

EMPLOYEE GUIDE

Raising a Grievance or Complaint

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INTRODUCTION

At LincsLaw we understand problems at work can affect every part of your life. As employees, we can spend as much time with our work colleagues as we do with our family and friends. We appreciate that your home, way of life and security will be dependent upon the income your employment provides. Therefore, if things go wrong for you at work, it puts pressure on every aspect of your personal life.

We set out below some general guidance which should help you if you are considering raising a complaint or grievance with your employer. The information provided in this guide is intended to be of assistance, but it is no substitute for a proper consideration of your situation and legal advice about your concerns. We would be happy to meet with you to discuss your grievances and undertake a proper assessment of your situation. Information about our Fixed Fee Consultations can be found at our website at www.lincslaw.co.uk

GRIEVANCES AND COMPLAINTS

Most employers will have a policy or procedure that can be used by employees with a dispute or concern within the workplace. In any event, with or without their own procedure, employers are required to abide by the ACAS Code of Practice 1: Disciplinary and Grievance Procedures.

Although such procedures are there to help employees, many people are reluctant to use them because they are anxious about making their complaints “formal”. We understand the concerns you will have as an employee before taking such a step. However, for matters which are likely to become issues before the Employment Tribunal, it will be necessary for you to demonstrate that you notified your employer of your complaints and used the internal procedures. Therefore, you will be expected to raise a grievance, if only to be able to prove you brought your complaints to your employer’s attention and attempted to resolve your issues within the workplace.

Obviously not every complaint or grievance results in an Employment Tribunal claim. Indeed, it is always better to resolve issues at an early stage if at all possible and avoid the necessity for litigation. However, it is also sensible to be aware of the possibility of matters escalating to the Employment Tribunal. You should therefore prepare your grievance in anticipation that it may, at some point in the future, be considered by the Employment Tribunal but at the same time in the hope that matters can be resolved and litigation will not be necessary.

If done carefully and properly, the risks involved in raising a formal grievance can be minimised and, often, raising your complaints in this way can protect you against further mistreatment. Also, it should be remembered that grievance procedures are there to help you as an employee and are the proper way in which you should raise your complaints.

WHAT TYPE OF ISSUES ARE SUITABLE FOR A GRIEVANCE?

Essentially, any matter of complaint you have about your workplace could be the subject of a grievance. This includes problems with your employer, work colleagues or even customers if you consider your employer is failing in their obligations to you.

Grievances can be raised about pay and benefits, this would extend to claims for “equal pay” between male and female workers. Any complaints about bullying and harassment in the workplace should be raised as a grievance, this is particularly true where you suspect the reason for the bullying and harassment is due to your gender, age, disability, race or ethnicity, pregnancy, sexual orientation etc.

Other common grievances include changes of contractual employment rights following a transfer of employer or an unfair performance management assessment. In essence, as an employee, a grievance is your way to bring matters which are of concern to you to the attention of your employer within a formal procedure. This not only puts your complaints on a recorded formal footing but requires your employer to consider and respond to your concerns.

WHAT INFORMATION SHOULD I INCLUDE IN MY GRIEVANCE?

We have tried to set out below some general principles and assistance for any employee drafting a grievance. However, once again, the guidance below is no substitute for a proper consideration of your situation and legal advice on your particular matter. We would be happy to meet with you to discuss your grievances and undertake a proper assessment of your situation. Information about our Fixed Fee Consultation can be found at our website at www.lincslaw.co.uk

By way of general assistance, any grievance to your employer should:-

- A. Be addressed to the person identified in the employer’s grievance policy (or the most senior member of staff if your employer does not have such a policy). Ensure you keep a copy and, if possible, proof of your employer receiving your grievance (email read receipt, proof of posting and/or if delivered by hand, a note of who you gave it to with the time and date).
- B. Indicate that the letter/document is a grievance and you require your employer to treat it as such. You do not want your employer to suggest that they were unclear or did not understand your complaint was a formal one or that you intended it to be a grievance under their policy.
- C. In your opening paragraph, set out the nature of our grievance. (For example, you could state you considered you were being bullied by your manager; that you had suffered disability discrimination; or

that you believed you had not been paid the correct amount.) This paragraph simply sets the tone and prevents any suggestion from your employer that they did not understand the nature of your grievance.

In the next part of your grievance you should provide the specific details of your complaint(s). It is to be anticipated that once your grievance is received, your employer will undertake some form of investigation. Such investigation could be anything from a brief check of attendance records, to a full scale consideration including witness interviews and review of documents. In any event, the more detail you provide, the more credibility your grievance will have. For some types of complaint these paragraphs will be relatively straightforward.

For example, for a pay matter your paragraph setting out the detail of your grievance could be as simple as:

On 4th April 2015, I should have received a salary payment of £2,000 gross (£1,500 net). In fact I received £1,000 gross (£700 net). I believe the amount I was paid was incorrect as I had undertaken 20 hours of overtime in March 2015 and submitted my timesheets fully and correctly by the company deadline. I have received no explanation for this shortfall and my attempts to resolve the situation through payroll have been unsuccessful.

For other types of matter more detail and explanation will be required. For example, a complaint of bullying at work might detail a number of incidents and require an explanation as to why you felt bullied:

On 4th April 2015 at around 3.00pm, I was tidying up the storeroom when Mrs Alpha came in. Although I was busy working, she made a number of comments stating that I was being "lazy" and "was not doing as [I] was told". She was clearly very angry and as one stage started shouting at me. I became very distressed and left the room in tears.

I believe this is an example of Mrs Alpha bullying me. I was not doing anything wrong yet she still shouted at me. My colleague, Ms Beta, was also in the storeroom at the time and witnessed the whole thing. Although Ms Beta was doing the same work, Mrs Alpha did not make any comments to her. She singled me out and I believe she was bullying me.

- D. If your employer has a staff handbook or staff policies you believe are being breached you should refer to them in your grievance. These types of policies are often used by employers to establish what is or is not acceptable conduct by their employees. In the event of a breach, you should ensure you should draw to the employer's attention how they, or their employees, are breaching their own policies.

If we use the example of Mrs Alpha above, a paragraph along the following lines could be added:-

I believe Mrs Alpha's behaviour was in breach of the company's Dignity at Work Policy. I was doing nothing wrong, but even if there was a problem with my work, the Policy clearly states Mrs Alpha should have discussed the problem with me calmly and in private. As she shouted at me without justification and in front of a colleague, she was bullying me in breach of the Policy.

- E. Once you have set out your complaints as fully and as completely as possible, you should state what action you would wish your employer to take. Everyone who raises a grievance will want it to be properly investigated and upheld. You should therefore state that having your grievance upheld is one of the outcomes you are seeking.

For some grievances, addition resolution will be straightforward, (for example, to receive outstanding payments or to reinstate previous terms and conditions of employment). For other situations it may be more complicated and you should think carefully about what you want to happen.

For our complaint against Mrs Alpha in the examples above, you might want the company to initiate disciplinary action against her, you might request they intervene to give you a different manager or you might request the involvement of a third party in your dealings with her. The way in which you request your matter be resolved will vary significantly depending upon the nature of your grievance and the size and resources of your employer (for example, requesting a transfer to a different department if your employer does not have one will just make you appear unreasonable).

Setting out your suggestions to resolve your grievance will identify you as someone who is sensible, rational and who has a genuine intention of dealing with workplace matters professionally, using the employer's policies and procedures.

WHAT WILL HAPPEN ONCE I HAVE SENT MY GRIEVANCE TO MY EMPLOYER?

If your employer has their own grievance or complaints procedure, they should follow that procedure. In any event, all employers (with or without their own procedure) should abide by the ACAS Code of Practice 1: Disciplinary and Grievance Procedures. Failure to follow their own and/or the ACAS grievance procedure could, in itself, be subject of grievance or could compound your complaint(s).

You will usually be invited to a meeting with your employer to discuss your grievance. You are entitled to take a work colleague or trade union representative to the meeting with you. If matters are resolved to your satisfaction, this is all well and good. If not, your employer should give you the opportunity to appeal against the outcome of your grievance.

At each stage, you should request written confirmation and an explanation from your employer of any decision they make. Obviously this should include any decision about whether they uphold your grievance but should also include any delays or failure to comply with time limits in their procedure. For straightforward matters, there may be no delays and matters may be dealt with swiftly. However, if you are being told your meeting is being delayed due to your employer's investigations, you should make sure you are fully informed about what is happening and when they expect any investigation to be completed.

At all times be aware of the impact delays may have against the time limits for Employment Tribunal litigation.

Obviously much will depend on the type of issue or complaint you have; it might be that your matter is appropriate for a grievance but does give you grounds for a claim at the Employment Tribunal.

However, if you consider your issue might be the basis of a complaint to the Employment Tribunal in the future you should be vigilant about time limits. As a general rule, you must submit your claim to the Employment Tribunal within three months of the act, omission or incident your claim is about. The day the act, omission or incident occurred is first day in calculating the time limit. For example, if the act, omission or incident occurred on 30th June, your claim would need to be submitted to the Employment Tribunal on or before 29th September.

Time limits can be extended if you are going through the ACAS Early Conciliation Process when your Employment Tribunal time limit would normally expire. Also, it is sometimes more difficult to work out your time limit for cases where there is no clear date to work from: for example, where there has been ongoing discrimination or where the claim is about an employer's failure to act.

Claims submitted "out of time" will not be accepted by the Employment Tribunal and in those circumstances your ability to pursue your claim will be lost. This can happen even if you are going through a grievance process with your employer when the time limit expires. It is therefore important that you keep Employment Tribunal time limits in mind when you are going through any grievance procedure and do not lose your ability to claim because of delays caused by your employer.

CAN WE HELP YOU?

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