

Hearings and appeals

What to expect if you are on a panel

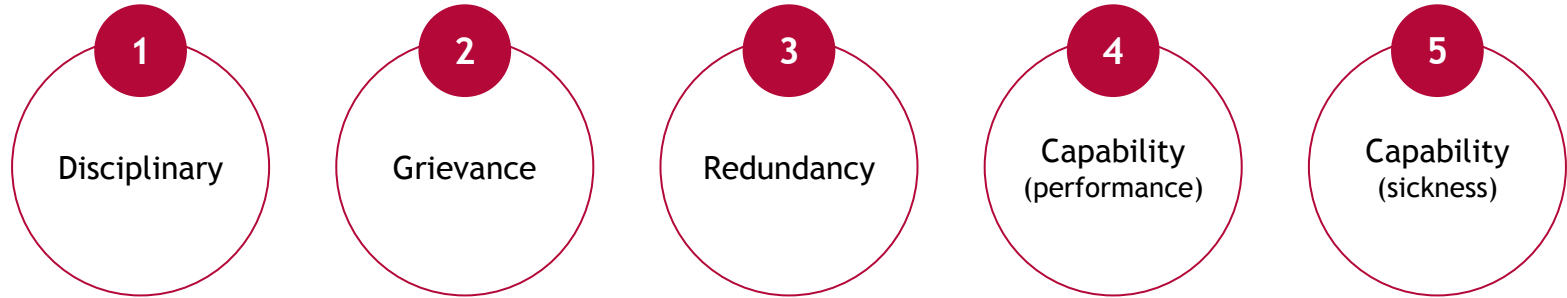
Emily Addai - Senior Associate

Eleanor Drabble - HR Consultant

Purpose of this session

To have a discussion on hearings and appeals to help you prepare

Meetings may be held for a number of reasons



Our focus today is grievance and disciplinary cases.

ACAS code of practice

You need to be aware of this key requirement

Disciplinary

- Establish the facts of the case [*the investigation*]
- Inform the employee of the problem
- Hold a meeting to discuss [*the hearing*]
- Right to be accompanied
- Decide on appropriate action
- Right of appeal

Grievance

- Receive the grievance
- Establish the facts of the case [*the investigation*]
- Hold a meeting to discuss [*the hearing*]
- Right to be accompanied
- Decide on appropriate action
- Right of appeal

Essential issues for meetings

- Matters should not be unduly delayed by any party
- They are not intended to be adversarial
- They are not legal proceedings

Essential first steps

If you are asked to chair or be on a panel:

- Be familiar with the relevant policy and/or procedure (processes will be different in different organisations)
- Understand what you are being asked to do in your role at a hearing or appeal
- Think of questions you might want to ask

Managing the meeting/hearing

The person chairing the meeting will be responsible for managing it.

- May be a difficult conversation, stressful, emotions running high
- Remain objective and calm at all times (seek to defuse the situation if required)
- Are there any adjustments you need to make to the process?

01

**Grievance
meetings**

Requirements of dealing with a grievance

Informal first, but...

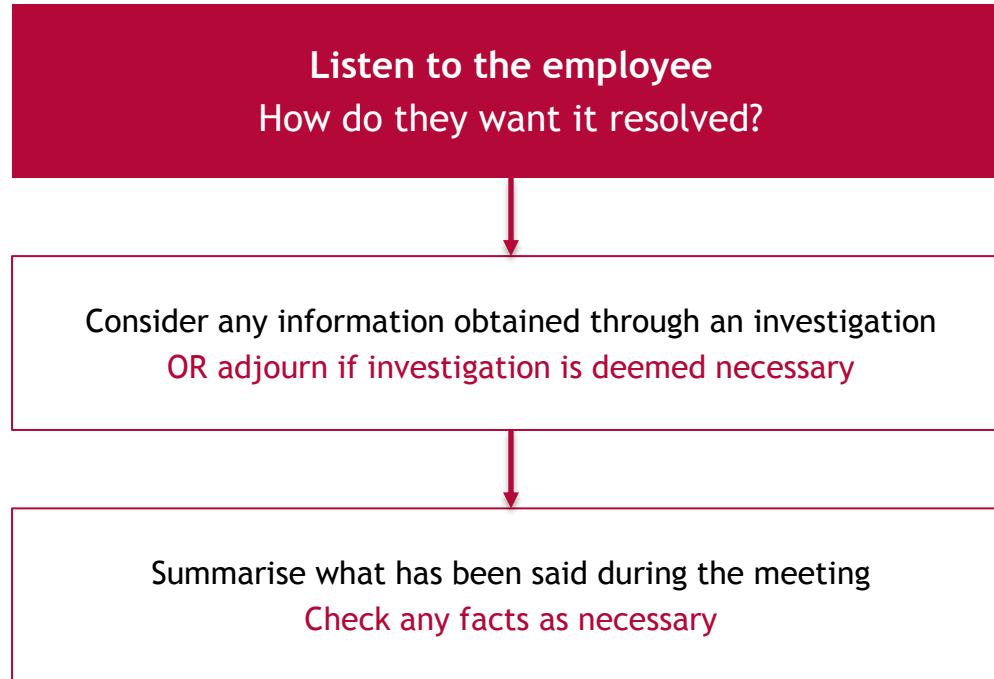
- If the matter cannot be dealt with informally, then a meeting needs to be held with the aggrieved
- May need investigation before or after meeting
- Meeting involves the aggrieved and a manager or panel

What happens at the meeting

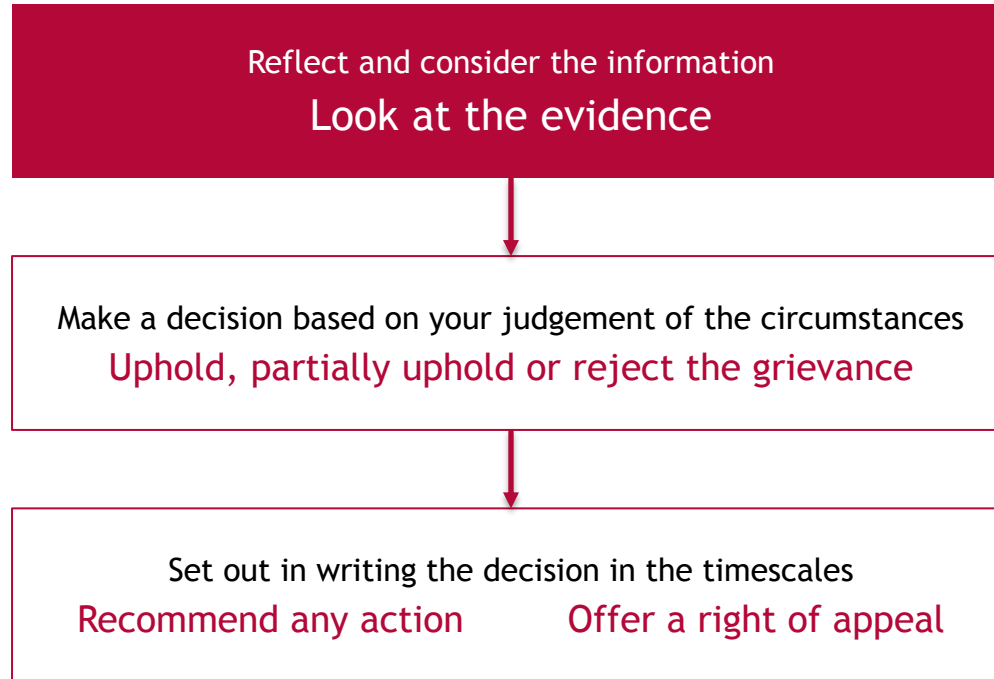
- The employee will explain their grievance and how they think it should be resolved
- Adjourn if investigation needs to take place
- Think about what has been said - don't make snap decisions
- Sum up the main points
- Tell the employee when they will receive an outcome

Try to encourage discussion and dialogue to lead to a solution

What happens at the meeting?



What happens after the meeting?



02

**Disciplinary
hearings**

Attending hearings

- You may be asked to attend as the sole decision maker or as part of a panel
- You may be asked to chair the meeting and so you will then manage its conduct
- The organisation may have a scheme of delegation about who can conduct hearings (and at what level of sanction)

Format of a hearing

If you chair, you will need to:

- Make introductions and explain the purpose of the hearing
- Confirm arrangements for the employee being accompanied
- Go through the format for the meeting (offer adjournments)

Format:

- The management case will be explained first, going through the evidence that has been collated during the investigation
- The employee then sets out their case and answers the allegations
- The employee should be able to ask questions, present their evidence and call witnesses (known in advance)

What is expected of you?

Make sure you:

- have read the information beforehand - the disciplinary pack will be sent out in advance, including any submission from the employee
- are objective and impartial
- give the employee the opportunity to state their case and answer the allegations

Consider the investigation

- Was it reasonable and proportionate?
- But remember - you are not investigating the matter, only making a decision based on the information presented
- Do you need to do any further investigation?

Considering the facts

Your role is to look at the allegation before you:

- Does the evidence support or go against the allegation?
- Balance of probabilities (is it more likely than not to have happened...?)

Consider the employee's response and evidence:

- What did the employee say?
- Does this provide a reasonable explanation?
- What is their mitigation?

If new facts emerge you may have to adjourn the meeting

Closing the meeting

- Allow each party to sum up their case
- Ask the employee if they have had the opportunity to state their case
- Adjourn the meeting to make the decision

Determining the outcome

Gross misconduct case

(These are acts so serious that they may call for dismissal without notice, even for the first offence)

Has the case for gross misconduct been made?	Look at the disciplinary rules and examples of GM in your policy	What has happened before in similar cases?	Look at employee's disciplinary record	What mitigation is there - does the mitigation explain the conduct and so should the sanction be reduced?	Range of reasonable responses - is the penalty reasonable in all the circumstances (ultimately for an ET to decide)
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03

Appeals

Why hold an appeal?

Essential part of natural justice

Appeals may be because of:

- Problems with the investigation and original hearing
- New evidence comes to light
- Disagree with outcome
- Undue severity of sanction (disciplinary hearings)

What should you consider at an appeal?

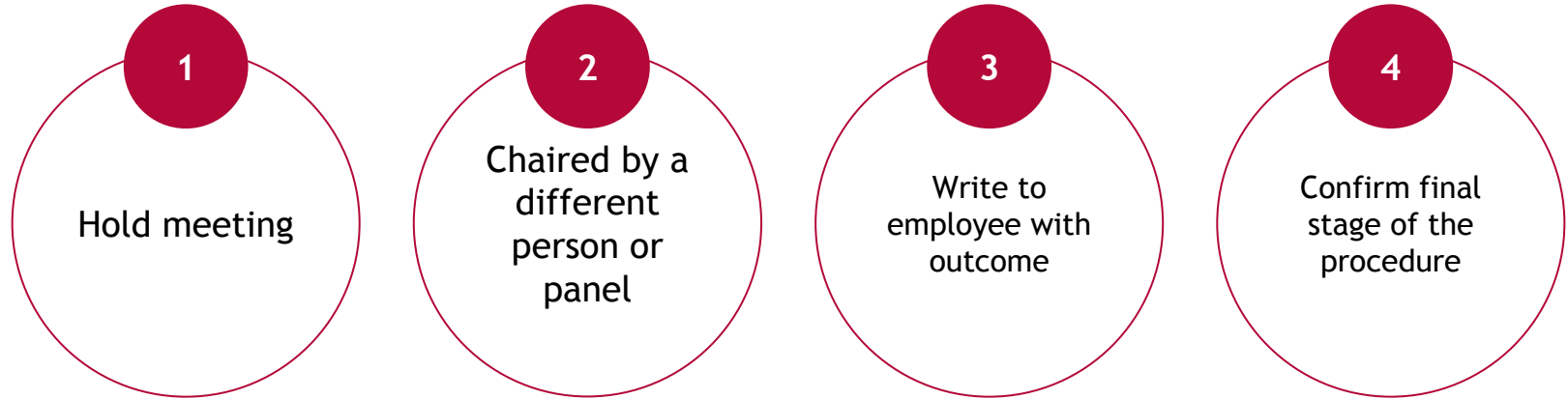
To look at:

- the employee's grounds of appeal
- your policy and how it handles appeals

To consider:

- Review hearing or a full re-hearing?
- Check policy - does it allow for both?

Appeal process



04

Getting it right

Why getting it right is important

- Claims - unfair dismissal, constructive dismissal, discrimination
- ACAS uplift
- In unfair dismissal claims, employment tribunals will consider the size and resources of the employer

Essential last steps

Ensure there are records kept:

- Nature of the issue
- What was decided and actions taken
- Detail of any appeal

Records should be kept confidential and in accordance with the Data Protection Act 2018

Dealing with case work in the current situation

- Certainly with grievances then it is likely that you can continue to deal with them remotely
- Misconduct hearings and appeals, can be continued but more likely to be pushed back
- Likely that the union will agree to an appeal being held against a dismissal

Considerations in the current situation

Furlough

Right to be
accompanied

Social Distancing

Use of technology

Reasonable
adjustments

Hardcopy evidence

Coming up

How not to get caught out at an employment tribunal - how would your current day to day approach to line management stand up under scrutiny?

Tuesday 9 June

Heather Mitchell, Emma Hughes, Joe Babos

Contact Us



Emily Addai

Senior Associate

emily.addai@brownejacobson.com
0115 976 6501 / 07786 248851



Eleanor Drabble

HR Consultant

eleanor.drabble@brownejacobson.com
0330 045 2108 / 07748 907614

Please note

The information contained in these notes is based on the position at June 2020. It does, of course, only represent a summary of the subject matter covered and is not intended to be a substitute for detailed advice. If you would like to discuss any of the matters covered in further detail, our team would be happy to do so.

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Contact us

Birmingham office

Victoria House
Victoria Square
Birmingham
B2 4BU

+44 (0)121 237 3900
+44 (0)121 236 1291

Exeter office

1st Floor
The Mount
72 Paris Street
Exeter
EX1 1JY

+44 (0)1392 458800
+44 (0)1392 458801

London office

15th Floor
6 Bevis Marks
London
EC3A 7BA

+44 (0)20 7337 1000
+44 (0)20 7929 1724

Manchester office

14th Floor
No.1 Spinningfields
1 Hardman Square
Spinningfields
Manchester
M3 3EB

+44 (0)370 270 6000
+44 (0)161 375 0068

Nottingham office

Mowbray House
Castle Meadow Road
Nottingham
NG2 1BJ

+44 (0)115 976 6000
+44 (0)115 947 5246

