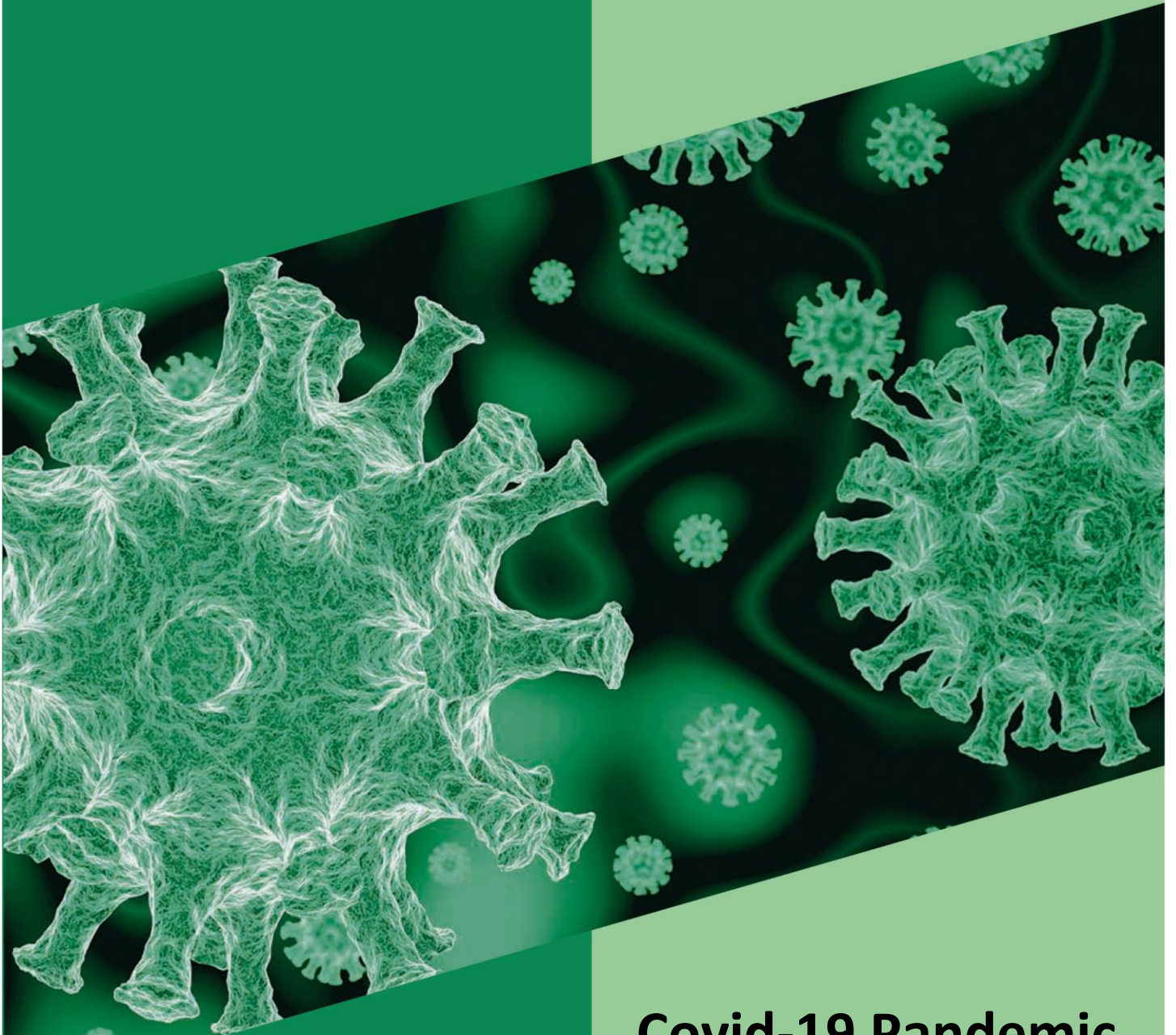


Bargaining Support Group



**Covid-19 Pandemic
Dealing with online
(virtual) hearings**

UNISON
the public service union

Dealing with online (virtual) hearings during the COVID-19 pandemic

Acas recently published guidance which notes that “going through a disciplinary or grievance procedure can be stressful in normal times, and employees might be facing other stressful circumstances at this time. Employers should give careful consideration to the health and wellbeing of employees when deciding whether and how to proceed at this time.”

In April 2020, LRD (Labour Research Department) launched a survey of trade union reps with 70% of respondents from the public sector, 27% from the private sector, 3% from the voluntary sector.

The survey’s first set of findings showed that, in many workplaces, disciplinaries and grievances are continuing as normal albeit under altered conditions. The consensus is that online grievance and disciplinary meetings do not work well.

Many reps said formal procedures have been suspended, with several taking a stand to ensure that they will not take place, even though this has left cases and appeals hanging. For others, meetings have been moved online, sometimes despite protests from the union.

Many reps point out that the stress of members involved in cases has been exacerbated by not being able to meet face-to-face. The reduction in facility time for many reps during the COVID crisis has also been an issue in ensuring that disciplinary, capability and grievance procedures continue to be handled fairly.

However, it is important to remember, as Acas points out “Employment law and the Acas Code of Practice on disciplinary and grievance procedures still apply during the coronavirus (COVID-19) pandemic. This includes while social distancing and lockdown measures are in place.”

UNISON’s normal model policies for disciplinary, capability and grievance procedures, which form the basis on which amendments can be made during the pandemic, can be found at www.unison.org.uk/bargaining-guides.

Where possible, the employer and union representatives may need to consider the **postponement of disciplinary and grievance procedures** during the continuing COVID-19 pandemic, unless the workplace is able to operate in-person meetings, whilst sufficiently maintaining health and safety requirements and being compliant with government guidance.

Whilst there is now an [easing of restrictions throughout the UK](#), although at varying stages, individuals may be particularly vulnerable to the virus (such as [those who had previously been shielding](#)) or anxious about face-to-face meetings, particularly if it involves people they are not normally in contact with, and these concerns should be taken into account.

As the [Acas guidance on ‘Disciplinary and grievance procedures during the coronavirus pandemic’](#) stresses, “employers should try to find a safe, fair and reasonable way to go ahead with procedures. If this is not possible, they should consider if it might be fair to suspend a procedure.”

An example where the postponement has been agreed is in the NHS, where it is stated that disciplinary matters will be paused “except where the employee requests proceeding as it would otherwise cause additional anxiety, or where they are very serious or urgent.”

However, it is important for the employer and union representatives to recognise that an employee may feel that a delay could cause them undue anxiety, so it may not always be appropriate. Additionally, the issue may be sufficiently serious to need urgent resolution.

It is essential that any temporary changes to disciplinary or grievance procedures to accommodate COVID-19 health and safety issues are agreed in advance with union reps. Whatever changes are decided, the procedures should still always comply with employment law and the [Acas Code of Practice on disciplinary and grievance procedures](#).

When deciding if a disciplinary or grievance procedure should go ahead, the employer and union representatives must carefully consider:

- **the circumstances of each case**
- **if the workplace is open and safe to carry out the procedure in person**
- **if the procedure has to be carried out remotely, and whether it is fair and reasonable to do so, and can be clearly justified**
- **if video meetings should be recorded.**

Employers and union representatives must also ensure that the following are maintained:

- **the employee’s right to be accompanied**
- **the employee's right of appeal**

as well as considering the impact of a temporarily amended procedure on any claim made to an employment tribunal that the employee may subsequently wish to make.

Should procedures go ahead, Acas states that, if online meetings are to be used, employers should ensure that:

- Everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection
- Any reasonable adjustments needed are made for anyone involved who has any disability or other accessibility issues that might affect their ability to use video technology
- Any witness statements or other evidence can be seen clearly by everyone involved during the hearing
- It will be possible to fairly assess and question evidence given by people interviewed in a video meeting

- It's possible to get hold of all the evidence needed for the investigation or hearing, for example records or files that are kept in the office
- It's possible for the person under a disciplinary investigation or who raised a grievance to be accompanied during the hearing.

If an employee has chosen a union rep to accompany them in a hearing, Acas adds that the procedure must allow the rep to:

- Put and sum up the employee's case
- Respond on behalf of the employee to anything said
- Talk privately with the employee at any point
- Suggest another time and date for a meeting and in the context of the pandemic it may be appropriate to allow more than the five-day delay considered reasonable in normal circumstance.

Acas also suggest that for most disciplinary or grievance meetings held by online video, there will be no reason to record the meeting.

They emphasise that the employee must maintain the right of appeal.

It may be useful to quote from the [Acas guidelines](#) where it is felt that an employer is contravening these principles.

Acas guidance on disciplinary and grievance procedures during the coronavirus pandemic

www.acas.org.uk/disciplinary-grievance-procedures-during-coronavirus

Acas Code of Practice on Disciplinary and Grievance Procedures

www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures

However, negotiators may want to consider arguing a more assertive position based on the following points:

- The default position should be postponement of disciplinary and grievance procedures unless an employee feels that delay would cause them undue anxiety or the issue is sufficiently serious to need urgent resolution.
- Where hearings proceed, the union should be able to choose with the member whether representation of their interests is best served through conducting that hearing through written communication, telephone / video conferencing or a face-to-face meeting.
- Conducting hearings through written communication should only proceed where timeframes are sufficiently extended to allow responses to claims across several rounds of claim and counter claim.
- Conducting meetings through telephone or video conferencing should only proceed where the union rep and member are persuaded that they will not be put at a disadvantage. In many cases, managers likely to be leading hearings will have considerably greater experience of using telephone and video conferencing than a member. Technical issues can often make such meetings a

disjointed experience and the ability of members and reps to confer in the course of the hearing will usually be problematic

- Face-to-face meetings should only proceed if a risk assessment has been undertaken and appropriate action to reduce or remove risks have been carried out, including taking account of individuals who are at higher risk of severe illness from coronavirus. Such meetings should also respect other organisational rules that may have been put in place to limit use of shared facilities and movement between staff in different departments. They should additionally take account of any travel involved by participants particularly by those who are reliant on public transport, the extra risks involved or any government guidance on travel.
- Whatever method is planned for the hearing, if appropriate to the case, there may be some benefit in considering the preparation and sharing with the hearing panel a detailed written case well in advance of the hearing date. Providing a comprehensive range of evidence that anticipates likely hearing questions and statements will provide a clear audit trail and help guarantee an opportunity to fully present the case, regardless of any technical problems that may be experienced on the day of the hearing
- Recording of meetings should only take place with the consent of all parties. It will be for the judgement of the union rep and member whether it would be an advantage to have the verbatim recording of what is said or whether recording would unnerve the member / lead to a less frank and open exchange
- Although hearings and investigation meetings (in whatever format) should ideally take place promptly, because of potential difficulties with technology and IT equipment and reliance on possibly delayed postal services for the sharing of written evidence etc, there may need to be a slightly longer notice period agreed to take account of these issues.
- Additional time may also be necessary to prepare and to read online documentation.
- Negotiate that employers provide the IT equipment to be used by employees to ensure that they are using equipment of a reasonable standard that is virus-free, pre-loaded with the video conference software to be used.
- Because of potential problems with technology, it would benefit both the employer and employee for there to be a test of equipment before use of telephone or video conference for the hearing or meeting. There should also be an agreed protocol should any difficulties be experienced during the course of the actual hearing. Perhaps it may be agreed with employers that employees can call on a family member or friend to assist them with technical issues during the hearing, although not the business of the hearing itself.

The other key protocols when representing members online are the same as in face to face hearings:

- Data protection and the GDPR

- UNISON's case management form
- UNISON's rulebook
- Race discrimination protocol
- Employment tribunal protocol and time limits
- Referral of professional registration cases.

UNISON case study

The following example paragraphs resulted from negotiations with a local government employer over temporary changes to grievance and disciplinary procedures:

“The first consideration will be whether it is absolutely necessary for the particular procedure to be invoked and whether all necessary steps have been taken to resolve the matter informally or by mutual agreement by both parties.

The second consideration will be whether or not it is essential to proceed immediately with the actions required to complete the formal procedure. Among the points to consider will be the effects of a delay on the ability for [the employer] to deliver key services, on safety and also on the mental health and wellbeing of the individuals involved. A decision to delay should ideally be reached through mutual agreement by all parties involved. In situations where the employee has stated that they have trade union representation, the trade union representative should also be consulted.

The third consideration will be the form that the meeting or hearing takes. Options will include:

- Resolving the matter through written correspondence.
- Discussing the matter through video-conferencing technology
- Discussing the matter face-to-face in a COVID-secure fully risk assessed setting applying appropriate social distancing and other measures to reduce risk.

The employee and trade union will have the opportunity to raise any concerns they have over the form that the meeting takes. A deferral of the process will be considered if [the employer] or the trade union representative consider that justified objections have been provided such as when the employee is not conversant with the technology proposed to undertake their hearing.

Both parties will have the opportunity to call adjournments. Processes will be agreed in advance of the hearing as to how practically any confidential discussions undertaken during an adjournment can be appropriately facilitated.”

Quick checklist

In preparation for an online hearing, reps, branches and regional organisers will need to carefully consider the following issues:

What steps do you need to take to ensure that this case is properly prepared before the hearing takes place?

- How will you meet in advance with the member? In the pre-meeting, check the member's suitable access to technology and any welfare issues they may have, as well as using the time to go through their case.
- How will the investigator obtain all information and evidence and share and present it at the hearing? Ensure you get hard copies sent to the member and their rep of all case papers and have a clear understanding of how witnesses will be used at the hearing? How does the member and their rep plan to contact and use witnesses?
- How will all participants be given access to technology without disadvantage? Check whether the member has the digital skills needed to enable them to fully participate. Are they a disabled worker or do they have any accessibility requirements? Do they have a safe, secure location to log in, concentrate and participate fully during the hearing?
- How will a fair hearing process be ensured by the employer? Will the hearing be recorded? All participants must agree. Who will be in the 'virtual' room? This must be clear in advance. How will breaks and adjournments be determined? What is the protocol for speaking during the meeting? What timescales have been agreed for the process?
- How will you be able to support the member during the hearing? Consider how you will be able to 'replicate' sitting alongside member. How will you communicate during the hearing – by email, 'chat', text? What support will there be for the member at home? Consider if any additional access requirements are needed for the member such as a BSL interpreter.

How do you plan to handle the actual hearing to ensure that it is fair and sticks to the employer's policy?

- Have you communicated with the member at a pre-meet, confirmed and tested how you plan to keep contact during the hearing (such as having appropriate signals etc)? Are there any unexpected issues about the technology, the equipment, internet, or privacy? Are you able to ensure no distractions?
- If a collective issue is being heard, agree in advance with the members who will talk and when?
- Is any agreed protocol being followed for speaking and listening without interruption (use of chat and hands up functions, un/muting mics etc), as well as allowing private conversations and 'breakout rooms'? Is the meeting set up to avoid any distractions (particularly important to remember if some participants are logging in from home)?
- Has the Chair outlined how the hearing will work and the process to follow should the technical side fail in some aspect? Or if there are any distractions, how to deal with them (such as adjournment), and when the breaks are to be taken (particularly as the process can be so tiring)?
- Don't be afraid to stop the meeting if necessary, to call for an adjournment, or to be allowed time to check papers etc.

- Make sure you have drinking water, a pen and paper etc to hand before the meeting goes ahead! Remind the member to charge their phone or laptop.
- Check that all outcomes are clear, timescales are highlighted, and the process for appeal outlined by the Chair – otherwise ask for clarification.
- If agreed in advance is the hearing being recorded, or notes being taken? How will the union rep and member access them and by when? Is it clear to everyone who is in the 'virtual' room?

Have you planned on what would you need to consider after the virtual hearing has taken place?

- Have you carried out a post hearing debrief with the member to check on their understanding of what happened, options for the way forward, as well as to check on their welfare? What support does the member have at home?
- Allow for a break for reflection and to check your notes. Are you clear on what happens next, the next steps the member can take, use of the appeal procedure if required and timelines?
- What has the member decided? Will you need to lodge an appeal?
- What is the employer going to do next? Are there any mitigating circumstances to be taken into account?
- If the member is to return to work, can they be assured they will be safe and that the workplace has appropriate health and safety measures? Are any additional risk assessments needed?
- If appropriate, use the experience to feedback to the employer about the process of an online hearing.

There is a UNISON webinar on dealing with online hearings available at <https://attendee.gotowebinar.com/recording/644791411452606987>

For more information and courses please go to <https://learning.unison.org.uk/>

Dealing with other types of virtual (online) meetings during the pandemic

Pre-pandemic work-life inevitably involved many different types of face-to-face meetings. And this was particularly the case for trade union reps and branches in their negotiations with employers and while representing members.

The issues faced during the pandemic for more formal hearings may be the same for other meetings such as sickness reviews. Online meetings are far from ideal, so the advice is the same as for hearings – can the meeting be postponed until a face-to-face meeting can safely take place with adequate health and safety measures? If the employer does not agree to this or the employee is keen for the meeting to go ahead, then it's important to ensure in advance of the online meeting that the employer agrees that:

- Everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection.

- Access means having a separate computer or laptop for each participant. It has been reported for example that a health worker had to share the laptop with their line manager whilst they were both in the workplace, when conducting a virtual meeting with HR and others. Clearly this situation may restrict dialogue and sharing of opinions, may limit the opportunity the rep and the member to break off and talk privately, and could therefore put the member and rep at a disadvantage. At the time, it may also have broken social distancing requirements, and still may not be appropriate, especially if the member is particularly vulnerable to the virus (such as [those who had previously been shielding](#)).
- Any reasonable adjustments needed are made for anyone involved who has any disability or other accessibility issues that might affect their ability to use video technology.
- Any evidence or information can be seen clearly by everyone involved during the meeting and can be considered in advance of the meeting.
- Both parties will have the opportunity to call adjournments. Processes will be agreed in advance of the hearing as to how practically any confidential discussions undertaken during an adjournment can be appropriately facilitated.