



XpertHR Podcast

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- Qian Mou:** Welcome to the XpertHR podcast with me, Qian Mou. Today we're talking about how HR and line managers can take a common sense approach to dealing with grievances effectively. I'm joined by senior employment law editor, Susie Munro.
- So Susie, we know that there's no mandatory statutory procedure when you're dealing with grievances anymore, although obviously the principles of the ACAS Code provide a useful framework. So should employers have a set procedure still to follow for every grievance then? [0:00:47.9]
- Susie Munro:** Well aside from following the principles of the Code, which are pretty straightforward, employers have some flexibility in how they deal with grievances. Procedures are important – they can help employers to act consistently and they can help inexperienced line managers, and they also make it easier to show employees that they're being treated fairly and consistently. But, if you're slavishly sticking to a procedure, you may not be focusing on the best way to resolve the actual issue. So I think the important thing is for the employer's policy and practice on grievances to give employees the confidence that they can air any issues that they have and that they will be dealt with properly.
- Qian Mou:** And that's kind of the point of the ACAS Code, to provide guidance rather than a set procedure? [0:01:33.5]
- Susie Munro:** Yes. So the Code sets out the principles of how to carry out a fair grievance procedure, but actually there's not that much detail in it. It encourages employers to try to resolve the issue informally first of all, but if that's not possible, the Code advises to hold a meeting – and the employee has the right to be accompanied at that meeting – then to give the employee the chance to explain the issue and listen to what they want to be done to resolve it. And then it's just about making a decision and giving the employee the right to appeal. And there's the underlying principle of always acting promptly during the procedure.
- Qian Mou:** Okay, and the Code actually is important in the sense that it will still be taken into account if the grievance ends up in an employment tribunal claim. So tribunals can increase the compensation that they can order an employer to pay if it turns out the employer hasn't followed the ACAS Code. [0:02:26.0]
- Susie Munro:** Yes, that's right.

Qian Mou: Let's move onto talking about grievances in practice. How does an employer recognise a grievance? [0:02:32.9]

Susie Munro: So it's best for employers to take a wide approach as to what they will class as a grievance. The ACAS Code defines grievances as "concerns, problems or complaints that employees raise with their employers". So, it could cover any work issue, really.

Qian Mou: So it should be fairly straightforward for employers to recognise, if it can basically cover any employment type of issue? [0:02:55.5]

Susie Munro: Yes.

Qian Mou: And there's no requirement for grievances to be in writing or in any particular format, is there? [0:03:00.9]

Susie Munro: So the Code says it should be in writing and ideally the employee would provide a written grievance. But, there might be a good reason for them not wanting to do so, and the employer shouldn't insist that they do put it in writing. So the employee might not have particularly good written English. What they put down might not cover the real issues or it might not be enough detail. So when the employer meets with the employee it might be appropriate for them to work together to record what the grievance is. Obviously, the employer should make sure that the employee does agree with what is being recorded to make sure it does actually cover their concerns.

Qian Mou: Right. So having it in writing can help to avoid misunderstandings. [0:03:41.4]

Susie Munro: Yeah.

Qian Mou: And presumably it could also serve as a record to show that the grievance was dealt with fairly if there are any issues in the future? [0:03:49.3]

Susie Munro: Yeah.

Qian Mou: Alright. So employers might also find that they're faced with grievances that on the face of it aren't very serious. In this type of situation does an employer have to run a formal grievance procedure? [0:04:01.3]

Susie Munro: I think that's an important point. The ACAS Code assumes that employers will try to resolve the issue informally at first, only going to the formal procedure if that doesn't work. And it's important to recognise that the employee's complaint might appear trivial to the line manager but it might be really important to the employee, so there has to be a balance between not being too dismissive and being sensible about the time and the resources that you put into dealing with the complaint.

As an example, say, someone could bring a grievance about a colleague listening to music on headphones just a bit too loudly. So colleagues can hear it, and some people might be able to ignore that and some people might find it really annoying and really distracting. So that complaint is a grievance and it's something that could lead to more issues between the employees if nothing is done. But the first

step would be to try to resolve it informally rather than holding a formal meeting, and a quick word with the person with the headphones should hopefully be enough.

Qian Mou: So in many circumstances you probably can just take some simple action to resolve the issue. [0:05:02.7]

Susie Munro: Yes. Or if it's genuinely trivial there are some circumstances where it will be okay to say you're not going to take any action, and HR and line managers need to have the confidence to recognise when it's appropriate to say that.

Qian Mou: Alright. So what about a situation where an employee mentions something to their manager but doesn't want it to be followed up in a formal grievance? What should the employer do? [0:05:27.5]

Susie Munro: Yes or they might make a grievance and then say they want to retract it. So I think the important thing is to find out why they don't want to pursue the grievance. It could be that they don't want to be seen as a troublemaker or possibly, more serious, that they're worried about some kind of retaliation by others involved. So really it's about trying to instil confidence that the grievance will be dealt with effectively and they will be protected if there is a worry that there will be some kind of retaliation.

Qian Mou: And if a line manager tries to do all of these things but ultimately the employee doesn't feel comfortable, you can't force an employee to pursue the grievance but in some circumstances the line manager will still have to take responsibility and take action if a potential issue has been raised that does need to be dealt with? [0:06:11.8]

Susie Munro: Yes. So they can take action outside of the parameters of the formal grievance procedure. And it may be that just the issue being raised by the employee is enough to allow them to do something about it. So it could be that they need to initiate the disciplinary procedure to investigate if there's been any behaviour that needs to be dealt with.

Qian Mou: Okay, so what about situations where the grievance involves other workers but the colleagues are reluctant to get involved? [0:06:39.4]

Susie Munro: Yes, so it might be that employees are possible witnesses to something around the grievance. There's the option of asking the colleague to provide some kind of statement or information on an anonymous basis, but realistically often that's not going to be possible to ensure that. So if you've got a very small team or if it's a very specific complaint it might be obvious to everyone who's raised the grievance and who's given information about it.

Qian Mou: Okay, but the focus of the grievance procedure shouldn't necessarily be about making a finding of fact or finding out exactly what's happened and apportioning the blame. [0:07:15.4]

Susie Munro: No, so the grievance procedure should be about finding out what the employee wants to be done and deciding how to proceed, and it might be that the outcome is to instigate the disciplinary procedure against another employee. And this would be where you would carry

out a much fuller investigation and you might want the witnesses to get involved at that stage.

Qian Mou: And in some situations mediation could help. That could be a potential outcome of the grievance? [0:07:41.2]

Susie Munro: Yes.

Qian Mou: So for example, if you've got a situation where two employees aren't working well together, say one has raised a grievance that the other is talking over them in meetings and criticising all of their suggestions, while the other employee thinks that there's no problem and the person making the complaint just needs to be more confident. This could be a situation where mediation could work, rather than going down the route of trying to find out exactly what's happened and if anyone's at fault. [0:08:07.4]

Susie Munro: Yes. If both parties are happy to do it and it looks like it might work, you could try to set up some mediation where they can try to find a way to carry on working together. So yeah, mediation could be the potential outcome of the grievance. Although it won't be appropriate in all situations, say where there's a serious allegation of bullying, for example.

Qian Mou: Okay, so speaking of serious allegations, sometimes you will have quite a serious situation where, for example, an employee feels that they can no longer stay on to work while the grievance is being resolved. So in these cases the employee could resign or allege that they've been constructively dismissed. What does an employer do then? [0:08:46.7]

Susie Munro: Yes, so it might be that the employee feels that they can't carry on working because of problems with colleagues or being under too much strain because of long hours or something like that, and they just decide that they're going to leave. Obviously the concern for the employer might be that there might be an employment tribunal claim on the way. If the employee does put in a grievance after they've left the organisation, the employer doesn't have a duty to deal with that under its grievance procedure, but it might highlight that there is a potentially serious issue among the workforce.

Qian Mou: So an issue that could be something that would affect other employees, even though the person who raised the matter has left? [0:09:24.8]

Susie Munro: Yes, and the employer might be able to improve things by looking at its policies and practices, or it might be that a disciplinary investigation might be needed. But the employer doesn't just want to ignore the grievance. And also, if there is a concern that there might be a tribunal claim, if the employer agrees to meet with the employee and listens to them and assures them that some action will be taken, that might prevent the situation escalating. And it might prevent them from putting in a tribunal claim if they feel that they're being listened to and that the issue has been acknowledged.

Qian Mou: And this might be something that could happen during the conciliation process. [0:10:01.2]

Susie Munro:

Yes, or even before it's got that far. So the employer might want to be more proactive about talking to the employee.

Qian Mou:

Okay. Thanks, Susie. So to wrap up, since there's no longer a statutory procedure, employers have quite a bit of flexibility in terms of dealing with grievances. The important thing is to take your employee seriously, to listen to his or her concerns, and to try and find a way of resolving the issue that they've raised.

For more guidance you can refer to our good practice guide on handling grievances or to our grievance Liveflo. That brings us to the end of this week's podcast, which you've been listening to with me, Qian Mou. We're back again next Friday but until then it's goodbye from us.