.

Points to consider

Whilst changes are to be made to the statutory grievance process in the future, we are stuck with the current regime for now. As such, employers should remember:

- A written grievance procedure is essential, and all staff should have easy access to it
- Any grievance procedure should take account of the ACAS Code of Practice on dispute resolution
- Managers should be aware of the ease with which grievances can be raised, and the consequences of failing to spot a complaint that could later be held to be a statutory grievance
- All grievances should be taken seriously and dealt with in a timely fashion. In assessing your conduct as an employer an Employment Tribunal will consider all of your actions, and the reasonableness of them
- If a grievance is raised, ensure that you have clarity as to exactly what the grievance does and does

not relate to. This makes the process of disposing of it simpler and easier to keep on track

- Keep written records of all steps that you take in the grievance process
- Having identified the exact details of the grievance at the outset, try and build a common thread in your documentation from investigation to hearing to outcome to appeal. This will make the correspondence easier for an Employment Tribunal to follow, should matters reach that stage.

We can help!

We can advise employers on establishing a fair grievance procedure, the implementation of that procedure, the steps that should be taken in a grievance process and the management of that process such that risk is minimised.

From time to time employers take the view that a resignation letter is not intended as a statutory grievance, and that they wish to treat it informally despite the legal risks in doing so. We help you to assess your risks in this respect, and steps that can be taken to minimise them.

We can train managers and HR on spotting grievances, handling them, disposing of them and on the drafting of appropriate legal paperwork. We can provide fixed price training packages on establishing a compliant grievance procedure and running a grievance process. Please contact us for more details.

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