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LTN 22 | DISCIPLINARY AND GRIEVANCE ARRANGEMENTS IN LOCAL COUNCILS

This LTN contains a summary of grievance and disciplinary issues of particular relevance to local councils. It contains links to external sources for more detailed guidance on grievance and disciplinary arrangements.

For councils, like all employers considering new or revised arrangements, the most important guidance is contained in the ACAS Code of Practice on Disciplinary and Grievance Procedures (www.acas.org.uk/index.aspx?articleid=2174). A failure to follow the ACAS Code is not unlawful. But if employees take their case to an employment tribunal, the tribunal is legally required to take the ACAS Code into account when considering relevant cases.

Councils should also look at the guide that accompanies the ACAS Code: "Discipline and Grievances at Work" (www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf).

Legal advice

Councils that consider that they have legal issues arising from their grievance and disciplinary arrangements can request advice through the NALC legal scheme. See the members' section of NALC's website (www.nalc.gov.uk).

Drafting policies

Drafting policies may often require HR input. NALC does not draft policies for individual councils. They may need to instruct their own HR advisers. Grievance and disciplinary policy templates drafted by WorkNest (www.worknest.com) can be found on the NALC website. WorkNest provides HR support to organisations, including local councils. There are other organisations that can provide HR support to councils. For example, ACAS are HR experts and a good source of advice for employers in the public sector (www.acas.org.uk/index.aspx?articleid=1461). It has produced some helpful template letters (www.acas.org.uk/templates) for use in the grievance and disciplinary process that councils can adapt to their own circumstances.

Hearing disciplinary and grievance matters

Committees and sub-committees

Disciplinary and grievance arrangements can be set up by full council or its staffing committee. Decisions on disciplinary matters, grievances or appeals can be delegated to a sub-committee. Arrangements should be confirmed by written terms of reference

For more information on committee/sub-committee structures, see LTN 1: Councils' powers to discharge their functions.

Councillors with direct involvement in a disciplinary or grievance matter should not be appointed to a grievance panel, disciplinary panel or an appeal panel. An appeal panel should not contain any councillor who made the original decision on the grievance or disciplinary panel (www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf).

Membership of panels

Disciplinary, grievance or appeal panels should have three members because:

- One councillor cannot make a decision on behalf of the council.
- Two-member panels allow the chair to secure their desired outcome by exercising the casting vote in the event of a tie.
- More than three members will probably be unwieldy. It may also make it more difficult to find members with no direct involvement and it will reduce the pool of potential appeal panel members.

The Ledbury decision

The High Court case of R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) clarified how councils must deal with an employee complaint about the conduct of a councillor. Employees cannot use the formal stages of the council's grievance procedure if the complaint can be made under the council's code of conduct procedure. If it is not possible to resolve the complaint informally (e.g. by mediation - www.acas.org.uk/mediation), an employee's complaint can only be dealt with by the principal authority's monitoring officer. For example, a formal complaint by an employee that a councillor interfered in their management could only be pursued as a code of conduct complaint to the principal authority's monitoring officer, not as an employee grievance.

For more information on Ledbury, see Legal Briefing L08-18 (June 2018), and for more information on the code of conduct, see LTN 80: Members' conduct and the registration and disclosure of their interests [England].

Council's duty of care to its staff

The council's duty of care requires that it takes all steps that are reasonably possible to ensure employees' health, safety and wellbeing. This duty does not disappear if an employee makes a complaint to the principal authority's monitoring officer. A council should always consider whether there is the action that it should take consistent with its ongoing duty of care that does not involve its formal grievance procedure (www.acas.org.uk/employment-contracts-and-the-law/employer-and-employee-duties).

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