

Appeals grounds for an employee

On what grounds can an employee appeal a disciplinary decision?

There are no restrictions on the potential grounds on which an employee can appeal a disciplinary decision. Paragraph 26 of the ACAS code of practice on disciplinary and grievance procedures explains that an employee should appeal if he or she believes that a disciplinary decision is wrong or unjust. Consequently, employers must take a broad approach in allowing employees the right of appeal.

Potential grounds of appeal could include that:

- new evidence has come to light that should be investigated;
- the sanction imposed was too severe or disproportionate to the misconduct;
- the sanction was inconsistent with one imposed for similar misconduct committed by another employee;
- there was unfairness or bias among the original decision-makers; or
- the employer has not taken into account a previously exemplary disciplinary record.

Procedural failings could also form potential grounds for appeal, for example where the employer failed to follow its own disciplinary policy, or did not give the employee enough information about the allegations of misconduct for him or her to be able to prepare for the disciplinary hearing.

How should the employer respond if an employee appeals a grievance decision but does not set out the grounds for the appeal?

Under the ACAS code of practice on disciplinary and grievance procedures, an employee is required to advise the employer of the grounds for appeal in writing. Where the employee fails to do this, the employer should write to the employee and ask for the grounds for appeal so that it can properly consider, and if necessary investigate, the issues in advance of the appeal meeting.

However, where an employee refuses or fails to provide the grounds for appeal, the employer would be advised still to hear the appeal and notify the employee of the outcome without unreasonable delay. Should the appeal become relevant to subsequent tribunal proceedings, and if the employee is successful with his or her claim, the tribunal could make a reduction to any compensation that it awards of up to 25% if it considers that the employee unreasonably failed to comply with the ACAS code by not providing the written grounds for his or her appeal.