



EMPLOYMENT LAW

WHITE PAPER – DISMISSAL FOR HR CONFERENCE 2026

AI generated grievances: How far can you push back on AI-generated grievances that are excessive, misguided or simply wrong — without hampering the investigation or hearing?

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17 June 2026

What will I cover today?

Why do employees raise grievances, and why do employers hear them?

What issues does AI cause in grievances?

What are the options for employers to push back on a grievance drafted by AI and what are the risks and consequences?

Why raise a grievance, and why respond?

Statutory ACAS Code and compensation uplift

- ACAS Code sets out basic requirements for employer to **hear a grievance fairly**
- Unreasonable failure to comply may lead to **uplift of up to 25% on any compensation** awarded to employee claiming for
 - Unlawful detriment (most commonly alleged to arise from whistle blowing/discrimination); or
 - Constructive dismissal
- A similar **reduction is made** where employee unreasonably fails to comply
- Complete **failure to hear a grievance** likely to breach Code and attract **maximum uplift; lesser failures** may attract **smaller uplift**

Breach of contractual terms: Express

- Whilst there is a requirement under Employment Rights Act 1996 to **specify person to whom employee can apply for resolution** of a grievance and **how they should do so** this does not of itself create an express contractual right
- Employers **occasionally (generally unwisely) commit to contractual grievance policies**

Breach of contractual terms: Implied

Redress of Grievances

- Established in WA Goold (Pearmak) Ltd v McConnell and another [1995] IRLR 516
- Implied term in employment contracts that employer will **reasonably and promptly afford employees a reasonable opportunity to obtain redress of grievances**
- Right is **fundamental** but whether a breach of it is **repudiatory** will depend on **facts and degree**
- Unlikely to include minor **procedural failures** or questions of **poor quality** (Hamilton v Tandberg Television Ltd EAT/65/02) unless **grievance not truly heard**

Trust and Confidence

- Test is whether the **conduct is calculated to or is likely to damage the relationship between the parties without reasonable cause**
- May arise due to **failure to adhere to procedures or take grievance seriously**

Other Terms

- Failure to **address matter raised in grievance** may breach other terms
- See Waltons & Morse v Dorrington [1997] IRLR 488, EAT – employer found to have **failed to provide suitable working environment**

If breach is repudiatory, employee may resign and claim constructive dismissal

Discrimination and whistleblowing

Potential claims for **discrimination and/or harassment** if treatment of grievance is **based on protected characteristic**

Failure to hear (or actions taken in response) may be **victimisation** if grievance raises complaint of discrimination

Treatment may be **detriment because of whistleblowing** if grievance contains (or follows) a **protected disclosure**

Defence of taking all reasonable steps to prevent discrimination **unlikely to be available**

Potential **breach of duty to take all reasonable steps to prevent sexual harassment**

Potential **breach of duty to take all reasonable steps to prevent third-party harassment**

Justified refusals

- Refusal to hear a grievance may be justified if it is **malicious, retaliatory or vexatious** and investigation would be **detrimental to other employees**
- Employers should be sparing in refusing to hear grievances altogether but it may be sufficient to **investigate to some extent** to determine whether entire grievance is unfounded and **provide an outcome** to the employee

Tactical advantages and disadvantages

Employer

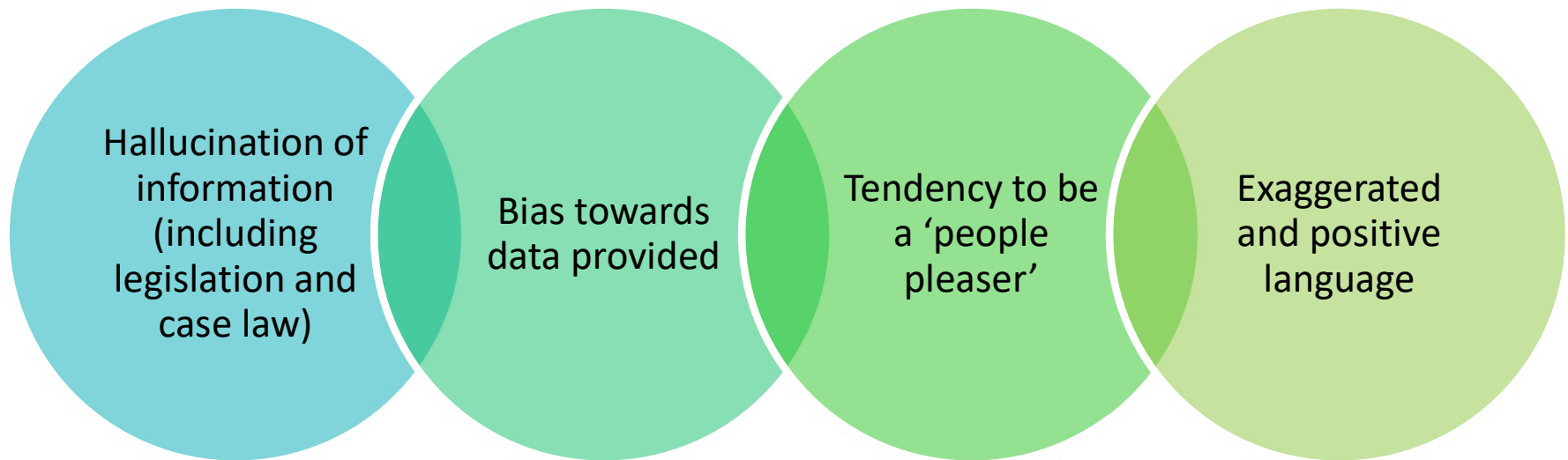
- **Reasonableness is an unruly horse – better safe than sorry?**
- Ability to demand information from employee with limited obligation to reveal position in response means **running grievance processes can help you prepare and defend the case**

Employee

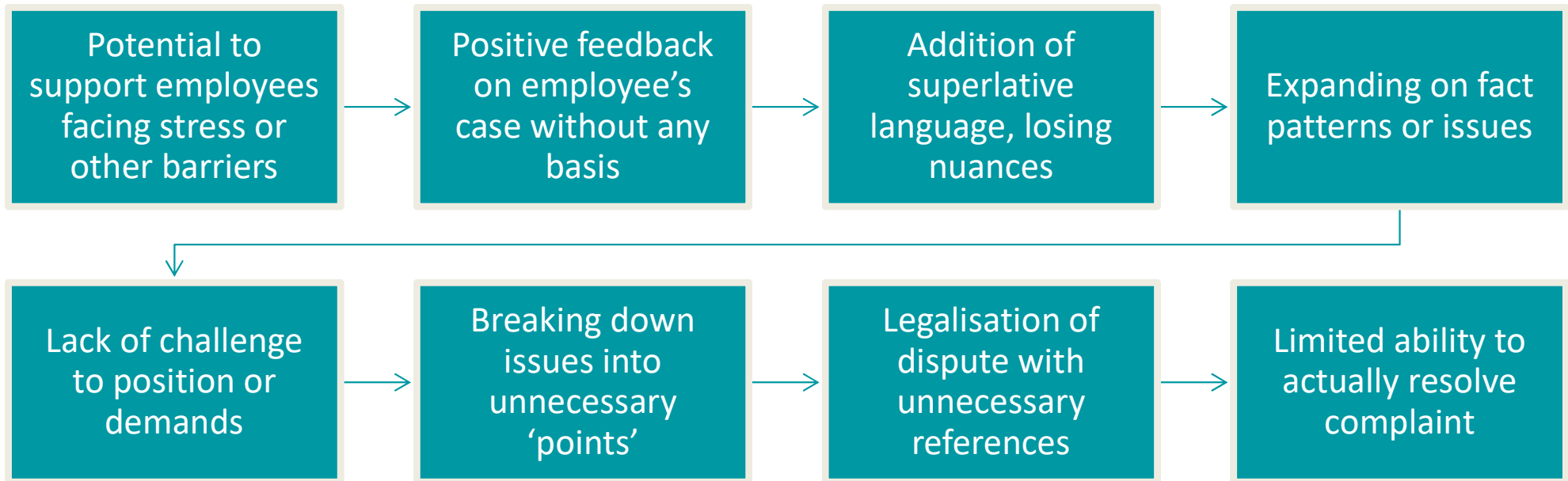
- **Failure to do so likely to be criticised** (and may lead to ACAS uplift)
- **Forces employer to respond** to allegations in some way and rarely an employer will actually provide redress;
- **Proofing of employer's witnesses is also on the record and can be helpful**
- But, obligation to **put case to employer at early stage**, potentially revealing hand

Issues with use of AI in grievances

Challenges with AI



Results of using AI in grievances



Dealing with AI-drafted grievances

Grievance Policy

Regulate use of AI

- **Cannot prohibit** (or police) employees' use of AI altogether
- Set **parameters** around use of **work-provided AI tools** (banning use for personal purposes, including preparing disputes)
- Ban use of **non-work provided tools** during **working hours and on work devices**
- Clarify that **confidential information and personal data** must **never be input into AI**
- Explain that breaching any of these requirements may lead to **disciplinary action**

Disincentivise use of AI

- Acknowledge **why employees might be tempted to use AI** to help them prepare their grievance
- Summarise the **issues with AI** (e.g. hallucinations and inaccuracies) and explain the **risks to the process** if AI is used, including the **potential for delay**
- Encourage the employee to **use their own words** to explain what they feel has happened and remind them that they **remain responsible** for what is written in the grievance
- Require grievance to be in a **form that discourages AI use** (e.g. question-and-answer form) BUT note that **failure to comply will not justify the employer disregarding** grievance

Legal risks in context

Constructive Dismissal

Requires employee to **resign and establish repudiatory breach** = significant risk for employee, likelihood of them pursuing and winning claim in practice may be low

Discrimination / Whistleblowing

Requires employee to **establish treatment was because of protected act, disclosure or characteristic** = high burden on employee, won't apply to most fact patterns

ACAS Code

Requires employee to **bring a successful claim** and show that **employer's conduct was unreasonable** = several hurdles for employee before any consequences for employer

Practical Issues

Long **waiting times** in Employment Tribunals and no automatic costs awards = claims can have **significant time, energy and financial cost** for employee upfront

Legal risks: A word of caution



Highest-stakes cases are still **likely to proceed to litigation**, including those relating to **reputationally damaging** allegations and/or **high-earning employees**



Resigning and claiming constructive dismissal is likely to become **more attractive** under Employment Rights Act 2025 due to **lifting of compensation cap**



Employees using AI are **likely to become aware of their ability to make a claim**, regardless of potential merit, and **more likely to pursue it** if they have received **positive feedback** from AI and have **unrealistic expectations** for their **chances of success / potential compensation**



Potential for impact on **wider employee relations** if grievances are not heard or taken seriously, impacting employer's **culture, morale and reputation**

Assessing an AI grievance

- Key matters to address upfront:
 - Are you able to understand from the written grievance **what the employee is alleging has occurred**, and **what they believe is wrong with it**?
 - Are you able to **provide the requested remedy** if the grievance is upheld, and would it be appropriate?
- If there are **no substantive issues**, grievance is likely to be able to **proceed as normal**
- Does the evident use of AI mean that **another policy has been breached**? Disciplinary action for any breaches of policy **likely to be high-risk**, particularly if grievance alleges discrimination or makes a protected disclosure – may be more justifiable if **confidential information or personal data** has been uploaded to AI but this will be **nearly impossible to prove**

Addressing substantive issues

Ask employee to reword their grievance or ask targeted questions (BUT note that AI will likely be used again)

Use in-person or virtual meetings to establish the employee's true grievance (with transcribed notes), prior to usual investigation meetings

Avoid temptation to make factual findings on all of the points raised in the grievance unless necessary or advantageous to do so

Explore the achievability of remedies with the employee and keep an open mind

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