



NUT GUIDANCE

STATUTORY DISCIPLINARY AND GRIEVANCE PROCEDURES

1. INTRODUCTION

Regulations were introduced in 2004 which establish a new statutory dispute resolution framework, with implications for the way the Union handles casework. This guidance highlights the main statutory requirements relating to:

- statutory dismissal and discipline procedures;
- statutory grievance procedures;
- changes to employment tribunal claims.

The main changes are:

- that all employers must have in place disciplinary, dismissal and grievance procedures which meet minimum statutory requirements. The statutory procedures do not take the place of existing procedures, but rather set the standard for the steps that must be included;
- that employees wishing to pursue certain claims to employment tribunal must first have followed a grievance procedure in order for their claim to be considered.

It is expected that few LEA or school disciplinary and dismissal procedures will not meet the minimum requirements. However, many grievance procedures do not allow for grievances to be commenced once a teacher has left employment. Employers will now be obliged to include a modified procedure to allow for grievances to be pursued post-employment.

The changes will impact on casework procedures, as the NUT is now obliged to invoke grievance procedures more frequently. In addition, members must be made aware of the need to follow a grievance procedure, in order to protect their position, even in those cases that the Union does not expect to pursue.

How does this affect existing grievance and disciplinary procedures?

Local procedures must include the statutory steps as a minimum. Most LEA and school disciplinary and dismissal procedures will include the minimum steps. Local procedures are also likely to contain additional provisions which are favourable to teachers or which set time limits for steps to be taken. These will all be unaffected by the new rules.

Some existing grievance procedures allow grievances to be pursued only whilst the teacher remains an employee. These will require amendment by the employer, because the statutory provisions now require that post-employment grievances be pursued.

If local procedures do not include the minimum statutory steps, guidance should be sought from the NUT regional office or, in Wales, NUT Cymru.

What are the consequences for claims to tribunals?

Generally, teachers must have followed a statutory procedure before making a claim to a tribunal on form ET1. Failure by a member to comply with a statutory procedure, where it applies, could result in a tribunal refusing to accept a claim; or a reduction in the award of compensation.

For this reason, NUT regional offices or, in Wales, NUT Cymru must be informed of all grievance and disciplinary proceedings and all potential tribunal claims as soon as the division is aware of them. The Office will then be able to advise should any further steps be necessary at that stage.

As the consequences of not pursuing a grievance or appeal against dismissal are severe, the Union is producing model letters for use by Divisions. These will allow division secretaries and caseworkers to ensure that members are given full details of the implications of the new dispute resolution provisions.

2. DISMISSAL AND DISCIPLINE ON GROUNDS OF CONDUCT AND CAPABILITY

When must a dismissal or disciplinary procedure be invoked by the employer?

The statutory dismissal and discipline procedures must be followed where the employer is contemplating:

a. **dismissing** a teacher on grounds of:

- conduct;
- capability;
- redundancy;
- non-renewal of a fixed term contract; or
- retirement.

b. **taking disciplinary action** on grounds of a teacher's conduct or capability **except** where the proposed action is:

- suspension on full pay; or
- a written or oral warning.

Why are warnings and suspension excluded?

Warnings and suspension are excluded from the statutory procedures because employers have argued that it would be too bureaucratic and cumbersome to expect a full procedure to be completed for all disciplinary action.

Because of this exclusion, it is likely that most disciplinary action that teachers are subjected to will be excluded from the *statutory* rules. However, it is likely that employers will continue to follow existing *agreed* disciplinary procedures. Should this not be the case, please contact the NUT regional office or, in Wales, NUT Cymru for further advice.

What if an employer decides not to renew a fixed term contract?

Employers must follow the standard dismissal procedure.

This change obliges employers who decide not to renew a fixed term contract to complete the full dismissal procedure. Currently, some employers rely solely on the fixed term coming to an end, without giving an opportunity for representations to be made regarding further employment.

What if a teacher is being made redundant?

Employers must follow the standard dismissal steps where redundancies are contemplated. Employers must provide written reasons for the redundancy and the reasons for selecting the individual teacher. Members may challenge employers' grounds for making redundancies or the grounds for selecting individual teachers for redundancy.

Existing redundancy dismissal procedures in LEAs and schools are expected to meet the statutory requirements, so that no additional dismissal process will be required.

What is the Standard Dismissal and Disciplinary Procedure?

Step 1 Statement of grounds and invitation to meeting

- Before taking any action, the employer must write to the teacher setting out the circumstances or alleged conduct or capability which led the employer to contemplate dismissal or disciplinary action. The employer must invite the teacher to attend a meeting.

Step 2 Meeting

- Before taking any action, the employer must have given the teacher a reasonable opportunity to consider his or her response to the allegations and must hold a meeting. The employer must inform the teacher of the decision and offer the teacher the right of appeal.

Step 3 Appeal

- If not satisfied with the decision, the teacher should inform the employer of his/her wish to appeal. The employer must then invite the teacher to an appeal meeting. The employer must inform the teacher of the decision.

Failure by an employer to follow the procedure when it applies will make any dismissal automatically unfair.

What if an employer summarily dismisses a teacher?

Where an employer can show that it dismissed a teacher:

- immediately;
- without notice;
- for gross misconduct; and
- on reasonable grounds

the **modified** dismissal procedure must be followed after the dismissal.

Failure to follow a procedure will make the dismissal automatically unfair.

What is the Modified Dismissal Procedure?

Step 1 Statement of grounds

- The employer must write to the teacher setting out the alleged misconduct, the grounds for believing that the teacher was guilty of the conduct, why the teacher was dismissed and the right to appeal.

Step 2 Appeal

- The teacher must inform the employer if he or she wishes to appeal. The employer must invite the teacher to an appeal meeting. The employer must inform the teacher of its decision.

Must a teacher always follow a procedure to the appeal stage?

Members must follow all steps including the right of the appeal if they wish to take the matter to a tribunal. If they do not appeal, the tribunal may reject a claim or reduce any award of compensation.

What if a teacher is claiming constructive dismissal?

Teachers wishing to claim constructive dismissal at a tribunal must first have followed a grievance procedure. A dismissal procedure would not be appropriate.

3. GRIEVANCE

When do the statutory grievance procedures apply?

Where a teacher has a grievance about action which the employer has taken or is contemplating taking in relation to him or her, the grievance procedure must be followed before a complaint is taken to a tribunal.

Some grievances will relate to the behaviour of colleagues or third parties. In these circumstances, the grievance will relate to the failure of the employer to prevent or deal with its occurrence.

Complaints about discrimination, harassment, workplace bullying, unauthorised deductions or breach of working time regulations, paid suspensions and warnings must be raised as a grievance.

What is the Standard Grievance Procedure?

Step 1 Statement of grievance

- The teacher must inform the employer of the grievance in writing.

Step 2 Meeting

- The employer must invite the teacher to attend a meeting to discuss the grievance. The employer must inform the teacher of the decision and offer the right of appeal.

Step 3 Appeal

- If the teacher wishes to appeal, he or she must inform the employer. The employer must invite the teacher to attend a further meeting. The employer must inform the teacher of the decision.

What if the teacher has left?

The standard grievance procedure applies in most cases where the teacher has left.

The modified grievance procedure applies where:

- the teacher has left; and
- the parties agree in writing to use the modified procedure; and
- before the employment ended either the employer did not know about the grievance, or the grievance procedure had not been commenced or completed.

Neither statutory grievance procedure applies where:

- the teacher has left; and
- neither procedure has been commenced; and
- since the employment ended it is not reasonably practicable for the teacher to send the statement of grievance (e.g. teacher is abroad).

What is the Modified Grievance Procedure?

Step 1 Statement of grievance

- The teacher must inform the employer of the grievance in writing.

Step 2 Response

- The employer must inform the teacher of its response in writing.

What about local harassment and workplace bullying procedures?

Separate local procedures covering grievances about harassment or workplace bullying must contain the minimum statutory steps.

What about grievances about dismissals?

Where a teacher's grievance is that the employer has dismissed or is contemplating dismissing the teacher there is no need to follow a statutory *grievance* procedure. However, the employer must follow the *dismissal* procedure and the teacher must utilise the right of appeal if he or she wishes to make a claim to a tribunal.

What about constructive dismissals?

If the employer was aware of the grievance before the teacher left, the standard grievance procedure should be followed up to the appeal stage.

If the employer was not aware of the grievance before the teacher left, the modified grievance procedure may be followed if both parties agree in writing. In the absence of agreement, the teacher must follow the full standard grievance procedure.

What about grievances about disciplinary action?

If a teacher has a complaint that an oral or written warning or suspension or other disciplinary action was discriminatory or that disciplinary action was taken on grounds other than conduct or capability he or she should send a Step 1 grievance letter to the employer before the appeal meeting under the dismissal procedure, if followed, or before lodging an ET1 with a tribunal. The grievance procedure would then have to be completed in full.

Do the statutory procedures apply to collective grievances?

The statutory procedures need not be followed where:

- a written grievance is raised on behalf of at least two employees by a trade union representative, including regional or divisional officers and elected school representatives; or
- a grievance is raised under a collective agreement between at least two employers or an employers' association and a trade union.

4. GENERAL EXEMPTIONS TO THE REQUIREMENT TO FOLLOW A STATUTORY PROCEDURE

Teachers may be exempted from following the statutory procedures where they do not start or complete a procedure due to impracticality, harassment or threat of violence. If a tribunal decides that there were no reasonable grounds for relying on the exemption, it may reduce any award. Therefore, where a member refuses to follow a procedure, the regional office or, in Wales, NUT Cymru should be consulted.

5. MEETINGS

Could the employer use an initial or appeal meeting to discuss more than one matter?

It is possible to use a meeting to discuss a grievance and a dismissal/disciplinary matter. If a grievance is raised during a dismissal/disciplinary procedure it is good practice to adjourn the procedure to allow the grievance to be investigated.

Are there rules about the statutory meetings?

In addition to following the basic statutory steps and allowing the other party to follow the procedures, the legislation provides that:

- the timing and location of meetings must be reasonable;
- steps and actions must be taken without unreasonable delay;
- parties must be able to explain their cases;
- the employer should, be represented at appeal meetings by a manager more senior than was in attendance at the first meeting;
- employees are entitled to be accompanied by their trade union representative at all statutory meetings;

- if the employer, the teacher or the trade union representative is not **reasonably** able to attend a meeting, the employer or employee is not treated as failing to comply;
- the employer is obliged only to rearrange a meeting once.

The employer and the regional office or, in Wales, NUT Cymru must be informed immediately if the Union's representative cannot attend a meeting to protect the Union from blame for failing to follow a procedure.

6. TRIBUNAL CLAIMS

Tribunals will reject claims unless relevant complaints have been raised as a grievance and 28 days has passed.

The normal relevant time limit will apply in many cases. The general rule is that a grievance letter must be submitted within 3 months of the act complained of. If the statutory grievance procedure does not apply, an ET1 form must be submitted within 3 months of the act. The NUT regional office or, in Wales, NUT Cymru should be informed of all potential grievances or tribunal complaints.

Employment tribunals are required to adjust awards by 10 per cent to 50 per cent where the statutory procedures have not been followed. The adjustment will depend on the failure being attributable to one of the parties.

7. ACAS

Under the new ET Regulations, conciliation is mandatory. ACAS will be required to offer its services in all ET claims but the impact of the duty imposed on ACAS to conciliate is not yet clear.

APPENDIX A

LOGGING A GRIEVANCE – STATUTORY REQUIREMENTS

The new procedural rules prevent claimants from pursuing a claim to an employment tribunal unless they have first sought to use the employer's internal procedures to resolve the matter. A claimant who wishes to pursue a claim of unfair dismissal must have appealed against dismissal before entering the application; or commenced the grievance procedure if it is a claim of constructive dismissal. Those wishing to pursue other claims, such as discrimination matters, must have followed the grievance procedure.

Failure by a member to comply with the relevant procedure will result in a tribunal refusing to accept a claim, or a reduction in the award of compensation.

As a result, the Union has devised a common procedure for caseworkers to use when dealing with grievances on behalf of members. This includes several standard letters to ensure that legal requirements are met.

1. The member should be asked to prepare a written statement of grievance and send it to the division secretary or caseworker. This should be the member's own explanation of the matter and the steps that the member believes the employer could take to resolve the issue.

Should a claim later be made to tribunal, the grievance will be expected to have set out the factual basis for the claim that is made. For example, should a claim of race discrimination later be made, the factual basis of the claim of race discrimination should have been included within the grievance statement. It is not necessary that the legal claim to be made is set out in the grievance.

A model letter should be sent to the member explaining the process and the importance for tribunal claims is attached as Appendix B.

2. The division secretary or caseworker should consider the statement. If it appears necessary, advice should be sought from the regional office or, in Wales, NUT Cymru.
3. The division secretary or caseworker should forward the grievance statement to the school and/or LEA as appropriate. The grievance statement must be sent to the employer in order to meet the statutory provisions. In the case of community schools, the school grievance procedure should also be invoked.

Model letters are set out at Appendix C. **A copy should be sent to the regional office or, in Wales, NUT Cymru for information.**

LETTER TO BE SENT TO MEMBER WISHING TO PURSUE GRIEVANCE

Dear [Member]

Your Grievance

I am writing to inform you about the next steps with your grievance.

The grievance procedure enables you to raise your concerns with your school or employer in an attempt to resolve the matter. The first formal stage of the procedure involves you presenting your grievance in writing. You should set out your grievance, giving the basic factual details and the complaint that you have. In doing so, you must disclose all the key areas of the grievance that you will rely upon, in order that your school and employer can understand the nature of your complaint and the circumstances that gave rise to it. You need not include every detail of the factual background. Finally, also set out what you think could be done to resolve the matter.

It is important that you set out all the key issues as there are implications for any future legal action that you may wish to consider should the matter not be resolved at this stage. Employment tribunals are not able to consider applications unless the employee has sought to exhaust the workplace grievance procedure first. In your letter commencing, the procedure you therefore need to include any matters which form the factual basis of your grievance.

[Members teaching in voluntary aided, foundation, independent schools, city technology colleges or academies: Since you are employed by your governing body, you should address your grievance to the school/college governing body.]

[Members teaching in community or voluntary controlled schools: Since you are employed by the LEA rather than your governing body, you should write two separate letters, one addressed to the LEA, and one addressed to the school governing body.]

There are also strict time limits, usually of 3 months, for claims to tribunal, so it is important that you act promptly. The Union will be able to advise you further about this should that be necessary.

Once you have set your grievance out in writing, please send it to me so that I can consider the next step. **Do not send it yourself.** Please also keep me informed of any developments.

Yours

APPENDIX C

MODEL LETTERS TO ACCOMPANY MEMBER'S GRIEVANCE

The member's grievance statement should be sent to the employer along with a covering letter.

If the school is a community or voluntary controlled school, the grievance statement should be sent to the LEA and in addition the school's own grievance procedure should be invoked.

If the school is a voluntary aided or foundation school or Academy, the grievance letter should be sent to the governing body.

Models of these letters are set out below.

Community school or voluntary controlled school

Dear [head teacher/chair of governors of community school as appropriate according to grievance procedure]

Please find attached a statement of grievance from our member Ms A. I am submitting this in accordance with the school grievance procedure in the hope of resolving Ms A's complaint satisfactorily. A grievance regarding the same issue is also being sent to the LEA as Ms A's employer and I enclose a copy of that.

Please contact me in order that we can liaise regarding the next steps in this matter.

Yours

Dear [LEA personnel officer]

Please find attached a statement of grievance from our member Ms A who teaches at B School. I am submitting this to you as employer in the hope that we will be able to resolve Ms A's complaint satisfactorily. This is also being submitted to B school under the school's grievance procedure.

Please contact me in order that we can liaise regarding the next steps in this matter.

Yours

Voluntary aided or foundation school or Academy

Dear [head teacher/chair of governors of community school as appropriate according to grievance procedure]

Please find attached a statement of grievance from our member Ms A. I am submitting this in accordance with the school grievance procedure in the hope of resolving Ms A's complaint satisfactorily.

Please contact me in order that we can liaise regarding the next steps in this matter.

Yours