

Discipline and grievances at work



handbook

inform

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work
with you

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Contents

Introduction

Discipline and grievance procedures	5
The statutory procedures and the <i>Code of Practice</i>	6
Acas handbook	7
Prevention is better than cure	8

1 PART 1: DISCIPLINE AT WORK 9

The need for rules and disciplinary procedures 10

Key points	10
Why have rules?	11
How should rules be drawn up and communicated?	11
What should rules cover?	12
Timekeeping	12
Absence	12
Health and safety	12
Use of organisation facilities	12
Discrimination, bullying and harassment	12
Gross misconduct	13
Why have a disciplinary procedure?	13
What should disciplinary procedures contain?	13
Training	15

2 Handling discipline: an overview 17

Encourage improvement	17
Act promptly	17
Gather the facts	17
Be firm and fair	17
Suspension with pay	17
Stay calm	18
Be consistent	18
Consider each case on its merits	18
Follow the disciplinary procedure	18
Is disciplinary action necessary?	19
Core principles of reasonable behaviour	20

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Acas delivers training on employment law and good practice to employers and managers in all sizes of organisations. Just go to www.acas.org.uk/training for more details.

Informal action	23
Key points	23
What is informal action?	23
How should it be done?	24
Mediation	24

The disciplinary meeting	27
Key points	27
Investigating cases	27
Preparing for the meeting	28
How should the disciplinary meeting be conducted?	29
Statement of the complaint	29
Employee's reply	30
General questioning and discussion	30
Summing up	31
Adjournment	31
What problems may arise and how should they be handled?	31

Taking action	33
Key points	33
What should be considered before deciding any disciplinary penalty?	33
Imposing the disciplinary penalty	35
First formal action – unsatisfactory performance	35
First formal action – misconduct	35
Final written warning	37
Dismissal or other sanction	38
Dismissal with notice	38
Dismissal without notice	39
How should the employee be informed of the disciplinary decision?	39
Written reasons for dismissal	40
What records should be kept?	40
Time limits for warnings	41

Appeals	43
Key points	43
What should an appeals procedure contain?	43
Small firms	44
How should an appeal hearing be conducted?	44
At the meeting	44
Employment tribunal time limits	45

7	The statutory procedure	47
	Key points	47
	What is the three-step procedure?	47
	The minimum requirements	48
	Failure to comply with the procedure	48
	Exemptions to the procedure	49
	The modified procedure	49
	Holding a meeting	50
	Failure to attend a meeting	50
	Appeals	50
8	Dealing with absence	51
	Key points	51
	How should frequent and persistent short-term absence be handled?	52
	How should longer-term absence through ill health be handled?	53
	Specific health problems	56
	Failure to return from extended leave on the agreed date	56
9	Unsatisfactory performance	59
	Key points	59
	Setting standards of performance	59
	What is the role of training and supervision?	60
	Appraisal systems	60
	Negligence or lack of ability?	61
	How should unsatisfactory performance be dealt with?	61
	Action in serious cases	62
	Dismissal	62
10	Dealing with particular cases	63
	Key points	63
	What type of cases need particular attention?	63
	Employees to whom the full procedure is not immediately available	63
	Trade union officials	63
	Use of external consultants	64
	Criminal charges or convictions	64
	Cases involving Statutory Registration Authorities	65

	PART 2: GRIEVANCE PROCEDURES	67
11	What is a grievance and why have a procedure?	69
	Key points	69
	What is a grievance?	69
	Why have a procedure?	70
12	How should a grievance hearing be conducted?	72
	Key points	72
	What is a grievance hearing	72
	Preparing for the hearing	72
	Conduct of the hearing	73
	Grievances about fellow employees	75
13	Special cases	76
	Discrimination	76
14	Training and records	77
	Training	77
	Records	77
	PART 3: THE RIGHT TO BE ACCOMPANIED	79
15	Checklist for the right of accompaniment	80
	What is the right to be accompanied?	81
	What if the worker is dismissed?	81
	APPENDICES	83
	Appendix 1: Rules for small organisations	84
	Appendix 2: Sample disciplinary procedures	85
	Appendix 3: Sample letters	90
	Appendix 4: Basic Principles of Human Rights Act 1998, Data Protection Act 1998, & Disability Discrimination Act 1995	102
	Glossary	107
	Notes	110
	Index	113
	Copy of the <i>Acas Code of Practice on disciplinary and grievance procedures</i> (includes Annexes A, B, C, D & E)	117
	Acas Publications	166
	Acas Training	167
	Contact information	168

Introduction

Discipline and grievance procedures

Organisations should set standards of performance and conduct reinforced by company rules. Problems when standards are not met or where grievances are raised by employees may often be dealt with informally but if a formal approach is needed then procedures help employers to be fair and consistent.

Disciplinary procedures may be used for problems with employees' conduct or performance although some organisations have a separate procedure for dealing with performance problems.

Grievance procedures are used for considering problems or concerns that employees wish to raise with their employers.

This handbook tells you how to handle discipline and grievances at work. The detailed advice given is based on the three following principles:

- rules and procedures provide a framework for **behaviour and performance**
- discipline and grievances are about **people not processes**
- in most cases employers should aim to **improve and not to punish**.

In a well-managed organisation disciplinary procedures may not be needed very often. But, if a problem does arise then they are vital. Good procedures can help organisations to resolve problems internally – and avoid employment tribunal claims.

Examples of discipline and grievances in practice

Brief details of a number of examples of discipline and grievances in practice are included in this handbook. Remember that these are for illustrative purposes only and that actual cases you deal with should be considered in the light of all the circumstances.

The statutory procedures and the Code of Practice

This handbook contains examples of disciplinary procedures to help employers in all types and size of organisation. Although organisations can be flexible about how formal or extensive their procedures need to be, there is a statutory procedure they must follow as a minimum if they are contemplating dismissing an employee – or imposing certain kinds of penalty short of dismissal such as suspension without pay or demotion. Unless employers follow the statutory procedure, employment tribunals will find dismissals automatically unfair.

The statutory procedure involves the following three steps:

- a statement in writing of what it is the employee is alleged to have done,
- a meeting to discuss the situation, and
- the right of appeal.

The Government intends to repeal the current statutory dispute resolution procedures outlined in this guide. The new legislation is likely to be introduced in April 2009. For more information, visit the 'Employment matters' section of the Department for Business, Enterprise and Regulatory Reform website at www.berr.gov.uk

The statutory procedure (see p47 for details) is the minimum standard. Employment tribunals expect employers to behave fairly and reasonably. Acas strongly advises employers and employees to start talking to each other long before the dismissal stage – for example, through counselling or working out an 'improvement note' for an employee's performance.

The Government is proposing to repeal the statutory dispute procedures in April 2009. For further information visit the Department for Business, Enterprise and Regulatory Reform website at www.berr.gov.uk.

Disciplinary procedures are an aid to the effective management of people, and should not be viewed primarily as a means of imposing sanctions or as leading to dismissal. Where dismissal does occur, employees may make a complaint to an employment tribunal if they believe they have been unfairly dismissed, although ordinarily the employee must have one year's service¹. It is for the employer to show the reason for the dismissal and that it was a fair reason.

The tribunal will determine whether the dismissal was fair or unfair and will take into account the size and administrative resources of the employer in deciding whether they acted reasonably or unreasonably.

The tribunal will take account of the guidance given in the *Acas Code of Practice on disciplinary and grievance procedures* (see Annexes A and C of the Code) and consider how far the statutory three-step procedures have been followed.

What does it mean?

Check the glossary for more explanation of the terms used in this handbook.

The *Code of Practice* provides guidance on good practice in disciplinary and grievance matters in employment, and includes information on the right to be accompanied at a disciplinary or grievance hearing.

Acas handbook

Although this handbook is purely advisory it complements the *Code of Practice* by giving additional practical advice.

Discipline

Section 1 on discipline at work starts by explaining why organisations need rules and disciplinary procedures and gives an overview of how to handle discipline. It then looks in depth at:

- Informal action
- The disciplinary hearing
- Taking action: unsatisfactory performance and misconduct
- Appeals
- Dismissal etc: the new statutory procedures

The rest of the part on discipline gives advice on handling absence, unsatisfactory performance and particular cases – such as those involving trade union representatives, criminal charges or employees in remote locations.

Grievances

Part 2 on grievances considers why organisations need procedures and gives advice on how to handle a grievance hearing.

Guidance is also given on special cases – such as those to do with bullying or harassment, discrimination and whistleblowing. In these sensitive areas some organisations may wish to develop separate procedures.

The statutory minimum grievance procedures are also summarised in Part 2.

The right to be accompanied

Part 3 has information on the right to be accompanied at disciplinary and grievance meetings.

Prevention is better than cure

Although it is important to deal with discipline and grievance issues fairly and effectively it is more important to prevent problems arising in the first place.

The first step is to understand the relationship between discipline and grievance issues and wider issues like communication, induction and training.

For example, if managers and staff are in the habit of talking to each other openly about what's happening at work then specific problems – like lack of training or poor motivation – can be resolved before any disciplinary action becomes necessary.

Equally, if staff are given contracts of employment when they start work – including rules for absence, timekeeping and discipline, as well as details of pay, holidays etc – then there will be less opportunity for ambiguity if problems arise in the future.

The use of the formal disciplinary and grievance procedures should be considered a 'last resort' rather than the first option. Many problems can be sorted out through informal dialogue between managers and staff – a 'quiet word' is often all that's needed.

Part 1
Discipline at work

The need for rules

and disciplinary procedures

Key Points

- Rules are necessary because they set standards. A good disciplinary procedure helps employees* keep the rules, and helps employers deal fairly with those who do not
- Rules will normally cover issues such as absence, timekeeping and holiday arrangements, health and safety, use of the organisation's equipment and facilities, misconduct, sub-standard performance, and discrimination, bullying and harassment
- Rules and procedures should be clear, and should preferably be put in writing. They should be known and understood by all employees
- All employees should have ready access to a copy of the rules and disciplinary procedures
- Management should aim to secure the involvement of employees and any recognised trade union or other employee representatives when rules and disciplinary procedures are introduced or revised
- Rules should be reviewed from time to time and revised if necessary
- Management should ensure that those responsible for operating disciplinary rules understand them and receive appropriate training

*The statutory dismissal, disciplinary and grievance procedures apply only to employees and this term is used throughout Parts 1 and 2 of this handbook. However, it is good practice to allow all workers access to disciplinary and grievance procedures. The right to be accompanied applies to all workers and this term is used in Part 3 of this handbook and Section 3 of the Code.

(*see glossary p107)

Why have rules?

Clear rules benefit employees and employers. Rules set standards of conduct and performance at work and make clear to employees what is expected of them.

How should rules be drawn up and communicated?

To be fully effective rules and procedures should be accepted as reasonable by those covered by them and those who operate them. It is therefore good practice to develop rules in consultation with employees (via their representatives if appropriate) and those who will have responsibility for applying them.

Writing down the rules helps both managers and employees to know what is expected of them. The rules should be made clear to employees, and ideally they should be given their own copy.

In a small organisation, it may be sufficient for rules to be displayed in a prominent place. In large organisations, it is good practice to include a section on rules in the organisation's handbook, and to discuss them during the induction programme.

Special attention should be paid to ensure that rules are understood by any employees with little experience of working life (for instance young people or those returning to work after a lengthy break), and by employees whose English or reading ability is limited.

Rules are more readily accepted and adhered to if people understand the reasons for them. For instance, if an employee is required to wear protective clothing, it is sensible to explain if this is for a particular reason eg because of corrosive liquids, or staining materials. A uniform may be more acceptable if it is explained that it is so customers or the public can identify employees.

Unless there are valid reasons why different sets of rules apply to different groups of employees – perhaps for health and safety reasons – rules should apply to all employees at all levels in the organisation.

The rules should not discriminate on the grounds of sex, marital status, racial group, sexual orientation, religion or belief, disability² or age³.

Where a rule has fallen into disuse or has not been applied consistently, employees should always be told before there is any change in practice. Any revisions to the rules should be communicated to all employees, and employees should be issued with a revised written statement within one month of the change⁴.

What should rules cover?

While the following is not an exhaustive list, as different organisations will have different requirements, examples of the types of issues that rules might cover are:

Timekeeping

- 'clock-in' times
- lateness.

Absence

- authorising absence
- approval of holidays
- notification of absence
 - i) who the employee tells
 - ii) when they tell them
 - iii) the reasons for absence
 - iv) likely time of arrival/return
- rules on self-certification and doctor's certificates.

Health and safety

- personal appearance – any special requirements regarding, for example, protective clothing, hygiene or the wearing of jewellery.

Employers should be aware that any such requirement must be solely on the basis of health or safety, and should not discriminate between sexes or on the basis of age, race, disability, sexual orientation or religion or belief

- smoking policy⁵
- special hazards/machinery/chemicals
- policies on alcohol, drug or other substance abuse.

Use of organisation facilities

- private telephone calls⁶
- computers, email and the internet
- company premises outside working hours
- equipment.

Discrimination, bullying and harassment

- equal opportunities policy
- policy on harassment relating to race, sex, disability, sexual orientation, religion or belief, age
- bullying and harassment policy⁷
- non-discriminatory clothing or uniform policies
- any standards of written or spoken language needed for the safe and effective performance of the job.

Gross misconduct

- the types of conduct that might be considered as 'gross misconduct' (this is misconduct that is so serious that it may justify dismissal without notice – see the glossary on p107).

Why have a disciplinary procedure?

A disciplinary procedure is the means by which rules are observed and standards are maintained. It provides a method of dealing with any shortcomings in conduct or performance and can help an employee to become effective again. The procedure should be fair, effective, and consistently applied.

What should disciplinary procedures contain?

When drawing up and applying procedures, employers should always bear in mind the requirements of natural justice. For example, employees should be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Employees should be given the opportunity to challenge the allegations before decisions are reached and should be provided with a right to appeal.

Good disciplinary procedures should:

- be put in writing
- say who they apply to (if there are different rules for different groups)
- be non-discriminatory
- provide for matters to be dealt with speedily
- allow for information to be kept confidential
- tell employees what disciplinary action might be taken
- say what levels of management have the authority to take the various forms of disciplinary action
- require employees to be informed of the complaints against them and supporting evidence, before any meeting
- give employees a chance to have their say before management reaches a decision
- provide employees with the right to be accompanied (see Part 3, p80)
- provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct
- require management to investigate fully before any disciplinary action is taken

- ensure that employees are given an explanation for any sanction and
- allow employees to appeal against a decision.

The procedures should also:

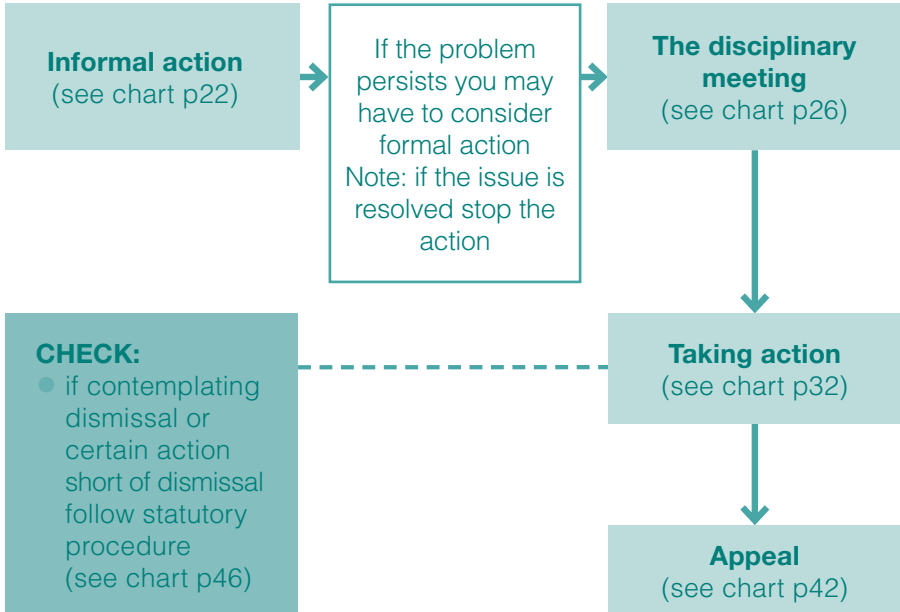
- apply to all employees, irrespective of their length of service, status or number of hours worked
 - ensure that any investigatory period of suspension is with pay, and specify how pay is to be calculated during such period. If, exceptionally, suspension is to be without pay, this must be provided for in the contract of employment
 - ensure that any suspension is brief, and is never used as a sanction against the employee prior to a disciplinary meeting and decision
- ensure that the employee will be heard in good faith and that there is no pre-judgement of the issue
 - ensure that, where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated, and there is a reasonably held belief that the employee committed the act in question.

Examples of disciplinary procedures are at Appendix 2, and may be adapted according to the requirements of the organisation.

Training

Those responsible for using and operating the disciplinary rules and procedures should be trained for the task. Ignoring or circumventing the procedures when dismissing an employee is likely to have a bearing on the outcome of any subsequent tribunal complaint. Good training helps managers achieve positive outcomes, reducing the need for any further disciplinary action. If the organisation recognises trade unions, or there is any other form of employee representation, it can be useful to undertake training on a joint basis – everyone then has the same understanding and has an opportunity to work through the procedure, clarifying any issues that might arise.

Handling discipline: an overview



Handling discipline:

an overview

Encourage improvement

The main purpose of operating a disciplinary procedure is to encourage improvement in an employee whose conduct or performance are below acceptable standards.

Act promptly

Problems dealt with early enough can be 'nipped in the bud', whereas delay can make things worse as the employee may not realise that they are below standard unless they are told. Arrange to speak to the employee as soon as possible – the matter may then be able to be dealt with in an informal manner and not as part of the disciplinary process (see chapter on 'Informal action').

Gather the facts

By acting promptly the relevant supervisor or manager can clarify what the problem is and gather information before memories fade, including anything the employee has to say. Where necessary, statements should be obtained from witnesses at the earliest opportunity. Keep records of what is said – copies may need to be given to the individual if the matter

progresses any further. Relevant personal details such as previous performance, length of service and any current warnings will need to be obtained before the meeting, as well as any appropriate records and documents.

Be firm and fair

Whilst maintaining satisfactory standards and dealing with disciplinary issues requires firmness on the part of the manager, it also requires fairness. Be as objective as possible, keep an open mind, and do not prejudge the issues.

Suspension with pay

Where there appears to be serious misconduct, or risk to property or other people, a period of suspension with pay should be considered while the case is being investigated. This allows tempers to cool and hasty action to be avoided. Any suspension must be with pay unless the contract of employment allows suspension without pay, and any period of suspension should be as short as possible. Tell the employee exactly why they are being suspended, and that they will be called in for a

disciplinary meeting as soon as possible. Do not use suspension as a sanction before the disciplinary meeting and decision and treat employees fairly and consistently.

Stay calm

Conduct enquiries, investigations and proceedings with thought and care. Avoid snap decisions, or actions in the heat of the moment. The disciplining of a worker is a serious matter and should never be regarded lightly or dealt with casually.

Be consistent

The attitude and conduct of employees may be seriously affected if management fails to apply the same rules and considerations to each case. Try to ensure that all employees are aware of the organisation's normal practice for dealing with misconduct or unsatisfactory performance.

Consider each case on its merits

While consistency is important, it is also essential to take account of the circumstances and people involved. Personal details such as length of service, past disciplinary history and any current warnings will be relevant to such considerations. Any provocation or other mitigation also needs to be taken into account.

Any decision to discipline an employee must be reasonable in all the circumstances and must not discriminate on grounds of age, race, sex, disability, sexual orientation or religion or belief.

Follow the disciplinary procedure

The disciplinary procedure must be followed and the supervisor or manager should never exceed the limits of his or her authority.

If the employee is dismissed or suffers a disciplinary penalty short of dismissal – such as suspension without pay – the statutory minimum procedures must have been followed (see p47). If they have not been followed and the employee makes a claim to an employment tribunal the dismissal will automatically be ruled unfair. To make a claim to an employment tribunal, employees will ordinarily have to have one year's service.

Is disciplinary action necessary?

Having gathered all the facts, the manager or supervisor should decide whether to:

- drop the matter – there may be no case to answer or the matter may be regarded as trivial
- arrange counselling/take informal action – this is an attempt to correct a situation and prevent it from getting worse without using the disciplinary procedure (see the next chapter on informal action).
- Consider using an independent mediator. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this. For more information about mediation see the Acas leaflet *Mediation explained* available on the Acas website or from our publications orderline (see back cover).
- arrange a disciplinary meeting – this will be necessary when the matter is considered serious enough to require disciplinary action (see the section on the disciplinary meeting, p27).

Employment Tribunals expect employers to behave fairly and reasonably. The following core principles of reasonable behaviour are taken from the Acas Code of Practice on disciplinary and grievance procedures – reproduced in full at the back of this handbook.

Core principles of reasonable behaviour

- Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- Inform the employee of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
- Act consistently.

Key stages

in handling disciplinary procedures

The following five chapters give guidance on handling disciplinary matters. Each chapter is preceded by a chart, setting out the key stages:

Chart 1: Informal action – p22

Chart 2: The disciplinary meeting – p26

Chart 3: Taking action: unsatisfactory performance and misconduct – p32

Chart 4: Appeals – p42

Chart 5: The statutory procedure – p46

(For a chart explaining how to deal with grievances, go to Part 2, Grievance procedures, p68)

Chart 1: Informal action

See 'Informal action', p23

Gather the facts now –
before memories fade

Have a 'quiet word' in private:
is there a case to be answered?

CHECK:

- this is not a disciplinary hearing
- the aim is to encourage and improve

No

Yes

The matter is
over – don't
leave any
bad feeling

Be clear about:

- what needs to be done to improve
- when you might speak again
- what could happen next (ie formal action)

CHECK:

- offer help eg training or counselling if needed
- keep written notes

Informal action

Key Points

- Informal action may often be a more satisfactory method of resolving problems than a disciplinary meeting
- If it takes the form of a discussion with the objective of encouraging and helping the employee to improve, it must not turn into a disciplinary meeting
- The employee should fully understand the outcome
- A note of any informal action should be kept for reference purposes

What is informal action?

In many cases the right word at the right time and in the right way may be all that is needed, and will often be a more satisfactory way of dealing with a breach of rules, or unsatisfactory performance, than a formal meeting. Additional training, coaching and advice may be needed, and both manager and employee should be aware that formal processes will start if there is no improvement or if any improvement fails to be maintained.

Discipline in practice example 1

A valued and generally reliable employee is late for work on a number of occasions causing difficulty for other staff who have to provide cover.

You talk to the employee on his own and he reveals that he has recently split up with his wife and he now has to take the children to school on the way to work. You agree an adjustment to his start and finish times and make arrangements for cover which solves the problem. You decide that disciplinary action is not appropriate.

How should it be done?

- talk to the employee in private. This should be a two-way discussion, aimed at pointing out the shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained
- listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee
- where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. The employee should be told that if there is no improvement then the next stage will be the formal disciplinary procedure. It may be useful to confirm the agreed action in writing

- be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied (see Part 3 of this handbook and Section 3 of the Code). If during the discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure
- keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.

Mediation

In some cases, where the employer considers that formal disciplinary action is not appropriate, an independent mediator may help solve disagreements over disciplinary issues. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this. For more information about mediation see the

Acas leaflet *Mediation explained* available on the Acas website or from our publications orderline (see back cover).

Chart 2: *The disciplinary meeting*

See 'Holding a disciplinary meeting', p27

Tell the employee in writing:

- what they are alleged to have done wrong
- the time and place for a meeting
- they have the right to be accompanied



At the meeting:

- state the evidence
- let the employee put their case
- let the accompanying person ask questions



Adjourn to consider any action

- (if necessary) and think about:
- previous sanctions
 - employee's record
 - any special circumstances



Make your decision:

- inform the employee of the decision and the right to appeal
- monitor the situation and keep an open mind

CHECK:

- carry out a thorough investigation before any meeting
- give the employee copies of any information to be used
- arrange another meeting within five days if the employee or accompanying person cannot attend
- consider fresh evidence if necessary

See Chart 3:
'Taking action' and
Chart 4: 'Appeals'

The disciplinary *meeting*

Key Points

- Before any meeting carry out sufficient investigation to enable a clear view of the facts to emerge
- Prepare for the meeting carefully, and ensure all the relevant facts are available
- Tell the employee in writing what is being alleged, and advise him or her of rights under the disciplinary procedure, including the right to be accompanied at any disciplinary meeting
- Give the employee time to prepare, and proper opportunity to state his or her case
- Listen carefully to all that is said
- Consider adjourning the meeting, where necessary, before deciding on any disciplinary penalty to allow full consideration of all the matters raised

Investigating cases

- When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. Where it is necessary to hold an investigatory meeting give the employee advance warning of the meeting and time to prepare. Exceptionally, where

you have reasonable grounds for concern that evidence may be tampered with or destroyed before the meeting, consider suspending the employee with pay for a brief period whilst the investigation is carried out.

- Any investigatory meeting should be conducted by a management representative and should be confined to establishing the facts of the case. If at any stage it becomes apparent that formal disciplinary action may be needed then the interview should be terminated and a formal hearing convened at which the employee will have the right to be accompanied.
- be careful when dealing with evidence from an informant who wishes to remain anonymous. Take written statements, seek corroborative evidence and check that the informant's motives are genuine⁸
- are the standards of other employees acceptable, or is this employee being unfairly singled out?
- consider what explanations may be offered by the employee, and if possible check them out beforehand

Preparing for the meeting

- ensure that all the relevant facts are available, such as disciplinary records and any other relevant documents (for instance absence or sickness records) and, where appropriate, written statements from witnesses
- tell the employee of the complaint, the procedure to be followed, and that he or she is required to attend a disciplinary meeting
- tell the employee that he or she is entitled to be accompanied at the meeting (see Part 3)
- arrange for a second member of management to be present wherever possible
- check if there are any special circumstances to be taken into account. For example, are there personal or other outside issues affecting performance or conduct?
- allow the employee time to prepare his or her case. It may be useful and save time at the meeting if copies of any relevant papers and witness statements are made available to the employee in advance
- if the employee concerned is a trade union official discuss the case with a trade union representative or full-time official after obtaining the employee's agreement. This is because the action may be seen as an attack on the union
- arrange a time for the meeting, which should be held as privately as possible, in a suitable room, and where there will be no interruptions. The employee may offer a reasonable alternative date if their chosen companion cannot attend

- if an employee fails to attend a meeting through circumstances outside their control, such as illness, the employer must arrange another meeting
- establish what disciplinary action was taken in similar circumstances in the past
- where possible arrange for a second member of management to take notes of the proceedings and act as a witness
- if a witness is someone from outside the organisation who is not prepared or is unable to attend the meeting try and get a written statement from him or her
- allow the employee to call witnesses or submit witness statements
- if there may be understanding or language difficulties consider the provision of an interpreter or facilitator (perhaps a friend of the employee, or a co-employee)
- think about the structure of the meeting and make a list of points you will wish to cover.
- introduce those present to the employee and explain why they are there
- introduce and explain the role of the accompanying person if present
- explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the organisation's disciplinary procedure
- explain how the meeting will be conducted.

Statement of the complaint

- state precisely what the complaint is and outline the case briefly by going through the evidence that has been gathered. Ensure that the employee and his or her representative or accompanying person are allowed to see any statements made by witnesses
- remember that the point of the meeting is to establish the facts, not catch people out. Establish whether the employee is prepared to accept that he/she may have done something wrong. Then agree the steps which should be taken to remedy the situation.

How should the disciplinary meeting be conducted?

Meetings rarely proceed in neat, orderly stages but the following guidelines may be helpful:

Employee's reply

- give the employee the opportunity to state his/her case and answer any allegations that have been made. He/she should be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to confer privately with the employee. Listen carefully and be prepared to wait in silence for an answer as this can be a constructive way of encouraging the employee to be more forthcoming
- if it is not practical for witnesses to attend, consider proceeding if it is clear that their evidence will not affect the substance of the complaint
- if a grievance is raised during the meeting that relates to the case it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered.

General questioning and discussion

- use this stage to establish all the facts
- adjourn the meeting if further investigation is necessary, or, if appropriate, at the request of

the employee or his or her accompanying person

- ask the employee if she or he has any explanation for the misconduct or failure to improve, or if there are any special circumstances to be taken into account
- if it becomes clear during this stage that the employee has provided an adequate explanation or there is no real evidence to support the allegation, stop the proceedings
- keep the approach formal and polite and encourage the employee to speak freely with a view to establishing the facts. A properly conducted disciplinary meeting should be a two-way process. Use questions to clarify the issues and to check that what has been said is understood. Ask open-ended questions, for example, 'what happened then?' to get the broad picture. Ask precise, closed questions requiring a yes/no answer only when specific information is needed
- do not get involved in arguments and do not make personal or humiliating remarks. Avoid physical contact or gestures which could be misinterpreted or misconstrued as judgemental.

Summing up

Summarise the main points of the discussion after questioning is completed. This allows all parties to be reminded of the nature of the offence, the arguments and evidence put forward and to ensure nothing is missed. Ask the employee if he/she feels that they have had a fair hearing, and whether they have anything further to say. This should help to demonstrate to the employee that they have been treated reasonably.

Adjournment

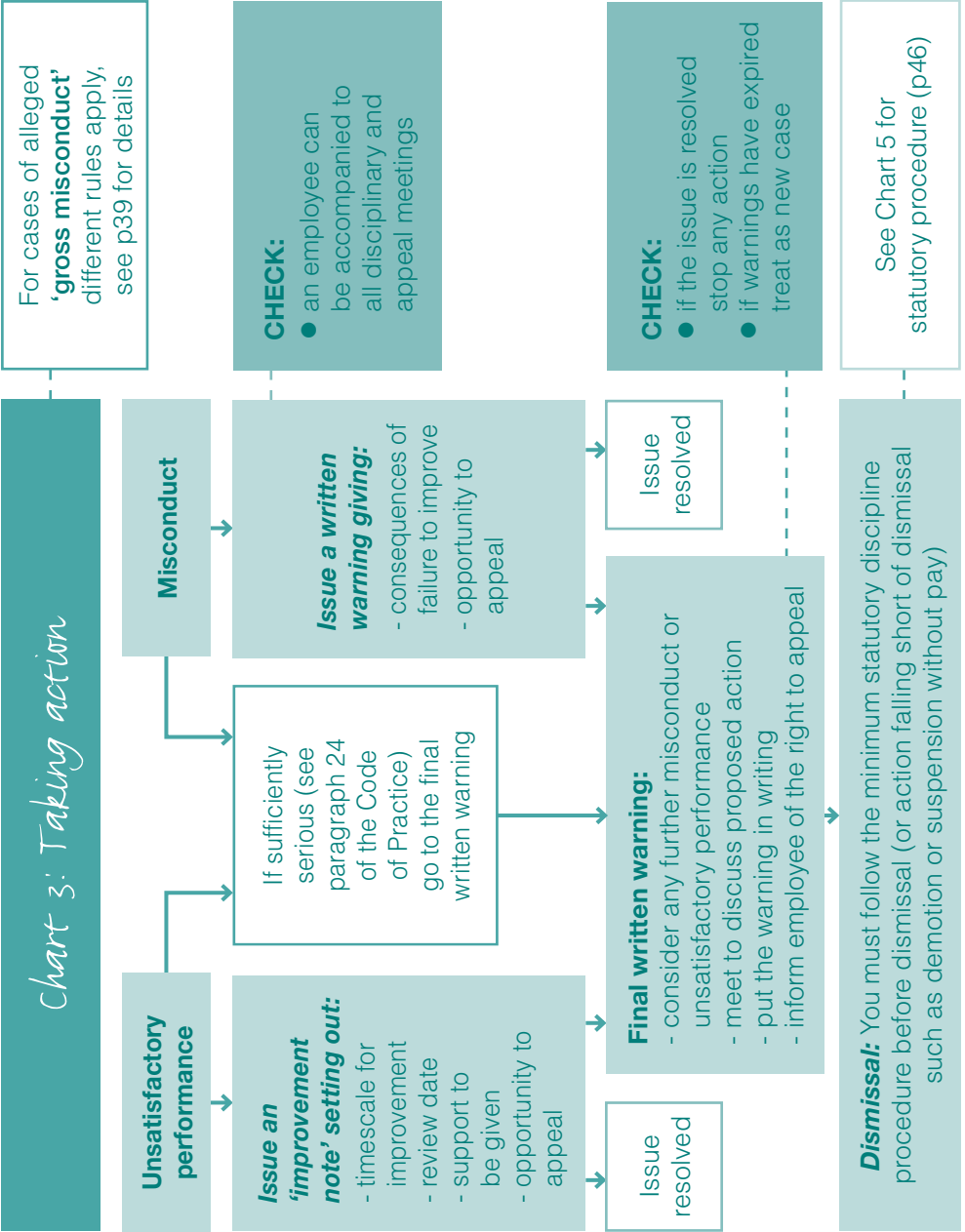
It is generally good practice to adjourn before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised, particularly if there is any dispute over facts. If new facts emerge, consider whether to reconvene the disciplinary meeting.

What problems may arise and how should they be handled?

It is possible that the disciplinary meeting may not proceed very smoothly – people may be upset or even angry.

If the employee becomes upset or distressed allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and reconvene at a later date – however, the issues should not be avoided. Clearly during the meeting there may be some ‘letting off steam’, and this can be helpful in finding out what has actually happened. However, abusive language or conduct should not be tolerated.

Chart 3: Taking action



For cases of alleged 'gross misconduct' different rules apply, see p39 for details

CHECK:

- an employee can be accompanied to all disciplinary and appeal meetings

CHECK:

- if the issue is resolved stop any action
- if warnings have expired treat as new case

See Chart 5 for statutory procedure (p.46)

Taking action

Key Points

- The decisions that are made at the end of a disciplinary meeting are whether to take disciplinary action, if so what, and whether any other action should be taken (for example, training or job change)
- Before deciding whether a disciplinary penalty is appropriate, and at what level, consider the employee's disciplinary and general record, whether the organisation's rules point to the likely penalty, action taken in previous cases, any explanations and circumstances to be considered and whether the penalty is reasonable
- Leave the employee in no doubt as to the nature of the disciplinary penalty, the improvement expected and the need to sustain the improvement
- Give the employee written details of any disciplinary action
- Keep records of disciplinary action secure and confidential. Give a copy of the record to the employee concerned
- Do not allow disciplinary action to count against an individual indefinitely except in exceptional cases – such as where misconduct verges on gross misconduct

What should be considered before deciding any disciplinary penalty?

When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:

- whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct
- the penalty imposed in similar cases in the past
- the employee's disciplinary record, general work record, work experience, position and length of service
- any special circumstances which might make it appropriate to adjust the severity of the penalty

- whether the proposed penalty is reasonable in view of all the circumstances.

It should be clear what the normal organisational practice is for dealing with the kind of misconduct or unsatisfactory performance under consideration. This does not mean that similar offences will always call for the same disciplinary action: each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, ignorance of the rule or standard involved or inconsistent treatment in the past. Take the opportunity to review rules and procedures and the organisation's communications with employees. Look at consistency of process and investigation rather than just at outcomes.

If guidance is needed on formal disciplinary action seek advice, where possible, from someone who will not be involved in hearing any potential appeal. Call the Acas helpline on 08457 47 47 47 to talk to one of our advisers.

Discipline in practice – example 2

A member of the accounts staff makes a number of mistakes on invoices to customers. You bring the mistakes to his attention, make sure he has had the right training and impress on him the need for accuracy but the mistakes continue.

You invite the employee to a disciplinary meeting and inform him of his right to be accompanied by a colleague or employee representative. At the meeting the employee does not give a satisfactory explanation for the mistakes so you decide to issue an improvement note setting out: the problem, the improvement required, the timescale for improvement, the support available and a review date. You inform the employee that a failure to improve may lead to a final written warning.

Imposing the disciplinary penalty

First formal action – unsatisfactory performance

In cases of unsatisfactory performance an employee should be given an ‘improvement note’, setting out:

- the performance problem
- the improvement that is required
- the timescale for achieving this improvement
- a review date and
- any support the employer will provide to assist the employee.

The employee should be informed that the note represents the first stage of a formal procedure and that failure to improve could lead to a final written warning and, ultimately, dismissal. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period (eg, six months).

However, if an employee’s unsatisfactory performance – or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be justifiable to move directly to a final written warning.

First formal action – misconduct

In cases of misconduct, employees should be given a written warning setting out the nature of the misconduct and the change in behaviour required.

The warning should also inform the employee that a final written warning may be considered if misconduct is repeated. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (eg, six months).

Discipline in practice – example 3

An employee in a small firm makes a series of mistakes in letters to one of your key customers promising impossible delivery dates. The customer is upset at your firm's failure to meet delivery dates and threatens to take his business elsewhere.

You are the owner of the business and carry out an investigation and invite the employee to a disciplinary meeting. You inform her of her right to be accompanied by a colleague or employee representative.

Example outcome of meeting

At the meeting the employee does not give a satisfactory explanation for the mistakes and admits that her training covered the importance of agreeing realistic delivery dates with her manager. During your investigation, her team leader and section manager told you they had stressed to the employee the importance of agreeing delivery dates with them before informing the customer. In view of the seriousness of the mistakes and the possible impact on the business, you issue the employee with a final written warning. You inform the employee that failure to improve will lead to dismissal and of her right to appeal.

Example outcome of meeting in different circumstances

At the meeting, the employee reveals that her team leader would not let her attend training as the section was too busy. Subsequently the team leader was absent sick and the employee asked the section manager for help with setting delivery dates. The manager said he was too busy and told the employee to 'use her initiative'. Your other investigations support the employee's explanation. You inform the employee that you will not be taking disciplinary action and will make arrangements for her to be properly trained. You decide to carry out a review of general management standards on supervision and training.

Final written warning

If the employee has a current warning about conduct or performance then further misconduct or unsatisfactory performance (whichever is relevant) may warrant a final written warning. This may also be the case where 'first offence' misconduct is sufficiently serious, but would not

justify dismissal. Such a warning should normally remain current for a specified period, for example, 12 months, and contain a statement that further misconduct or unsatisfactory performance may lead to dismissal.

Discipline in practice – example 4

A member of your telephone sales team has been to lunch to celebrate success in an exam. He returns from lunch in a very merry mood, is slurring his speech and is evidently not fit to carry out his duties. You decide to send him home and invite him in writing to a disciplinary meeting the following day setting out his alleged behaviour of gross misconduct for which he could be dismissed. Your letter includes information about his right to be accompanied by a colleague or employee representative.

At the meeting he admits he had too much to drink, is very apologetic and promises that such a thing will not happen again. He is one of your most valued members of staff and has an exemplary record over his 10 years service with you. You know that being unfit for work because of excessive alcohol is listed in your company rules as gross misconduct. In view of the circumstances and the employee's record, however, you decide not to dismiss him but give him a final written warning. You inform the employee of his right to appeal.

Dismissal or other sanction

If the employee has received a final written warning further misconduct or unsatisfactory performance may warrant dismissal. Alternatively the contract may allow for a different disciplinary penalty instead. Such a penalty may include disciplinary transfer, disciplinary suspension without pay⁹, demotion, loss of seniority or loss of increment. These sanctions may only be applied if allowed for in the employee's contract.

Note

Employers must have followed the minimum statutory dismissal and disciplinary procedures if they wish to dismiss an employee. The procedures – detailed on p47 – also apply to sanctions such as demotion, loss of seniority or loss of pay.

Any penalty should be confirmed in writing, and the procedure and time limits for appeal set out clearly.

There may be occasions when, depending on the seriousness of the misconduct involved, it will be appropriate to consider dismissal without notice (see below).

Dismissal with notice

Employees should only be dismissed if, despite warnings, conduct or performance does not improve to the required level within the specified time period. Dismissal must be reasonable in all the circumstances of the case.

Unless the employee is being dismissed for reasons of gross misconduct, he or she should receive the appropriate period of notice or payment in lieu of notice. Such payment should include payments to cover pension contributions and holiday pay as well as the value of any non-cash benefits such as a company car, medical insurance, and any commission which the employee might otherwise have earned. Minimum periods of notice are laid down by law. Employees are entitled to at least one week's notice if they have worked for a month but less than two years. This increases by one week (up to a maximum of 12) for each completed year of service. If the contract of employment gives the right to more notice than the

statutory minima then the longer period of notice applies¹⁰.

Dismissal without notice

Employers should give all employees a clear indication of the type of misconduct which, in the light of the requirements of the employer's business, will warrant dismissal without the normal period of notice or pay in lieu of notice. So far as possible the types of offences which fall into this category of 'gross misconduct' should be clearly specified in the rules, although such a list cannot normally be exhaustive.

No dismissal should be instant. A dismissal for gross misconduct should only take place after the normal investigation and disciplinary meeting to establish all the facts. The employee should be told of the complaint and be given the opportunity to state his or her case as in any other disciplinary meeting.

The employee has the right to be accompanied at any such meeting (see Section 3 of the Code).

Gross misconduct is generally seen as misconduct serious enough to destroy the contract between the employer and the employee, making any further working relationship and trust impossible. It is normally restricted to very serious offences, for example physical violence, theft or fraud, but may be determined by the nature of the business or other circumstances (see also paragraph 57 of the Code). The full three-step standard statutory procedure should be used before deciding whether to dismiss – although, in very exceptional circumstances, employers may use the modified statutory procedure (see Annex B of the Code of Practice).

How should the employee be informed of the disciplinary decision?

The employee should be informed as soon as possible of the decision in all cases. The employee should be told the reasons for the decision, including the results of any further investigations, and left in no doubt as to what action is being taken under the disciplinary procedure. The period that any warning is to remain in force must be clearly stated, and the possible consequences of any further misconduct or continuing unsatisfactory performance.

The employee must understand what improvement is required, over what period and how it will be assessed.

Details of any disciplinary action should be given in writing to the employee as soon as the decision is made. A copy of the notification should be retained by the employer. The written notification should specify:

- the nature of the misconduct
- any period of time given for improvement and the improvement expected
- the disciplinary penalty and, where appropriate, how long it will last
- the likely consequences of further misconduct
- the timescale for lodging an appeal and how it should be made.

The organisation may wish to require the employee to acknowledge receipt of the written notification.

Written reasons for dismissal

Employees with one year's service or more have the right to request a 'written statement of reasons for dismissal'. Employers are required by law to comply within 14 days of the request being made, unless it is not reasonably practicable.

A woman who is dismissed during pregnancy or maternity leave is automatically entitled to the written statement without having to request it and irrespective of length of service¹¹. The written statement can be used in evidence in any subsequent proceedings, for example, in relation to a complaint of unfair dismissal.

What records should be kept?

Consistent handling of disciplinary matters will be difficult unless simple records of earlier decisions are kept. These records should be confidential, detailing the nature of any breach of disciplinary rules, the action taken and the reasons for it, the date action was taken, whether an appeal was lodged, its outcome and any subsequent developments. The Data Protection Act 1998 governs the keeping of manual and computer records, and allows the 'data subjects' access to personal and personnel records about them. The Information Commissioner has produced Codes of Practice covering recruitment and selection, employment records, monitoring at work and information about an employee's health¹².

In each particular case copies of the relevant records should be given to the employee concerned

without him or her needing to request them, although in certain circumstances some information may be withheld, for example to protect a witness.

Time limits for warnings

Except in agreed special circumstances, any disciplinary action taken should be disregarded for disciplinary purposes after a specified period of satisfactory conduct or performance. This period should be established clearly when the disciplinary procedure is being drawn up. Normal practice is for different periods for different types of warnings. For example, a first written warning might be valid for up to six months while a final written warning may remain in force for 12 months (or more in exceptional circumstances). Warnings should cease to be 'live' following the specified period of satisfactory conduct and should thus be disregarded for future disciplinary purposes.

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.

Exceptionally there may be circumstances where the misconduct is so serious – verging on gross misconduct – that it cannot be realistically ignored for future disciplinary purposes. In such circumstances, it should be made very clear that the final written warning can never be removed and that any recurrence of serious misconduct will lead to dismissal. Such instances should be very rare, as it is not good employment practice to keep someone permanently under threat of dismissal.

Chart 4: Appeals

An appeal should:

- usually be lodged within five working days of the disciplinary decision
- be heard by someone senior to the manager who took the original disciplinary decision (wherever possible)

The right to appeal is essential to natural justice
See the 'Glossary' (p107) for a definition

At the appeal meeting:

- consider any new evidence
- allow the employee to comment on any new evidence
- do not be afraid to overturn a previous decision

CHECK:

- remind the employee of their right to be accompanied
- appeals are a good opportunity to identify and rectify any faults in the disciplinary process

Appeal finding:

- tell the employee the result of the appeal and the reason for the decision
- confirm the decision in writing

Appeals

Key Points

- Provide for appeals to be dealt with speedily
- Wherever possible use a procedure which is different from the general grievance procedure
- Wherever possible provide for the appeal to be heard by someone with higher authority than the person who took the original disciplinary decision
- Pay particular attention to any new evidence introduced at the appeal meeting and allow the employee to comment on it
- Examine the issues fully and do not be afraid to overturn a poor decision

The opportunity to appeal against a disciplinary decision is essential to natural justice, and appeals may be raised by employees on various grounds, for instance new evidence, undue severity or inconsistency of the penalty. Defects in the original disciplinary procedure may often be remedied through a properly held appeal. An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and good practice is that it should not result in any increase in penalty as this may deter individuals from appealing.

What should an appeals procedure contain?

It should:

- specify a time-limit within which the appeal should be lodged (the Code recommends five working days as usually appropriate)
- provide for appeals to be dealt with speedily, particularly those involving suspension or dismissal
- wherever possible provide for the appeal to be heard by someone senior in authority to the person who took the disciplinary decision and,

if possible, who was not involved in the original meeting or decision

- spell out what action may be taken by those hearing the appeal
- set out the right to be accompanied at any appeal meeting (see Section 3 of the Code, and Part 3 of this handbook)
- provide that the employee, or a companion if the employee so wishes, has an opportunity to comment on any new evidence arising during the appeal before any decision is taken.

Small firms

In small firms, it may not be possible to find someone with higher authority than the person who took the original disciplinary decision. If this is the case, that person should act as impartially as possible when hearing the appeal, and should use the meeting as an opportunity to review the original decision.

How should an appeal meeting be conducted?

Before the appeal ensure that the individual knows when and where it is to be held, and of their statutory right to be accompanied (see Section 3 of the Code of Practice and Part 3 of this handbook).

Make sure the relevant records and notes of the original meeting are available for all concerned.

At the meeting

- introduce those present to each other, explaining their presence as necessary
- explain the purpose of the meeting, how it will be conducted, and the powers the person/people hearing the appeal have
- ask the employee why he or she is appealing against the discipline
- pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it
- once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision
- do not be afraid to overturn a previous decision if it becomes apparent that it was not soundly based – such action does not undermine authority but rather makes clear the independent nature of the appeal. If the decision is overturned does this mean training for managers needs to be improved, do rules need clarification, or are there other implications to be considered?

- inform the employee of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear, if this is the case, that this decision is final.

Employment tribunal time limits

Employees who feel they have been unfairly dismissed (and meet the qualifying conditions) or wish to claim compensation within the prescribed limit for being dismissed in breach of contract, have a legal right to make a complaint to an employment tribunal. Such complaints must normally be received by the tribunal within three months counting from and including the individual's last day of employment. A breach of contract claim of wrongful dismissal may alternatively be made in a county court or the High Court, in which case the time limit is six years from the termination of employment (five years in Scotland).

In most cases, internal appeal decisions are reached well within this time frame, but exceptional cases, or appeals to external bodies such as independent arbitrators, may take longer to be heard. If the disciplinary process is in progress then employment tribunals have discretion to extend the time limit for presenting a case in the light of all the circumstances.

Chart 5: The statutory procedure

See Annex A of the Code of Practice for the new statutory procedures in full

Step One:

- write to the employee letting them know of the allegations against them
- invite them to a meeting to discuss the allegations

EXEMPTIONS

- employers and employees are exempt from the three-step procedure in certain limited cases (see Annex E of the Code of Practice p162)

Step Two:

- hold a meeting with the employee and their colleague (if they wish to be accompanied)
- notify the employee of your decision

Modified procedure

There is a modified two-step procedure to be used in very exceptional circumstances (see annex B of the Code, p158 for details)

Issue resolved

Step Three:

- if the employee wishes to appeal hold an appeal meeting
- inform the employee of your final decision

WARNING:

- if the employer fails to follow this procedure an employment tribunal will judge the dismissal 'automatically unfair'
- failure by either party to follow it leads to adjustment of compensation up or down

The Statutory *procedure*

Key Points

- Employers must follow the statutory procedures if they are contemplating dismissing an employee or applying sanctions such as demotion, loss of seniority and loss of pay
- An employee has the right to be accompanied at both the meeting to discuss the allegations and the appeal meeting
- Employment tribunals can increase or reduce the compensation by normally between 10-50 per cent if employers or employees have not fully complied with the procedures
- The statutory procedures are a minimum standard. It is best to follow the good practice in this handbook

What is the three-step procedure?

If an employer is thinking of dismissing an employee – or imposing a penalty short of dismissal such as suspension without pay, demotion, loss of

seniority or loss of pay – they must follow the statutory procedure, which is set out in full in Schedule 2 of the Employment Act 2002. The main steps may be summarised as follows:

Step 1

Write to the employee

notifying them of what they are alleged to have done wrong – in terms of performance or conduct; set out the basis for the allegations; and invite them to a meeting to discuss the matter.

Step 2

Inform the employee

of the grounds for making the allegations and **hold a meeting** to discuss them – at which the employee has the right to be accompanied. Notify the employee of the decision and the right to appeal.

Step 3

Hold an appeal meeting

(if the employee wishes to appeal) at which the employee has the right to be accompanied – and inform the employee of the final decision.

The minimum requirements

Following the three-step procedure is a minimum requirement. It is strongly advisable for an employer and employee to start talking to each other long before any disciplinary process reaches even the likelihood of dismissal, or action short of dismissal. For example, counselling or a quiet word might be the most appropriate first step or – if formal action is required – an improvement note may help to resolve the problem in cases of unsatisfactory performance.

Failure to comply with the procedure

An employment tribunal will automatically find a dismissal unfair if the statutory procedure has not been followed where it applies. The tribunal will also, except in exceptional circumstances, increase compensation for the employee by between 10 and 50 per cent. Equally, if the employment tribunal finds that an employee has been dismissed unfairly but has failed to participate in the procedure (for instance they have failed to attend the disciplinary meeting without good cause), compensation may be reduced by usually between 10 and 50 per cent.

Discipline in practice – example 5

Ten pounds has gone missing from the company's petty cash account and the firm's cashier is suspected of taking the money. You investigate the matter and decide that the cashier does have a case to answer.

You write to the cashier setting out the allegation that he has taken money without authorisation from the petty cash account and your grounds for it and that the allegation is of gross misconduct for which he could be dismissed. You also invite him to a meeting to discuss the matter. At the meeting the cashier admits having taken the money for his personal use but argues that it was only £10 and he was intending to pay it back as soon as he received his week's salary. You decide that this is not sufficient justification for having taken the money without authorisation and you dismiss the cashier for gross misconduct. You inform him that he can appeal against the decision if he wishes.

Exemptions to the procedure

There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case but employers and employees will normally be expected to go through the statutory dismissal and disciplinary procedure. There are exemptions which occur in very exceptional circumstances – see Annex E of the *Acas Code of Practice on disciplinary and grievance procedures* for details p162.

The modified procedure

There may be some very limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting an employment tribunal will, very exceptionally, find the dismissal to be fair. To allow for these cases there is a statutory modified procedure under which the employer is required to write to the employee after the dismissal setting out the reasons for the dismissal and to hold an appeal meeting, if the employee wants one. The modified procedure is set out in Annex B of the *Acas Code of Practice on disciplinary and grievance procedures*.

Holding a meeting

Where possible the timing and location of the meeting should be agreed with the employee. Employees must take all reasonable steps to attend the meeting. At the meeting, the employer should explain the complaint against the employee and give them the chance to set out their case and answer any allegations. The employee should also be allowed to ask questions, present evidence and call witnesses.

Failure to attend meeting

If an employee fails to attend a first meeting (see step 2 above) through circumstances outside their control, such as illness, the employer must arrange another meeting. However, if there is no good reason for failing to attend, the employer can treat the statutory procedure as being at an end. If the meeting is re-arranged the employer is entitled to make a decision if the employee does not attend whatever the reason. In those circumstances, employees' compensation may be reduced if they bring a successful complaint before an employment tribunal.

Appeals

It is often helpful to set a time limit for employees to appeal – five working days is usually enough. Reasons why employees choose to appeal include: they think the penalty is unfair; there is new evidence to consider; or they are unhappy with the way the disciplinary procedure was used.

Wherever possible, a senior manager not involved in the case should hear the appeal. They should remind the employee of their right to be accompanied and inform them of the decision as soon as possible.

Dealing *with absence*

Key Points

- Before any action is taken to discipline or dismiss an employee who is absent from work always:
 - carry out a full investigation into the reasons for the absence
 - give the employee the opportunity to state his or her case, and to be accompanied at any disciplinary meeting
 - issue warnings and give time for improvement where appropriate
 - consider whether suitable alternative employment is available
 - act reasonably in all the circumstances

This section considers how to handle problems of absence and gives guidance about unauthorised short-term and long-term absences, and the failure to return from extended leave. A distinction should be made between absence on grounds of illness or injury and absence for reasons which may call for disciplinary action. Where disciplinary action is called for,

the normal disciplinary procedure should be used. Where the employee is absent because of illness or injury, the guidance in this section of the booklet should be followed. The organisation should be aware of the requirements of the Disability Discrimination Act 1995 when making any decisions that affect someone who may be disabled as defined by the Act¹³.

Records showing lateness and the duration of and reasons for all spells of absence should be kept to help monitor absence levels. These enable management to check levels of absence or lateness so that problems can be spotted and addressed at an early stage¹⁴ (the Information Commissioner has produced a Code of Practice on employment records).

How should frequent and persistent short-term absence be handled?

- unexpected absences should be investigated promptly and the employee asked for an explanation at a return-to-work interview
- if there are no acceptable reasons then the matter should be treated as a conduct issue and dealt with under the disciplinary procedure
- where there is no medical certificate to support frequent short-term, self-certified, absences then the employee should be asked to see a doctor to establish whether treatment is necessary and whether the underlying reason for the absence is work-related. If no medical support is forthcoming the employer

should consider whether to take action under the disciplinary procedure

- if the absence could be disability related the employer should consider what reasonable adjustments could be made in the workplace to help the employee (this might be something as simple as an adequate, ergonomic chair, or a power-assisted piece of equipment¹⁵). Reasonable adjustment also means redeployment to a different type of work if necessary
- if the absence is because of temporary problems relating to dependants, the employee may be entitled to have time off under the provisions of the Employment Rights Act 1996 relating to time off for dependants. Also, the Employment Act 2002 gives working fathers the right to two weeks paid paternity leave and working adoptive parents the right to 26 weeks paid leave and a further 26 weeks unpaid leave. Working mothers now have the right to 26 weeks paid and a further 26 weeks unpaid maternity leave

- if the absence is because the employee has difficulty managing both work and home responsibilities then the employer should give serious consideration to more flexible ways of working. Employees with young and disabled children have the right to request flexible working arrangements – including job-sharing, part-time working, flexi-time, working from home/teleworking and school time contracts – and employers must have a good business reason for rejecting any application
- in all cases the employee should be told what improvement in attendance is expected and warned of the likely consequences if this does not happen
- if there is no improvement, the employee's length of service, performance, the likelihood of a change in attendance, the availability of suitable alternative work, and the effect of past and future absences on the organisation should all be taken into account in deciding appropriate action.

In order to show both the employee concerned, and other employees, that absence is regarded as a serious matter and may result in dismissal, it is very important that persistent absence is dealt with promptly, firmly and consistently. An examination of records will identify those employees who are frequently absent and may show an absence pattern.

How should longer-term absence through ill health be handled?

Where absence is due to medically certificated illness, the issue becomes one of capability rather than conduct. Employers need to take a more sympathetic and considerate approach, particularly if the employee is disabled and where reasonable adjustments at the workplace might enable them to return to work.

There are certain steps an employer should take when considering the problem of long-term absence:

- employee and employer should keep in regular contact with each other
- the employee must be kept fully informed if there is any risk to employment
- if the employer wishes to contact the employee's doctor or other specialist treating them for a medical report, he or she must notify the employee in writing that they intend to make such an application and they must secure the employee's consent in writing¹⁶
- in addition, the employer must inform the individual that he or she has:
 - the right to withhold consent to the application being made
 - the right to state that he or she wishes to have access to the report. (The Access to Medical Reports Act 1988 also gives the individual the right to have access to the medical practitioner's report for up to six months after it was supplied)
 - rights concerning access to the report before (and/or after) it is supplied

- the right to withhold consent to the report being supplied to the employer
 - the right to request amendments to the report
- where the employee states that he or she wishes to have access to the report, the employer must let the GP know this when making the application and at the same time let the employee know that the report has been requested
- the letter of enquiry reproduced in Appendix 3, and approved by the British Medical Association, may be used, and the employee's permission to the enquiry should be attached to the letter¹⁷
- the employee must contact the GP within 21 days of the date of application to make arrangement to see the report. Otherwise the rights under the 1988 Act will be lost
- if the employee considers the report to be incorrect or misleading, the employee may make a written request to the GP to make appropriate amendments
- if the GP refuses, the employee has the right to ask the GP to attach a statement to the report reflecting the employee's view on any matters of disagreement

- the employee may withhold consent to the report being supplied to the employer
- on the basis of the GP's report the employer should consider whether alternative work is available
- the employer is not expected to create a special job for the employee concerned, nor to be a medical expert, but to take action on the basis of the medical evidence
- where there is a reasonable doubt about the nature of the illness or injury, the employee should be asked if he or she would agree to be examined by a doctor to be appointed by the organisation
- where an employee refuses to cooperate in providing medical evidence, or to undergo an independent medical examination, the employee should be told in writing that a decision will be taken on the basis of the information available and that it could result in dismissal
- where the employee is allergic to a product used in the workplace the employer should consider remedial action or a transfer to alternative work

- where the employee's job can no longer be held open, and no suitable alternative work is available, the employee should be informed of the likelihood of dismissal
- where dismissal action is taken the employee should be given the period of notice to which he or she is entitled by statute or contract and informed of any right of appeal.

Where an employee has been on long-term sick absence and there is little likelihood of he or she becoming fit enough to return, it may be argued that the contract of employment has been terminated through 'frustration'. However, the doctrine of frustration should not be relied on since the courts are generally reluctant to apply it where a procedure exists for termination of the contract. It is therefore better for the employer to take dismissal action.

Note

Employers must **as a minimum** follow the statutory dismissal and disciplinary procedures if they wish to dismiss an employee. The procedures – detailed on p47 – also apply to sanctions such as demotion, loss of seniority or loss of pay.

Where it is decided to dismiss an employee who has been on long-term sick absence, the normal conditions for giving notice will apply, even though in practice the employee will be unable to work the notice. In such circumstance, the employee should receive wages throughout the notice period or wages in lieu of notice as a lump sum¹⁸.

Specific health problems

Consideration should be given to introducing measures to help employees, regardless of status or seniority, who are suffering from alcohol or drug abuse, or from stress. The aim should be to identify employees affected and encourage them to seek help and treatment. Employers should consider whether it is appropriate to treat the problem as a medical rather than a disciplinary matter¹⁹. Stress in particular may be directly related to working conditions and addressing the cause may well relieve the symptoms. Visit the Acas website at www.acas.org.uk for special guidance on managing stress at work.

There is sometimes workforce pressure to dismiss an employee because of a medical condition, or even threats of industrial action. If such an employee is dismissed, then he or she may be able to claim unfair dismissal before an employment tribunal, or breach of contract. Also, the Disability Discrimination Act 1995 makes it unlawful for an employer of any size to treat a disabled person less favourably for a reason relating to their disability, without a justifiable reason. Employers are required to make a reasonable adjustment to working conditions or the workplace where that would help to accommodate a particular disabled person⁽²⁰⁾.

Failure to return from extended leave on the agreed date

Employers may have policies which allow employees extended leave of absence without pay, for example to visit relatives in their countries of origin, or relatives who have emigrated to other countries, or to nurse a sick relative. There is no general statutory right to such leave without pay, except to deal with an initial emergency relating to a dependant under the Employment Rights Act 1996.

Where a policy of extended leave is in operation, the following points should be borne in mind:

- the policy should apply to all employees, irrespective of their age, sex, marital status, racial group, disability, sexual orientation or religion or belief
- any conditions attaching to the granting of extended leave should be carefully explained to the employee, using interpreters if necessary, and the employee's signature should be obtained as an acknowledgement that he or she understands and accepts them. Employers should be aware that agreed extended leave can preserve continuity of employment, even when such leave is unpaid and other terms and conditions of employment are suspended for the duration of the leave
- if an employee fails to return on the agreed date, this should be approached in the same way as any other failure to abide by the rules and the circumstances should be investigated in the normal way, with disciplinary procedures being followed if appropriate
- care should be taken to ensure that foreign medical certificates are not treated in a discriminatory way: employees can fall ill while abroad just as they can fall ill in this country
- before deciding to dismiss an employee who overstays leave, the employee's experience, length of service, reliability record and any explanation given should all be taken into account. Employers must follow the statutory procedure before dismissal, see p47.
- failure to return from ordinary maternity leave does not of itself terminate the contract of employment. Employers should try and find out the reason for the failure and take action if necessary as in any other case of failing to return from leave (whether extended/additional maternity/holiday/parental/time off for dependants).

An agreement that an employee should return to work on a particular date will not prevent a complaint of unfair dismissal to an employment tribunal if the employee is dismissed for failing to return as agreed. In all such cases, all the factors mentioned above and the need to act reasonably should be borne in mind before any dismissal action is taken.

Unsatisfactory *performance*

Key Points

- Careful recruitment, selection and training will minimise the risk of unsatisfactory performance
- When an employee starts, the standards of work required, the conditions of any probationary period, and the consequences of failure to meet the necessary standards should be explained
- Issue an improvement note to encourage the employee to reach a satisfactory standard
- Explain to the employee the improvement required, the support that will be given and when and how performance will be reviewed
- Consider finding the employee alternative work, where appropriate

This section considers how to handle problems concerning sub-standard work and unsatisfactory performance, and provides guidance on how to encourage improvement.

Setting standards of performance

Employees have a contractual responsibility to achieve a satisfactory level of performance

and should be given help and encouragement to reach it. Employers are responsible for setting realistic and achievable standards and making sure employees understand what is required. Standards should be capable of being measured in terms of quality, quantity, time and cost. Any shortfall in performance should be pointed out to the employee concerned,

and consideration given as to whether this is due to inadequate instruction, training, supervision or some other failing. Care in recruitment, selection and training will minimise the risk of unsatisfactory performance.

The following principles should be observed when the employee starts in the organisation:

- the standard of work required should be explained and employees left in no doubt as to what is expected of them. Special attention should be paid to ensuring that standards are understood by employees whose English is limited and by young persons with little experience of working life
- job descriptions should accurately convey the main purpose and scope of each job and the tasks involved
- the consequences of any failure to meet the required standards should be explained
- where an employee is promoted within the organisation the consequences of failing to make to grade in the new job, after a probationary period if appropriate, should be explained.

What is the role of training and supervision?

Proper training and supervision are essential to the achievement of satisfactory performance. Regular discussion with employees about performance, either formally or informally, will help to identify any problem areas and allow remedial action to be taken promptly. Inadequate performance, particularly during a probation period, should be identified as quickly as possible, so that appropriate remedial action can be taken.

Appraisal systems

An appraisal system is a systematic method of obtaining and analysing information to evaluate an employee's performance in a job, and assess his or her training and development needs and potential for future promotion. It is essential that appraisal is carried out in a fair and objective manner. Assessment criteria must be non-discriminatory and should be applied irrespective of racial group, age, sex, marital status, disability, sexual orientation or religion or belief. They should be relevant to the requirements of the job. Those responsible for carrying out appraisals should be made aware of the dangers of stereotyping and making assumptions based on inadequate

knowledge. For further information see the Acas advisory booklet *Employee appraisal*.

Negligence or lack of ability?

Negligence usually involves a measure of personal blame arising, for example, from lack of motivation or inattention for which some form of disciplinary action will normally be appropriate. Lack of ability on the other hand is due to lack of skill, experience or knowledge, and may point to poor recruitment procedures or inadequate training. Where skills have become outmoded by new technology, employers should consider whether new skills could be achieved through training.

How should unsatisfactory performance be dealt with?

In all cases the cause of unsatisfactory performance should be investigated. The following guidelines will help to identify the cause and assist in ensuring that appropriate action is taken:

- ask the employee for an explanation – check this reason if possible
- if the reason is lack of necessary skills then give training and time to reach the required standard

- if, despite encouragement and assistance, the required standard cannot be reached, then consider finding the employee suitable alternative work
- issue an improvement note to encourage the employee to reach a satisfactory standard
- meet the employee to discuss the improvement note and follow the guidance set out in the section 'Taking action' (p33)
- an employee should not normally be dismissed because of unsatisfactory performance unless warnings and a chance to improve have been given, with additional training if necessary
- if the main cause of the unsatisfactory performance is the changing nature of the job, employers should consider whether the situation may properly be treated as redundancy rather than as a capability issue²¹.

Action in serious cases

Where an employee commits a single error and the actual or potential consequences of that error are, or could be extremely serious, warnings may not be appropriate. The disciplinary procedure should indicate that dismissal action may be taken in such circumstances.

Dismissal

If employees are unable to achieve a satisfactory level of performance even after an opportunity to improve, and with training assistance if required, the availability of suitable alternative work should be considered. If such work is not available the situation should be explained sympathetically to the employee before dismissal action is taken.

Note

Employers must as a minimum follow the statutory dismissal and disciplinary procedures if they wish to dismiss an employee. The procedures – detailed on p47 – also apply to sanctions such as demotion, loss of seniority or loss of pay.

Dealing with *particular cases*

Key Points

- Consider how disciplinary matters should be handled when management and trade union representatives are not immediately available
- In normal circumstances take no disciplinary action against a trade union official until you discussed the case, after obtaining their permission, with a senior trade union representative or full-time official of the trade union
- Do not dismiss or discipline an employee merely because he or she has been charged with or convicted of a criminal offence

What type of cases need particular attention?

Paragraphs 41-43 of the Code of Practice give advice on special situations. Employers may find the following additional advice helpful.

Employees to whom the full procedure is not immediately available

It may be sensible to arrange time off with pay so that employees who are in isolated locations or on shifts can attend a disciplinary meeting on the main site in normal working hours. Alternatively,

if a number of witnesses need to attend it may be better to hold the disciplinary meeting on the nightshift or at the particular location.

Trade union officials

Although normal disciplinary standards apply to their conduct as employees, disciplinary action against a trade union official can be construed as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior representative of the trade union.

Use of external consultants

In rare instances employers may wish to bring in external consultants to carry out an investigation. Where this is the case make arrangements for the investigation to be overseen by a representative of management to ensure that the consultants follow the organisation's disciplinary policies and procedures. Any investigatory meetings should be conducted by a management representative and should be confined to establishing the facts of the case.

Criminal charges or convictions

An employee should not be dismissed or otherwise disciplined merely because he or she has been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct merits action because of its employment implications.

Where it is thought the conduct warrants disciplinary action the following guidance should be borne in mind:

- the employer should investigate the facts as far as possible, come to a view about them and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure
- where the conduct requires prompt attention the employer need not await the outcome of the prosecution before taking fair and reasonable action
- where the police are called in they should not be asked to conduct any investigation on behalf of the employer, nor should they be present at any meeting or disciplinary meeting.

In some cases the nature of the alleged offence may not justify disciplinary action – for example, off-duty conduct which has no bearing on employment – but the employee may not be available for work because he or she is in custody or on remand. In these cases employers should decide whether, in the light of the needs of the organisation, the employee's job can be held open. Where a criminal conviction leads, for example, to the loss of a licence so that continued employment in a particular job would be illegal, employers should consider whether suitable alternative work is available.

Where an employee, charged with or convicted of a criminal offence, refuses to cooperate with the employer's disciplinary investigations and proceedings, this should not deter an employer from taking action. The employee

Note

Employers must **as a minimum** follow the statutory dismissal and disciplinary procedures if they wish to dismiss an employee. The procedures – detailed on p47– also apply to sanctions such as demotion, loss of seniority or loss of pay.

should be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

Where there is little likelihood of an employee returning to employment, it may be argued that the contract of employment has been terminated through 'frustration'²². However, the doctrine is normally accepted by the courts only where the frustrating event renders all performance of the employment contract clearly impossible. It is normally better for the employer to take dismissal action.

An employee who has been charged with, or convicted of, a criminal offence may become unacceptable to colleagues, resulting in workforce pressure to dismiss and threats of industrial action. Employers should bear in

mind that they may have to justify the reasonableness of any decision to dismiss and that an employment tribunal will ignore threats of, and actual industrial action when determining the fairness of a decision (Section 107, Employment Rights Act 1996). They should consider all relevant factors, not just disruption to production, before reaching a reasonable decision.

Cases involving Statutory Registration Authorities

Employment in certain professions which are regulated by Statutory Bodies is conditional upon continuing Registration (for example General Medical Council in respect of doctors working within the Health Service, United Kingdom Central Council in respect of nurses, midwives and health visitors, and the Law Society in respect of solicitors). In such cases, the employer has a duty to report any incidents of alleged professional misconduct or serious performance issues to the appropriate Registration Authority.

This duty should be exercised quite separately to any disciplinary action, and as with criminal charges, the employer need not await the outcome of any separate investigation which the Registration Authority undertakes before considering implementing fair and reasonable action under the organisation's disciplinary procedures.

Part 2

Grievance procedures

The grievance procedure

An informal approach between employee and line manager is often the best way to proceed



Employees should inform the employer of their grievance



Hold a meeting in private and remind the employee of their right to be accompanied



Consider a response:

- inform the employee in writing of your decision
- arrange an appeal if necessary



A more senior manager should hold the appeal (where possible)

CHECK:

- if the employee wishes to use the grievance as a basis for an application to an employment tribunal the grievance must be set out in writing – see p70 for the statutory grievance procedure
- employers may wish to have separate procedures for handling complaints about bullying or harassment

What is a grievance

and why have a procedure?

Employers should familiarise themselves with the sections of the Code of Practice which deal with grievance procedures and the statutory right to be accompanied.

Key Points

- Grievances are concerns, problems or complaints that employees raise with their employers
- Where possible employees should aim to settle grievances informally with their line manager
- Grievance procedures are used by employers to deal formally with employees' grievances
- Grievance procedures allow employers to deal with grievances fairly, consistently and speedily
- Employers must have procedures available to employees so that their grievances can be properly considered
- The compensation given by employment tribunals can be adjusted by usually between 10-50 per cent if the employer or employee fails to follow the statutory grievance procedure (see chart on p68 and step guide on p70)

What is a grievance?

Anybody working in an organisation may, at some time, have problems or concerns about their work, working conditions or relationships with colleagues that they wish to talk about with

management. They want the grievance to be addressed, and if possible, resolved. It is also clearly in management's interests to resolve problems before they can develop into major difficulties for all concerned.

Issues that may cause grievances include:

- terms and conditions of employment
- health and safety
- work relations
- bullying and harassment
- new working practices
- working environment
- organisational change
- equal opportunities.

Grievances may occur at all levels, and the Code, and associated good practice, applies equally to management and employees.

Employees should aim to settle most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be settled quickly.

In some cases it may be helpful to use a neutral mediator to help sort out a grievance and maintain working relationships. Mediation is often most effective if used early on but may not be suitable if you want to enforce a legal right or want someone to decide the rights and wrongs of an issue for you. For more information about mediation see the Acas leaflet *Mediation explained* available on the Acas

website or from our publications orderline (see back cover).

If there is a grievance applying to more than one person consider whether it should be resolved with any recognised trade union(s).

Why have a procedure?

If a grievance cannot be settled informally or a formal approach is preferable, the employee should raise it formally with management.

Step 1

The employee informs the employer of their grievance in writing.

Step 2

The employer invites the employee to a meeting to discuss the grievance where the right to be accompanied will apply. The employer notifies the employee in writing of the decision and notifies of the right to appeal.

Step 3

The employee informs the employer if they wish to appeal. The employer must invite them to a meeting and following the meeting inform the employee of the final decision.

(Employees must take all reasonable steps to attend meetings.)

Employees must complete step 1 of the statutory procedure if they wish subsequently to use the grievance as the basis of an application to an employment tribunal.

Employment tribunals may adjust any award of compensation by usually between 10 and 50 per cent for failure by either party to follow relevant steps of the statutory procedure where it applies.

A written procedure can help clarify the process and help to ensure that employees are given their rights such as to be accompanied at grievance meetings (see Section 3 of the Code of Practice and Part 3 of this handbook on the right to be accompanied).

Employers should be aware that their employees might raise issues about matters not entirely within the control of the organisation, such as client or customer relationships or equal opportunity issues (for instance where an employee is working on another employer's site). These should be treated in the same way as within the organisation, with the employer/manager investigating as far as possible and taking action if required. The organisation should make it very clear to any third party

that grievances are taken seriously and action will be taken to protect their employees.

How should a grievance hearing be conducted?

Key Points

- Hold the meeting in private
- If the grievance concerns the line manager, consider who else could hear the complaint
- Tell the employee of their right to be accompanied
- Ensure an open discussion of the issue
- Consider adjourning the meeting if further advice needs to be sought
- Don't make a snap decision – even if the solution at first seems obvious, there may be repercussions to consider
- Give the employee the chance to appeal if they are not happy with the decision

What is a grievance hearing?

In general terms a grievance hearing is a meeting which deals with any grievance raised by an employee. For the purposes of the legal right to be accompanied, a grievance meeting is defined as a meeting where an employer deals with a complaint about a 'duty owed by them to a worker' (see paragraph 100 of the *Acas Code of Practice on disciplinary and grievance procedures*).

Preparing for the hearing

- any hearing should be held in private and without interruption from outside
- management may find it useful to have someone to take notes and act as a witness to the proceedings
- management will normally already have a written statement of the grievance, and should find out before the hearing whether similar grievances have been raised before, how they have been

resolved, and any follow-up action that has been necessary. This allows consistency of treatment.

Conduct of the hearing

- remember that a grievance hearing is not the same as a disciplinary hearing, and is an occasion when discussion and dialogue may fruitfully produce the answer
- make introductions as necessary
- invite the employee to re-state their grievance and perhaps how they would like to see it resolved
- care and thought should go into resolving grievances. They are not normally issues calling for snap decisions, and the employee may have been holding the grievance for a long time. Make allowances for any reasonable 'letting off steam' if the employee is under stress
- after any summing up, management may find it useful to adjourn – they may need to explore possibilities with other managers about the resolution of the grievance, or they may themselves wish to take advice on how to proceed further
- tell the employee when they might reasonably expect a response if one cannot be made at the time, bearing in mind the time limits set out in the procedure
- respond to the employee's grievance in writing within the time limits specified in the procedure
- if the employee is unhappy with the decision the employer should arrange an appeal
- the appeal should be heard by a more senior manager than the one involved in the grievance. In small firms, if this is not possible, another manager, the owner or, in the case of a charity the board of trustees, should hear the appeal.

If the employee's employment ends before the grievance procedure has been followed, a modified statutory grievance procedure may be applied if both parties agree. See also Annexes D and E in the *Acas Code of Practice on disciplinary and grievance procedures* for the modified grievance procedure and for possible exemptions to the procedure.

Be calm, fair and follow the procedure

In smaller organisations, grievances can sometimes be taken as personal criticism – employers should be careful to hear any grievance in a calm and impartial manner, being as fair to the employee as possible in the resolution of the problem.

This can be made easier by following the grievance procedure, and failure to allow an individual access to the procedure, or failing to take any grievance seriously, may have a bearing on any subsequent employment tribunal or breach of contract claim (see ‘How should an appeal hearing be conducted?’).

Grievances in practice: example

You are the owner of a small firm. An employee has been complaining that she is being given too much work and can't complete it in time. You have told the employee that her predecessor had no problem completing the same amount of work and that things will get easier with experience. The employee is not happy and puts her grievance to you in writing.

You invite the employee to a meeting to discuss the grievance and inform her of her right to be accompanied. At the meeting you discover that the employee is working on a different computer from her predecessor. The computer is slower and uses an old version of the software required to carry out the work. You agree to upgrade the software, provide training and to review progress in a month. You confirm what was agreed in writing and inform the employee of her right to an appeal meeting if she feels her grievance has not been satisfactorily resolved.

Grievances about fellow employees

There are occasions when an employee may be the cause of grievances among his or her co-employees – perhaps on grounds of personal hygiene, attitude, or capability for the job. Employers must deal with these cases carefully and should generally start by talking privately to the individual about the concerns of fellow employees. This counselling may resolve the grievance to the satisfaction of the co-employees, who need to be told that some action has been taken.

Alternatively, if those involved are willing, an independent mediator may be able to help (see page 70). If matters do not improve then the employer may need to consider whether the grievance warrants disciplinary investigation. If there is evidence which suggests that it does then the normal disciplinary procedures might need to be invoked. Care needs to be taken that any discussion with someone being complained about does not turn into a meeting at which they would be entitled to be accompanied (see Section 3 of the Code of Practice and Part 3 of this handbook).

Special cases

Some organisations may wish to have separate procedures to deal with areas of particular sensitivity, such as complaints about bullying or harassment²³, discrimination and 'whistle-blowing'. Clearly confidentiality is of prime importance when handling any such grievance, although the outcome may need to be made known if, for instance, someone is found to have bullied or harassed an individual and the result is disciplinary action.

Discrimination

Employees have the legal right to protection against discrimination on the grounds of age, sex, race, disability, sexual orientation, and

religion or belief. Employers need to take any grievances made to them seriously – failure to do so may amount to discrimination. Action taken by the organisation or any of its employees against someone because they have brought a complaint under a grievance procedure may be unlawful victimisation.

The Equal Opportunities Commission (www.eoc.gov.uk), the Commission for Racial Equality (www.cre.gov.uk), and the Disability Rights Commission (www.drc.gov.uk) have all produced Codes of Practice that can help employers produce appropriate grievance procedures.

Training

and records

Training

Management and representatives who may be involved in grievance matters should be trained for the task. They should be familiar with the provisions of the grievance procedure, and know how to conduct or represent at grievance hearings. Where trade unions are recognised, consideration might be given to training managers and trade union representatives jointly.

Records

Records should be treated as confidential and kept in accordance with the Data Protection Act 1998, which gives individuals the right to request and have access to certain personal data.

The overriding principles of the Data Protection Act 1998 are that any personal data kept should be necessary, fairly and lawfully processed, adequate, relevant, accurate and secure. Clearly records of grievance matters should only be kept if they adhere to the principles, and the parties involved should be assured of their accuracy and confidentiality. The Information Commissioner has published Codes of practice covering recruitment and selection, employment records, monitoring at work and medical information (visit www.informationcommissioner.gov.uk).

Part 3

The right to be accompanied

Checklist for *the right of accompaniment*

- This right applies to all workers, not just employees
- The right applies to certain disciplinary and grievance meetings which may result in some disciplinary action or where the grievance is about the employer's duty to the worker. This includes any meetings held as part of the statutory dismissal and grievance procedures (see p47 and p70)
- Workers should be informed that they have a statutory right to be accompanied by a fellow worker or trade union official if they make a reasonable request to be so accompanied. Workers should also be reminded of any rights of accompaniment they have over and above statutory rights, for instance through contractual or collective agreements
- The choice of the accompanying person is for the worker, not the employer, and can be either a co-worker or a trade union official (full-time or lay). The trade union official does not have to be from within the organisation, although if an organisation recognises trade union(s) then the official would normally come from the appropriate union. Trade union officials need to be trained or certified by their union to act as a worker's companion (see paragraph 108 of the Code). There is no obligation on a trade union to provide a companion

- The accompanying person can address the meeting, but not answer questions on behalf of the worker unless this is agreed by management
- Refusing to allow a worker to be accompanied could lead to a finding of ‘automatically unfair’ dismissal if the worker is dismissed as a result of the disciplinary hearing and makes an unfair dismissal claim to an employment tribunal

What is the right to be accompanied?

It is the statutory right for a worker to be accompanied, by a fellow worker or trade union official, at certain disciplinary and grievance meetings. Workers may be overawed or feel intimidated by some hearings, and the accompanying person can help the individual to make all the necessary points.

It has always been good employment relations practice to allow a worker to be accompanied or represented, and many organisations include such rights in contracts as a matter of course, sometimes extending the right to include representation or accompaniment by spouses, partners, carers, or friends.

Recognition agreements with trade unions will normally include rights for members to be represented by either a lay or full-time official at disciplinary hearings.

The right to be accompanied does not depend on the length of time a worker has worked for an employer.

What if the worker is dismissed?

If the worker is dismissed as a result of a disciplinary hearing he or she may have the right to complain to an employment tribunal of unfair dismissal. If they are contemplating dismissing a worker, all employers need to have followed the statutory minimum procedures (see p47).

If the employer has failed or refused to comply with a reasonable request to be accompanied at the disciplinary meeting or appeal the tribunal may order compensation of up to two weeks' pay.

If the failure by the employer leads to a finding of unfair dismissal or breach of contract by the tribunal then the worker may be entitled to greater legal remedies.

The *Appendices*

Appendix 1 – Rules for small *organisations*

As a minimum, rules should:

- be simple, clear and in writing
- be displayed prominently in the workplace
- be known and understood by all employees
- cover issues such as absences, timekeeping, health and safety and use of organisational facilities and equipment (add any other items relevant to your organisation)
- indicate examples of the type of conduct which will normally lead to disciplinary action other than dismissal – examples may include persistent lateness or unauthorised absence
- indicate examples of the type of conduct which will normally lead to dismissal without notice – examples may include working dangerously, stealing or fighting – although much will depend on the circumstances of each offence
- as a minimum follow the three-step statutory procedures when contemplating dismissal or action short of dismissal.

Appendix 2 – Sample disciplinary procedures

sample 1 (any organisation)

1. Purpose and scope

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The company rules (a copy of which is displayed in the office) and this procedure apply to all employees. The aim is to ensure consistent and fair treatment for all in the organisation.

2. Principles

Counselling will be offered, where appropriate, to resolve problems.

No disciplinary action will be taken against an employee until the case has been fully investigated.

At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

At all stages of the procedure the employee will have the right to be

accompanied by a trade union representative, or work colleague.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.

An employee will have the right to appeal against any discipline imposed.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

The minimum three-step statutory procedures will be followed if an employee faces dismissal or certain kinds of action short of dismissal (see the *Code of Practice on disciplinary and grievance procedures*, Annex A).

3. The Procedure

Stage 1 – improvement note: unsatisfactory performance

If performance does not meet acceptable standards the employee will normally be given an improvement note. This will set out the performance problem, the improvement that is required, the timescale and any help that may be given. The individual will be advised that it constitutes the first stage of the formal procedure. A record of the improvement note will be kept for ... months, but will then be considered spent – subject to achievement and sustainment of satisfactory performance.

Stage 1 – first warning: misconduct

If the conduct does not meet acceptable standards the employee will normally be given a written warning. This will set out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (eg, six months).

Stage 2: final written warning

If the offence is sufficiently serious, or there is a failure to improve

during the currency of a prior warning for the same type of offence, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to action under Stage 3 (dismissal or some other action short of dismissal), and will refer to the right of appeal. A copy of this written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after ... months subject to achievement and sustainment of satisfactory conduct or performance.

Stage 3 – dismissal or other sanction

If there is still a failure to improve the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or disciplinary suspension or transfer (as allowed in the contract of employment). Dismissal decisions can only be taken by the appropriate senior manager, and the employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which the employment will terminate, and the right of appeal. The decision to dismiss will be confirmed in writing.

If some sanction short of dismissal is imposed, the employee will receive details of the complaint, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after ... months subject to achievement and sustainment of satisfactory conduct or performance.

Statutory discipline and dismissal procedure

If an employee faces dismissal – or certain action short of dismissal such as loss of pay or demotion – the minimum statutory procedure will be followed. This involves:

- step one: a written note to the employee setting out the allegation and the basis for it
- step two: a meeting to consider and discuss the allegation
- step three: a right of appeal including an appeal meeting.

The employee will be reminded of their right to be accompanied.

Gross misconduct

The following list provides examples of offences which are normally regarded as gross misconduct:

1. theft, fraud, deliberate falsification of records
2. fighting, assault on another person
3. deliberate damage to organisational property
4. serious incapability through alcohol or being under the influence of illegal drugs
5. serious negligence which causes unacceptable loss, damage or injury
6. serious act of insubordination
7. unauthorised entry to computer records.

If you are accused of an act of gross misconduct, you may be suspended from work on full pay, normally for no more than five working days, while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Appeals

An employee who wishes to appeal against a disciplinary decision must do so within five working days. The senior manager will hear all appeals and his/her decision is final. At the appeal any disciplinary penalty imposed will be reviewed.

sample 2 (small organisation)

1. Purpose and scope

The organisation's aim is to encourage improvement in individual conduct or performance. This procedure sets out the action which will be taken when disciplinary rules are breached.

2. Principles

- a) The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been fully investigated.
- b) At every stage employees will have the opportunity to state their case and be represented or accompanied, if they wish, at the hearings by a trade union representative or a work colleague.
- c) An employee has the right to appeal against any disciplinary penalty.

3. The Procedure

Stage 1 – first warning

If conduct or performance is unsatisfactory, the employee will be given a written warning or performance note. Such warnings will be recorded, but disregarded after ... months of satisfactory service. The employee will also be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change. (Where the first offence is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be justifiable to move directly to a final written warning.)

Stage 2 – final written warning

If the offence is serious, or there is no improvement in standards, or if a further offence of a similar kind occurs, a final written warning will be given which will include the reason for the warning and a note that if no improvement results within ... months, action at Stage 3 will be taken.

Stage 3 – dismissal or action short of dismissal

If the conduct or performance has failed to improve, the employee may suffer demotion, disciplinary transfer, loss or seniority (as allowed in the contract) or dismissal.

Statutory discipline and dismissal procedure

If an employee faces dismissal – or action short of dismissal such as loss of pay or demotion – the minimum statutory procedure will be followed. This involves:

- step one: a written note to the employee setting out the allegation and the basis for it
- step two: a meeting to consider and discuss the allegation
- step three: a right of appeal including an appeal meeting

The employee will be reminded of their right to be accompanied.

Gross misconduct

If, after investigation, it is confirmed that an employee has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice:

- theft, damage to property, fraud, incapacity for work due to being under the influence of alcohol or illegal drugs, physical violence, bullying and gross insubordination.

While the alleged gross misconduct is being investigated, the employee may be suspended, during which time he or she will be paid their normal pay rate. Any decision to dismiss will be taken by the employer only after full investigation.

Appeals

An employee who wishes to appeal against any disciplinary decision must do so to the named person in the organisation within five working days. The employer will hear the appeal and decide the case as impartially as possible.

Appendix 3 –

sample letters

1. Notice of disciplinary meeting
2. Notice of written warning or final written warning
3. Notice of appeal meeting against warning
4. Notice of result of appeal against warning
5. Letter to be sent by the employer, setting out the reasons for the proposed dismissal or action short of dismissal and arranging the meeting (for statutory procedure)
6. Letter to be sent by the employer after the disciplinary meeting arranged in Letter 5 (for statutory procedure)
7. Notice of appeal meeting against dismissal (for statutory procedure)
8. Notice of result of appeal against dismissal (for statutory procedure)
9. Model letter of enquiry regarding likely cause of absence addressed to a worker's general practitioner

(1) Notice of disciplinary meeting

Dear Date

I am writing to tell you that you are required to attend a disciplinary meeting on at am/pm which is to be held in At this meeting the question of disciplinary action against you, in accordance with the Company Disciplinary Procedure, will be considered with regard to:

.....
.....
.....
.....
.....

You are entitled, if you wish, to be accompanied by another work colleague or your trade union representative.

Yours sincerely

Signed Manager

(2) Notice of written warning or final written warning

Dear..... Date

You attended a disciplinary hearing on I am writing to confirm the decision taken that you be given a written warning/final written warning* under the first/second* stage of the Company Disciplinary Procedure.

This warning will be placed in your personal file but will be disregarded for disciplinary purposes after a period of months, provided your conduct improves/performance reaches a satisfactory level**.

- a) The nature of the unsatisfactory conduct or performance was:
- b) The conduct or performance improvement expected is:
- c) The timescale within which the improvement is required is:
- d) The likely consequence of further misconduct or insufficient improvement is:

Final written warning/dismissal

You have the right of appeal against this decision (in writing**) to within days of receiving this disciplinary decision.

Yours sincerely

Signed Manager

Note: * The wording should be amended as appropriate

** Delete if inappropriate

(3) Notice of appeal meeting against warning

Dear Date

You have appealed against the written warning/ final written warning* confirmed to you in writing on

Your appeal will be heard by in on at

You are entitled to be accompanied by a work colleague or trade union representative.

The decision of this appeal hearing is final and there is no further right of review.

Yours sincerely

Signed Manager

Note: * The wording should be amended as appropriate

(4) Notice of result of appeal against warning

Dear Date

You appealed against the decision of the disciplinary hearing that you be given a warning/in accordance with Stage of the Company Disciplinary Procedure. The appeal hearing was held on

I am now writing to confirm the decision taken by the Manager who conducted the appeal hearing, namely that the decision to stands*/the decision to be revoked* [specify if no disciplinary action is being taken or what the new disciplinary action is].

You have now exercised your right of appeal under the Company Disciplinary Procedure and this decision is final.

Yours sincerely

Signed Manager

Note: * The wording should be amended as appropriate

(5) Letter to be sent by the employer, setting out the reasons for the proposed dismissal or action short of dismissal and arranging the meeting (for statutory procedure)

Dear Date

I am writing to tell you that [insert organisation name] is considering dismissing OR taking disciplinary action [insert proposed action] against you.

This action is being considered with regard to the following circumstances:

.....
.....
.....
.....

You are invited to attend a disciplinary meeting on at am/pm which is to be held in where this will be discussed.

You are entitled, if you wish, to be accompanied by another work colleague or your trade union representative.

Yours sincerely

Signed Manager

(6) Letter to be sent by the employer after the disciplinary meeting arranged in Letter 5 (for statutory procedure)

Dear Date

On you were informed that [insert organisation name] was considering dismissing OR taking disciplinary action [insert proposed action] against you.

This was discussed in a meeting on At this meeting, it was decided that: [delete as applicable]

Your conduct/performance/etc was still unsatisfactory and that you be dismissed.

Your conduct/performance/etc was still unsatisfactory and that the following disciplinary action would be taken against you

No further action would be taken against you.

The reasons for your dismissal are:

.....
.....

I am therefore writing to you to confirm the decision that you be dismissed and that your last day of service with the Company will be

The reasons for your dismissal are:

.....
.....
.....
.....

I am therefore writing to you to confirm the decision that disciplinary action will be taken against you. The action will be The reasons for this disciplinary action are:

.....
.....
.....
.....

You have the right of appeal against this decision. Please [write] to within days of receiving this disciplinary decision.

Yours sincerely

Signed Manager

**(7) Notice of appeal meeting against dismissal
(for statutory procedure)**

Dear Date

You have appealed against your dismissal on, confirmed to you in writing on Your appeal will be heard by in on at

You are entitled, if you wish, to be accompanied by another work colleague or your trade union representative.

The decision of this appeal meeting is final and there is no further right of review.

Yours sincerely

Signed Manager

**(8) Notice of result of appeal against dismissal
(for statutory procedure)**

Dear Date

You appealed against the decision of the disciplinary hearing that you be dismissed/subject to disciplinary action [delete as appropriate].
The appeal meeting was held on

I am now writing to confirm the decision taken by
[insert name of the manager] who conducted the appeal meeting, namely
that the decision to stands/ the decision to be revoked
[specify if no disciplinary action is being taken or what the new
disciplinary action is].

You have now exercised your right of appeal under the Company
Disciplinary Procedure and this decision is final.

Yours sincerely

Signed Manager

(9) Model letter of enquiry regarding likely cause of absence addressed to a worker's general practitioner

Doctor's name Date
Address

PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER IF THERE IS LIKELY TO BE ANY DELAY IN REPLYING

Re:
Name
Address

To administer Statutory Sick Pay, and the Company's sick pay scheme, and to plan the work in the department, it would be helpful to have a report on your patient, who works for our organisation.

His/her work as a has the following major features:

Management responsibility for
Seated/standing/mobile
Light/medium/heavy effort required
Day/shift/night work
Clerical/secretarial duties
Group I (private)/Group II (professional) driver
Other

The absence record for the past year is summarised as:

Total days lost
This month
Previous months

Attached is your patient's permission to enquire. He/she wishes/does not wish to have access to the report under the Access to Medical Reports Act 1988:

What is the likely date of return to work?

Will there be any disability at that time?

How long is it likely to last?

Are there any reasonable adjustments we could make to accommodate the disability?

Is there any underlying medical reason for this attendance record?

Is he/she likely to be able to render regular and efficient service in the future?

Is there any specific recommendation you wish to make about him/her which would help in finding him/her an alternative job, if that is necessary, and if there is an opportunity for redeployment (for instance no climbing ladders, no driving).

I would be grateful for an early reply and enclose a stamped addressed envelope. Please attach your account to the report (following the BMA guidance on fees).

Yours sincerely

Signed Name (BLOCK LETTERS)

Role in the company

Note: Please amend/delete where necessary

Appendix 4 –

Basic principles of Human Rights Act 1998, Data Protection Act 1998, and Disability Discrimination Act 1995

Human Rights Act 1998

The Human Rights Act 1998 incorporates the principles of the European Convention on Human Rights (1953), and is directly enforceable against state and public authorities. The actions and omissions of private employers will be judged against the standards of the Convention, and all courts, including employment tribunals, will take the Act into consideration when hearing employment/worker related claims.

The Articles of the Convention taken into the Act that are most likely to impact on employment related law are:

- Article 4, prohibition of forced labour and slavery
- Article 6(1), the right to a free trial (both civil and criminal law)
- Article 8, the right to privacy and respect for family life (including correspondence)
- Article 9, freedom of thought, conscience and religion

- Article 10, freedom of expression
- Article 11, freedom of assembly and association
- Article 14, prohibition of discrimination (such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status).

Many of these are subject to exceptions and derogations, and some do not 'stand alone' as independent rights, but are limited or qualified in that interference with the right may be lawful for, for example, the protection of the rights and freedoms of others. Employers would need to be able to argue in defence of any allegation of breach of the Act that such actions were necessary for business reasons.

Legal advice should be sought if such an allegation is made.

Employers should review organisational rules and procedures to ensure that the principles of the Act are taken into account. An obvious example would be if an organisation carries out drug tests on workers without having in place a policy making it clear to those workers that they can be drug tested and also making clear why it is necessary for the employer to have this power (for instance where workers are in high risk situations such as pilots, train drivers, oil rig workers).

Data Protection Act 1998

The particular points to note in the 1998 Data Protection Act are:

- a broad definition of 'data', including information held both electronically (whether on computer or other electronic means) and in manual or paper-based filing systems regardless of location
- a broad definition of 'processing'
- extension of the rights of 'data subjects' (workers in this case) to have access to details of data held about them, to know for what purpose information is held, and its relevance to their working life.

There are eight principles governing the processing of personal data:

- personal data shall be processed fairly and lawfully
- personal data shall be obtained only for specified and lawful purposes, and shall not be processed in any manner incompatible with those purposes
- personal data shall be adequate, relevant and not excessive in relation to the purposes for which it is processed
- personal data shall be accurate and, where necessary, kept up to date
- personal data shall be kept for no longer than is necessary for the purposes for which it is processed
- personal data shall be processed in accordance with the rights of data subjects under the Act
- personal data shall be subject to appropriate technical and organisational measures to protect against unauthorised or unlawful processing and accidental loss, destruction or damage
- personal data shall not be transferred to a country or territory outside the European Economic Area unless that

country or territory ensures an adequate level of data protection.

conferred by statute, or for the exercise of any function of the Crown

The 1998 Act introduces new restrictions on the holding and processing of what is termed 'sensitive personal data', such as racial or ethnic origin, political opinions, religious or other beliefs, whether a member of a trade union, physical or mental health, sexual life, and any court record, or allegations of such. In addition to being subject to the eight principles above at least one of the following conditions must be complied with – there are others, but most relevant in the context of employment are:

- the worker has given his or her explicit consent to the processing
- the processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the employer in connection with employment
- the processing is necessary in connection with any legal proceedings or for the purpose of obtaining legal advice
- the processing is necessary for the administration of justice, for the exercise of functions

- that if the processing relates to sensitive data as to racial or ethnic origin it is necessary for the purpose of monitoring equality of opportunity or treatment between persons of different racial or ethnic origins with a view to enabling such equality to be promoted or maintained; and is carried out with appropriate safeguards for the rights and freedoms of data subjects.

The Act also covers the use of computerised decision making packages, such as those used in recruitment and sifting of applications. The uses of such packages to complement, not replace, human judgement is not in contravention of the Act – it is when they are in sole use that restrictions apply.

Employers should think carefully about what kind of information they ask of their workers. What is the purpose of such information? Who is to have access to it and under what conditions? Unauthorised access to workers' records should be a disciplinary matter, and may be a criminal offence under

Section 55 of the Act. Remember that the worker can access their personal records and demand rectification of errors, and can claim compensation for damage caused by any breach of the Act, and also for distress in certain circumstances. Someone in the organisation must take responsibility for compliance with the Act.

Since October 2001 individuals have been able to see all manual files held on them, and been able to make complaints, seek correction or claim recompense.

Enforcement is the responsibility of the Information Commissioner. Full details are available from the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, Information line 01625 545700.

The Commissioner published a *Code of Practice on the Use of Personal Data in Employer/Employee Relationships* in early 2001. This Code gives detailed advice for employers and further recommendations for good practice. The website, www.informationcommissioner.gov.uk gives details of the publication of the Code and subsequent Codes of Practice on recruitment and

selection, employment records, monitoring at work and medical information.

Disability Discrimination Act 1995 (DDA)

The DDA gives disabled people rights in the areas of employment, access to goods, facilities and services and in the management, buying or renting of land or property. From October 2004, the Act applies to all employers. A disabled person is defined in the Act as 'anyone with a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day-to-day activities'.

However, disability does not necessarily affect someone's health, so insisting on a medical report purely on the basis of the disability may be unlawful discrimination.

Discrimination means treating someone less favourably without any justification, and the Act requires that employers make reasonable adjustments if that will then remove the reason for the unfavourable treatment. An example of a reasonable adjustment could be the provision of a suitable computer keyboard to

an operator who had difficulty through disability in using a conventional keyboard.

In relation to discipline and grievance procedures, employers must clearly ensure they do not discriminate in any area of practice which could lead to dismissal or any other detriment (for example warnings).

The Act also covers people who become disabled during the course of their employment, and this is particularly relevant to the absence handling section of this handbook. It is vital that the employer should discuss with the worker what their needs really are and what effect, if any, the disability may have on future work with the organisation. Any dismissal, including compulsory early retirement, of a disabled employee for a reason relating to the disability would have to be justified, and the reason for it would have to be one which could not be removed or made less than substantial by any reasonable adjustment.

The Disability Rights Commission Helpline – 08457 622 633 – provides information and advice about all aspects of the Disability Discrimination Act, as well as signposting specialist organisations where necessary. In addition, it can offer good practice advice on the employment of disabled people.

Glossary

- **capability:** an employee's ability or qualification to do their job. Most often referred to in discipline cases where there is a lack of capability
- **conduct:** an employee's behaviour in the workplace
- **disciplinary action:** formal action against an employee: for example issuing a first written warning for misconduct or dismissing someone for gross misconduct
- **disciplinary procedure:** is a procedure for organisations to follow to deal with cases of misconduct or unsatisfactory performance. It helps employers deal with discipline cases fairly and consistently
- **employees:** are people who work for an employer under a contract of employment. The term is used throughout Sections 1 & 2 of the handbook and the Code of Practice. The statutory discipline, dismissal and grievance procedures apply only to employees although it is good practice to give all workers (see definition p109) access to disciplinary and grievance procedures
- **grievance:** is a problem or concern that an employee has about their work, working conditions or relationships with colleagues
- **grievance procedure:** is a procedure for organisations to use to consider employees' grievances. It helps employers deal with grievances fairly and consistently
- **gross misconduct:** are acts which are so serious as to justify possible dismissal, such as theft or fraud; physical violence or bullying; deliberately accessing internet sites containing pornographic, offensive or obscene material; serious insubordination; serious incapability at work brought on by alcohol or illegal drugs; a serious breach of health and safety rules; or a serious breach of confidence
- **improvement note:** in cases of unsatisfactory performance an employee should be given an 'improvement note' setting out the performance problem, the improvement that is required, the timescale for achieving this improvement, a review date and any support the employer

will provide to assist the employee

- **natural justice:** refers to the basic fundamental principles of fair treatment. These principles include the duty to give someone a fair hearing; the duty to ensure that the matter is decided by someone who is impartial; and the duty to allow an appeal against a decision
- **reasonable adjustments:** a way of preventing discrimination against disabled employees by making changes to ensure that they are not at a disadvantage. For example, a specialist keyboard would count as a reasonable adjustment for a disabled employee unable to use a conventional keyboard
- **sanction:** is a punishment imposed on an employee as a result of unsatisfactory performance or misconduct. Sanctions may include dismissal or actions short of dismissal such as loss of pay or demotion

- **statutory grievance procedure (standard):** a statutory three-step procedure that employers and employees must follow to resolve workplace grievances. Failure to follow the statutory procedure where it applies is likely to affect any subsequent award made by a tribunal and may prevent an employee from bringing a case (see 'statutory grievance procedure')

- **statutory grievance procedure (modified):** a two-step procedure which applies where the employee has left employment and both parties agree to its use

- **statutory dismissal and disciplinary procedure (standard):** a three-step procedure that employers must follow before they dismiss an employee or impose a sanction such as demotion, loss of seniority or loss of pay. Failure to follow the statutory procedure is likely to affect any subsequent award made by a tribunal and can result in a dismissal being found to be automatically unfair

- **statutory dismissal and disciplinary procedure (modified):** a special modified procedure for use in very rare cases involving gross misconduct where an employer feels that it would be futile to investigate an incident prior to dismissing an employee

- **summary dismissal:** is dismissal without notice – usually only justifiable for gross misconduct. Summary is not necessarily the same as instant and incidents of gross misconduct should be investigated as part of a formal procedure

- **workers:** is a term that includes employees and also other groups such as agency workers or anyone carrying out work who is not genuinely self-employed. Workers might include those involved in seasonal work – such as farm labourers or shop assistants. The statutory discipline, dismissal and grievance procedures apply only to employees although it is good practice to give all workers access to disciplinary and grievance procedures. The right to be accompanied – see Part 3 of this handbook and Section 3 of the Code of Practice – applies to all workers.

Notes

1. There are no service requirements if the dismissal is connected with discrimination, pregnancy, trade union activities, seeking to assert a statutory right, and a number of other reasons which make the dismissal 'automatically unfair'. The full list is in the DTI leaflet *Individual Rights of Employees*; PL716 (see www.dti.gov.uk/publications).
2. Further advice and Codes of Practice can be obtained from the Equal Opportunities Commission (tel 0845 601 5901), the Disability Rights Commission (tel 08457 622 633) and the Commission for Racial Equality (tel 020 7939 0000). Acas' Equality Direct Helpline can also give help and advice to employers (tel 08456 00 33 44).
3. The Employment Equality (Age) Regulations 2006 came into force on 1 October 2006. For more details see the Acas guide *Putting the Employment Equality (Age) Regulations 2006 into practice* at www.acas.org.uk.
4. As required by Section 4 of the Employment Rights Act 1996.
5. The Health and Safety Executive has useful information on smoking at work and also links to sources of further information. Go to www.hse.gov.uk/contact/faqs/smoking.htm
6. Article 8 of the European Convention on Human Rights provides for a 'Right to respect for private and family life', and has been held to cover any worker surveillance done without the knowledge of the individual. It may be argued that employers who routinely tape record telephone calls should provide workers with the facility to make private unrecorded calls. This Article also applies to email monitoring and other forms of surveillance such as CCTV. The Information Commissioner has published a draft *Code of Practice on Monitoring at Work* and a CCTV Code of Practice – contact details are at the back of this handbook. Following the Regulation of Investigatory Powers Act 2000, the Home Office has produced Codes of Practice which also affect scrutiny of workers' emails, telephone calls etc (contact Home Office at www.homeoffice.gov.uk. tel 0870 000 1585).

7. See Acas advisory leaflet *Bullying and harassment – a guide for managers and employers* for further advice on policies and procedures.
8. Guidance given by the Employment Appeal Tribunal in *Linfood Cash and Carry v Thomson* [1989] IRLR 235, sets out the approach that should be taken with anonymous informants. In particular statements should be in writing, available to the accused employee and give details of time/place/dates as appropriate. The employer should enquire as to the character of the informant and assess the credibility and weight to be attached to the evidence.
9. Special consideration should be given before imposing disciplinary suspension without pay. It must be allowed for in the worker's contract of employment, and no suspension should exceed the maximum period set out in the contract. It must not be unreasonably prolonged, since it would then be open to the worker to take action for breach of contract or resign and claim constructive dismissal.
10. Further guidance on employees' rights to notice is provided in the Department of Trade and Industry booklet *Rights to notice and reasons for dismissal* PL707, obtainable free from most JobCentres (or at www.dti.gov.uk/publications).
11. Section 92 of the Employment Rights Act 1996 refers. More details of employees' rights to written reasons for dismissal are given in the DTI booklet *Rights to notice and reasons for dismissal* PL707 (visit www.dti.gov.uk/publications).
12. The recommendations for good practice can be obtained from the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
Tel 01625 545700
www.informationcommissioner.gov.uk.
13. The DDA defines a disability as 'a physical or mental impairment which has a substantial and long-term effect on a person's ability to carry out normal day-to-day activities'. Free leaflets about the Act are available through the Disability Rights Commission website at www.disability.gov.uk.

14. See Acas advisory booklets: *Absence and Labour Turnover* and *Personnel Data and Record Keeping* for further information. more detailed guidance on issues such as smoking, alcohol and drug abuse, HIV/AIDS and stress.
15. Disability Service Teams, contactable through the local Jobcentre, may be able to help with advice and possibly equipment. 20. Disability Service Teams in the Jobcentres may be able to help with advice and possibly equipment. Enquiries should be made of the local JobCentre.
16. Access to Medical Reports Act 1988. 21. Redundancy has a legal meaning as defined in the Employment Rights Act 1996 Section 139. More information is given in the DTI leaflets PL808 *Redundancy payments* and PL833 *Redundancy consultation and notification* at www.dti.gov.uk/publications.
17. The GP should return the report via the company doctor. If there is not one, the employer should make it clear to the employee, when seeking permission to approach the GP, that the report will be sent direct to the employer. Employers who wish to seek advice on securing the services of a company doctor should contact the Faculty of Occupational Medicine at 6 St Andrews Place, Regents Park, London NW1 4LB, tel 020 7317 5890 www.facocmed.ac.uk. 22. In law, frustration occurs when, without the fault of either party, some event, which was not reasonably foreseeable at the time of the contract, renders future performance either impossible or something radically different from what was contemplated originally. Legal advice should be sought if it is thought frustration of the employment contract has occurred.
18. See DTI leaflet PL707 *Rights to notice and reasons for dismissal* at www.dti.gov.uk/publications.
19. Acas advisory booklet: *Health and Employment* gives 23. See Acas leaflet: *Bullying and harassment – a guide for managers and employers*.

Index

Page references for the glossary are in **bold**

- absence 12, 51-57
 - model letter of enquiry 100-101
- Acas Equality Services 168
- Access to Medical
 - Reports Act 1988 54, 112
- accompaniment 80-81
- age discrimination 110
- alcohol abuse 56
- appeals 6, 42-45, 50
 - sample notice letters 93-94
- appraisal systems 60-61

- British Medical Association 54
- bullying 12, 76

- capability **107**
- CCTV 110
- Code of Practice on disciplinary and grievance procedures* (Acas) 7, 20, 116-165
- Code of Practice on the Use of Personal Data in Employer/Employee Relationships* (Information Commissioner) 105
- Commission for Racial Equality
 - 76, 110, 168
- communication 8
- conduct 5, 107
 - see also misconduct
- consistency 18
- convictions 64-65
- criminal charges 64-65

- Data Protection Act 1998
 - 40, 77, 103-105
- Department for Education and Skills 168
- disability 52, 53, 56, 111
- Disability Discrimination Act (DDA) 1995 51, 56, 105-106, 111
- Disability Rights Commission
 - 76, 106, 110, 168
- Disability Service Teams 112
- disciplinary action 19, **107**
- disciplinary meetings
 - 6, 19, 26-31, 63
 - appeals 44-45
 - right of accompaniment 80-82
 - sample notice letter 91
 - statutory procedures 50
- disciplinary procedures
 - 5, 13-14, 18, **107**
 - absence 51-57
 - appeals 42-45
 - criminal charges or convictions 64-65
 - and grievances 75
 - informal action 22-24
 - meetings 26-31, 80-82
 - sample letters 90-99
 - samples 85-89
 - statutory 6-7, 46-50
- Statutory Registration Authorities 65-66
- taking action 32-41
- trade union officials 63
- unsatisfactory performance 59-62

discipline
 handling 16-20
 rules and procedures 10-15
discrimination 11, 12, 76, 110
dismissal 38, 110, 111, 112
 criminal charges or convictions
 65
 long-term absence 55, 56
 with notice 38-39
 overstayed extended leave 57
 right of accompaniment 81, 82
 sample letters 95-99
 unsatisfactory performance 61
 without notice 39
 written reasons 40
drug abuse 56

employees 10, **107**
Employment Act 2002 47, 52
Employment Rights Act 1996 52,
 56, 65, 110
employment tribunals
 grievance procedures 71
 statutory disciplinary
 procedures 48
 time limits 45
Equal Opportunities Commission
 76, 110, 168
European Convention
 on Human Rights 110
extended leave 56-57
external consultants, use of 64

Faculty of Occupational
 Medicine 112
fairness 17
final written warnings 37, 92
firmness 17
flexible working 52-53
frustration 55, 65, 112

grievance hearings 72-75
 right of accompaniment 80-81
grievance procedures 5, 68, 69,
 70-71, **107**
discrimination 76
 hearings 72-75, 80-81
 training and records 77
grievances 69-70, **107**
gross misconduct 13, **107**
dismissal without notice 39
 sample disciplinary procedure
 87, 89

harassment 12, 76
health and safety 12
Health and Safety Executive 168
Human Rights Act 1988 102-103

illness 51, 53-55
improvement notes 35, 61, **107-108**
induction 8
informal action 19, 22-24
Information Commissioner 40, 52,
 77, 104, 110, 111, 168
Investigating cases 27-28

Linfood Cash and Carry v
 Thompson 111
long-term absence 53-55

maternity leave 57
misconduct
 written warnings 35, 37, 41
 see also gross misconduct
modified procedure 49

natural justice **108**
negligence 61

- passive smoking 110
- performance 5
 - appraisal systems 60-61
 - standards 59-60
 - training and supervision 60
 - see also unsatisfactory performance
- reasonable adjustments **108**
- records
 - absence 52
 - disciplinary procedures 40-41
 - grievance procedures 77
- redundancy 61, 112
- Registration Authorities 65-66
- Regulation of Investigatory Powers Act 2000 110
- sanctions 38, **108**
 - see also dismissal
- short-term absence 52-53
- sickness 51, 53-55
- Small Business Services 168
- small firms
 - appeals 44
 - disciplinary rules and procedures 84, 88-89
- smoking 12, 110
- Statutory Bodies 65-66
- statutory dismissal and disciplinary procedures 6-7, 18, 38, 46-50, **108-109**
- statutory grievance procedures 70-71, 73, **108**
- stress 56
- summary dismissal 39, **109**
- surveillance 110
- suspension with pay 17-18
- suspension without pay 111
- three-step procedure 7, 46-47
- time limits
 - employment tribunals 45
 - warnings 41
- timekeeping 12
- trade union officials
 - as accompanying person 80
 - disciplinary action 63
 - training in grievance procedures 77
- training 8
 - disciplinary rules and procedures 14
 - grievance procedures 77
 - and performance 60
- unsatisfactory performance 59-62
 - final written warnings 37
 - improvement note 35
- whistle-blowing 76
- workers 10, **109**
- written reasons for dismissal 40
- written warnings 35, 37
 - sample notice letter 92
 - time limits 41

The Acas *Code of Practice* 1

The Code of Practice which appears on the following pages (pages 117 to 165) is a full version, including all the Annexes, of the *Acas Code of Practice on disciplinary and grievance procedures*.

Disciplinary and grievance procedures

inform

advise

train

work
with you

This Code of Practice provides practical guidance to employers, workers and their representatives on:

The statutory requirements relating to disciplinary and grievance issues;

What constitutes reasonable behaviour when dealing with disciplinary and grievance issues;

Producing and using disciplinary and grievance procedures; and

A worker's right to bring a companion to grievance and disciplinary hearings.

The statutory dismissal, disciplinary and grievance procedures, as set out in the Employment Act 2002, apply only to employees as defined in the 2002 Act and this term is used throughout sections 1 and 2 of the Code. However, it is good practice to allow all workers access to disciplinary and grievance procedures. The right to be accompanied applies to all workers (which includes employees) and this term is used in section 3 of the Code.

A failure to follow any part of this Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Similarly, arbitrators appointed by Acas to determine relevant cases under the Acas Arbitration Scheme will take the Code into account.

A failure to follow the statutory disciplinary and grievance procedures where they apply may have a number of legal implications which are described in the Code.

The Code (from page 2 to page 36) is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on 17 June 2004. The Code comes into effect by order of the Secretary of State on 1 October 2004.

More comprehensive, practical, advice and guidance on disciplinary and grievance procedures is contained in the Acas Handbook "*Discipline and grievances at work*" which also includes information on the Disability Discrimination Act 1995 and the Data Protection Act 1998. The Handbook can be obtained from the Acas website at www.acas.org.uk. Further information on the detailed provisions of the statutory disciplinary and grievance procedures can be found on the Department of Trade and Industry's website at www.dti.gov.uk/er.

Contents

1

Section 1: Disciplinary rules and procedures 121

Guidance 122

- Why have disciplinary rules and procedures? 123
- Dealing with disciplinary issues in the workplace 125
- What if a grievance is raised during a disciplinary case? 131
- Dealing with gross misconduct 132
- Dealing with absence from work 132
- Dealing with special situations 133
- Appeals 133
- Keeping records 134
- Drawing up disciplinary rules and procedures 135
- Further action 138

2

Section 2: Grievance procedures 139

At a glance 140

Guidance 141

- Why have grievance procedures? 141
- Dealing with grievances in the workplace 141
- Raising a grievance 143
- Grievance meetings 144
- Appeals 145
- Special considerations 146
- Keeping records 146
- Drawing up grievance procedures 147

3

Section 3: A worker's right to be accompanied 149

At a glance 150

Guidance 151

- What is the right to be accompanied? 151
- What is a disciplinary hearing? 151
- What is a grievance hearing? 151
- What is a reasonable request? 152
- The companion 152
- Applying the right 153

4

Section 4: Annexes 155

Annex A: Standard statutory dismissal and disciplinary procedure 156

Annex B: Modified statutory dismissal and disciplinary procedure 158

Annex C: Standard statutory grievance procedure 159

Annex D: Modified statutory grievance procedure 161

Annex E: Statutory procedures: exemptions and deemed compliance 162

Section 1

Disciplinary rules and procedures

At a glance

Drawing up disciplinary rules and procedures

- Involve management, employees and their representatives where appropriate (Paragraph 52).
- Make rules clear and brief and explain their purpose (Paragraph 53).
- Explain rules and procedures to employees and make sure they have a copy or ready access to a copy of them (Paragraph 55).

Operating disciplinary procedures

- Establish facts before taking action (Paragraph 8).
- Deal with cases of minor misconduct or unsatisfactory performance informally (Paragraphs 11-12).
- For more serious cases, follow formal procedures, including informing the employee of the alleged misconduct or unsatisfactory performance (Paragraph 13).
- Invite the employee to a meeting and inform them of the right to be accompanied (Paragraph 14-16).
- Where performance is unsatisfactory explain to the employee the improvement required, the support that will be given and when and how performance will be reviewed (Paragraphs 19-20).

- If giving a warning, tell the employee why and how they need to change, the consequences of failing to improve and that they have a right to appeal (Paragraphs 21-22).
- If dismissing an employee, tell them why, when their contract will end and that they can appeal (Paragraph 25).
- Before dismissing or taking disciplinary action other than issuing a warning, always follow the statutory dismissal and disciplinary procedure (Paragraphs 26-32).
- When dealing with absences from work, find out the reasons for the absence before deciding on what action to take. (Paragraph 37).

Holding appeals

- If the employee wishes to appeal invite them to a meeting and inform the employee of their right to be accompanied (Paragraphs 44-48).
- Where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision (Paragraph 46).
- Inform the employee about the appeal decision and the reasons for it (Paragraph 48).

Records

- Keep written records for future reference (Paragraph 49).

Guidance

Why have disciplinary rules and procedures?

1. Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals. Disciplinary procedures are also a legal requirement in certain circumstances (see paragraph 6).
2. Disciplinary rules tell employees what behaviour employers expect from them. If an employee breaks specific rules about behaviour, this is often called misconduct. Employers use disciplinary procedures and actions to deal with situations where employees allegedly break disciplinary rules. Disciplinary procedures may also be used where employees don't meet their employer's expectations in the way they do their job. These cases, often known as unsatisfactory performance (or capability), may require different treatment from misconduct, and disciplinary procedures should allow for this.
3. Guidance on how to draw up disciplinary rules and procedures is contained in paragraphs 52-62.
4. When dealing with disciplinary cases, employers need to be aware both of the law on unfair dismissal and the statutory minimum procedure contained in the Employment Act 2002 for dismissing or taking disciplinary action against an employee. Employers must also be careful not to discriminate on the grounds of gender, race (including colour, nationality and ethnic or national origins), disability, age, sexual orientation or religion.

The law on unfair dismissal

5. The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for employment tribunals to decide. However, the core principles employers should work to are set out in the box overleaf. Drawing up and referring to a procedure can help employers deal with disciplinary issues in a fair and consistent manner.

Core principles of reasonable behaviour

- Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- Inform the employee of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
- Act consistently.

The statutory minimum procedure

6. Employers are also required to follow a specific statutory minimum procedure if they are contemplating dismissing an employee or imposing some other disciplinary penalty that is not suspension on full pay or a warning. Guidance on this statutory procedure is provided in paragraphs 26-32. If an employee is dismissed without the employer following this statutory procedure, and makes a claim to an employment tribunal, providing they have the necessary qualifying service and providing they are not prevented from claiming unfair dismissal by virtue of their age, the dismissal will automatically be ruled unfair. The statutory procedure is a minimum requirement and even where the relevant procedure is followed the dismissal may still be unfair if the employer has not acted reasonably in all the circumstances.

What about small businesses?

7. In small organisations it may not be practicable to adopt all the detailed good practice guidance set out in this Code. Employment tribunals will take account of an employer's size and administrative resources when deciding if it acted reasonably. However, all organisations regardless of size must follow the minimum statutory dismissal and disciplinary procedures.

Dealing with disciplinary issues in the workplace

8. When a potential disciplinary matter arises, the employer should make necessary investigations to establish the facts promptly before memories of events fade. It is important to keep a written record for later reference. Having established the facts, the employer should decide whether to drop the matter, deal with it informally or arrange for it to be handled formally. Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary meeting.
9. In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration should be given to a brief period of suspension with full pay whilst unhindered investigation is conducted. Such a suspension should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary action.
10. When dealing with disciplinary issues in the workplace employers should bear in mind that they are required under the Disability Discrimination Act 1995 to make reasonable adjustments to cater for employees who have a disability, for example providing for wheelchair access if necessary.

Informal action

11. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct or performance. The informal approach may be particularly helpful in small firms, where problems can be dealt with quickly and confidentially. There will, however, be situations where matters are more serious or where an informal approach has been tried but is not working.
12. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

Formal action

Inform the employee of the problem

13. The first step in any formal process is to let the employee know in writing what it is they are alleged to have done wrong. The letter or note should contain enough information for the individual to be able to understand both what it is they are alleged to have done wrong and the reasons why this is not acceptable. If the employee has difficulty reading, or if English is not their first language, the employer should explain the content of the letter or note to them orally. The letter or note should also invite the individual to a meeting at which the problem can be discussed, and it should inform the individual of their right to be accompanied at the meeting (see section 3). The employee should be given copies of any documents that will be produced at the meeting.

Hold a meeting to discuss the problem

14. Where possible, the timing and location of the meeting should be agreed with the employee. The length of time between the written notification and the meeting should be long enough to allow the employee to prepare but not so long that memories fade. The employer should hold the meeting in a private location and ensure there will be no interruptions.
15. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be

allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

16. An employee who cannot attend a meeting should inform the employer in advance whenever possible. If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (eg illness) the employer should arrange another meeting. A decision may be taken in the employee's absence if they fail to attend the re-arranged meeting without good reason. If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer. This five day time limit may be extended by mutual agreement.

Decide on outcome and action

17. Following the meeting the employer must decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee should be informed. Where it is decided that disciplinary action is justified the employer will need to consider what form this should take. Before making any decision the employer should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and – most important of all – whether the intended disciplinary action is reasonable under the circumstances.
18. Examples of actions the employer might choose to take are set out in paragraphs 19-25. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or unsatisfactory performance – or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss even though the employee has not previously received a warning for misconduct. (Further guidance on dealing with gross misconduct is set out at paragraphs 35-36.)

First formal action – unsatisfactory performance

19. Following the meeting, an employee who is found to be performing unsatisfactorily should be given a written note setting out:
 - the performance problem;
 - the improvement that is required;
 - the timescale for achieving this improvement;
 - a review date; and
 - any support the employer will provide to assist the employee.
20. The employee should be informed that the note represents the first stage of a formal procedure and that failure to improve could lead to a final written warning and, ultimately, dismissal. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period (eg six months).

First formal action – misconduct

21. Where, following a disciplinary meeting, an employee is found guilty of misconduct, the usual first step would be to give them a written warning setting out the nature of the misconduct and the change in behaviour required.
22. The employee should be informed that the warning is part of the formal disciplinary process and what the consequences will be of a failure to change behaviour. The consequences could be a final written warning and ultimately, dismissal. The employee should also be informed that they may appeal against the decision. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (eg six months).
23. Guidance on dealing with cases of gross misconduct is provided in paragraphs 35-36.

Final written warning

24. Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is sufficiently serious, the employee should normally be issued with a final written warning – but only after they have been given a chance to present their case at a meeting. The final written warning should give details of, and grounds for, the complaint. It should warn the employee that failure to improve or modify behaviour may lead to dismissal or to some other penalty, and refer to the right of appeal.

The final written warning should normally be disregarded for disciplinary purposes after a specified period (for example 12 months).

Dismissal or other penalty

25. If the employee's conduct or performance still fails to improve, the final stage in the disciplinary process might be dismissal or (if the employee's contract allows it or it is mutually agreed) some other penalty such as demotion, disciplinary transfer, or loss of seniority/ pay. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.
26. It is important for employers to bear in mind that before they dismiss an employee or impose a sanction such as demotion, loss of seniority or loss of pay, they must as a minimum have followed the statutory dismissal and disciplinary procedures. The standard statutory procedure to be used in almost all cases requires the employer to:

Step 1

Write to the employee notifying them of the allegations against them and the basis of the allegations and invite them to a meeting to discuss the matter.

Step 2

Hold a meeting to discuss the allegations – at which the employee has the right to be accompanied – and notify the employee of the decision.

Step 3

If the employee wishes to appeal, hold an appeal meeting at which the employee has the right to be accompanied – and inform the employee of the final decision.

27. More detail on the statutory standard procedure is set out at Annex A. There is a modified two-step procedure for use in special circumstances involving gross misconduct and details of this are set out at Annex B. Guidance on the modified procedure is contained in paragraph 36. There are a number of situations in which it is not necessary for employers to use the statutory procedures or where they will have been deemed to be completed and these are described in Annex E.
28. If the employer fails to follow this statutory procedure (where it applies), and an employee who is qualified to do so makes a claim for unfair dismissal, the employment tribunal will automatically find the dismissal unfair. The tribunal will normally increase the compensation awarded by 10 per cent, or, where it feels it is just and equitable to do so, up to 50 per cent. Equally, if the employment tribunal finds that an employee has been dismissed unfairly but has failed to follow the procedure (for instance they have failed to attend the disciplinary meeting without good cause), compensation will be reduced by, normally, 10 per cent, or, if the tribunal considers it just and equitable to do so, up to 50 per cent.
29. If the tribunal considers there are exceptional circumstances, compensation may be adjusted (up or down) by less than 10 per cent or not at all.
30. Employers and employees will normally be expected to go through the statutory dismissal and disciplinary procedure unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour, or they will be harassed. There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.
31. Equally, the statutory procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but, in the case of employers, wherever possible they should consider appointing another manager to deal with the procedure.

32. Where an employee fails to attend a meeting held as part of the statutory discipline procedure without good reason the statutory procedure comes to an end. In those circumstances the employee's compensation may be reduced if they bring a successful complaint before an employment tribunal. If the employee does have a good reason for non-attendance, the employer must re-arrange the meeting. If the employee does not attend the second meeting for good reason the employer need not arrange a third meeting but there will be no adjustment of compensation.

What if a grievance is raised during a disciplinary case?

33. In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the employer should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance, the employer may need to consider bringing in another manager to deal with the disciplinary process. In small organisations this may not be possible, and the existing manager should deal with the case as impartially as possible.

34. Where the action taken or contemplated by the employer is dismissal the statutory grievance procedure does not apply. Where the action taken or contemplated is paid suspension or a warning the statutory grievance procedure and not the dismissal and disciplinary procedure applies to any grievance. However, where the employer takes, or is contemplating other action short of dismissal and asserts that the reason for the action is conduct or capability related, the statutory grievance procedure does not apply unless the grievance is that the action amounts, or would amount, to unlawful discrimination, or that the true reason for the action is not the reason given by the employer. In those cases the employee must have raised a written grievance in accordance with the statutory grievance procedure before presenting any complaint to an employment tribunal about the issue raised by the grievance. However, if the written grievance is raised before any disciplinary appeal meeting, the rest of the grievance procedure does not have to be followed, although the employer may use the appeal meeting to discuss the grievance.

Dealing with gross misconduct

35. If an employer considers an employee guilty of gross misconduct, and thus potentially liable for summary dismissal, it is still important to establish the facts before taking any action. A short period of suspension with full pay may be helpful or necessary, although it should only be imposed after careful consideration and should be kept under review. It should be made clear to the employee that the suspension is not a disciplinary action and does not involve any prejudgement.
36. It is a core principle of reasonable behaviour that employers should give employees the opportunity of putting their case at a disciplinary meeting before deciding whether to take action. This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct or unsatisfactory performance. There may however be some very limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting an employment tribunal will, very exceptionally, find the dismissal to be fair. To allow for these cases there is a statutory modified procedure under which the employer is required to write to the employee after the dismissal setting out the reasons for the dismissal and to hold an appeal meeting, if the employee wants one. The statutory procedure that must be followed by employers in such cases is set out in Annex B. If an employer fails to follow this procedure and the case goes to tribunal, the dismissal will be found to be automatically unfair.

Dealing with absence from work

37. When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.
38. If the absence is due to genuine (including medically certified) illness, the issue becomes one of capability, and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:
- how soon the employee's health and attendance will improve;
 - whether alternative work is available;
 - the effect of the absence on the organisation;

- how similar situations have been handled in the past; and
 - whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply.
39. The impact of long-term absences will nearly always be greater on small organisations, and they may be entitled to act at an earlier stage than large organisations.
40. In cases of extended sick leave both statutory and contractual issues will need to be addressed and specialist advice may be necessary.

Dealing with special situations

If the full procedure is not immediately available

41. Special arrangements might be required for handling disciplinary matters among nightshift employees, employees in isolated locations or depots, or others who may be difficult to reach. Nevertheless the appropriate statutory procedure must be followed where it applies.

Trade union representatives

42. Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union's functions. Normal standards apply but, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official.

Criminal charges or convictions not related to employment

43. If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The employer should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody.

Appeals

44. Employees who have had disciplinary action taken against them should be given the opportunity to appeal. It is useful to set a time limit for asking for an appeal – five working days is usually enough.

45. An employee may choose to appeal for example because:

- they think a finding or penalty is unfair;
- new evidence comes to light; or
- they think the disciplinary procedure was not used correctly.

It should be noted that the appeal stage is part of the statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal.

46. As far as is reasonably practicable a more senior manager not involved with the case should hear the appeal. In small organisations, even if a more senior manager is not available, another manager should hear the appeal, if possible. If that is not an option, the person overseeing the case should act as impartially as possible. Records and notes of the original disciplinary meeting should be made available to the person hearing the appeal.

47. The employers should contact the employee with appeal arrangements as soon as possible, and inform them of their statutory right to be accompanied at the appeal meeting.

48. The manager must inform the employee about the appeal decision, and the reasons for it, as soon as possible. They should also confirm the decision in writing. If the decision is the final stage of the organisation's appeals procedure, the manager should make this clear to the employee.

Keeping records

49. It is important, and in the interests of both employers and employees, to keep written records during the disciplinary process. Records should include:

- the complaint against the employee;
- the employee's defence;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;

- the outcome of the appeal;
 - any grievances raised during the disciplinary procedure; and
 - subsequent developments.
50. Records should be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and have access to certain personal data.
51. Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

Drawing up disciplinary rules and procedures

52. Management is responsible for maintaining and setting standards of performance in an organisation and for ensuring that disciplinary rules and procedures are in place. Employers are legally required to have disciplinary procedures. It is good practice to involve employees (and, where appropriate, their representatives) when making or changing rules and procedures, so that everyone affected by them understands them.

Rules

53. When making rules, the aim should be to specify those that are necessary for ensuring a safe and efficient workplace and for maintaining good employment relations.
54. It is unlikely that any set of rules will cover all possible disciplinary issues, but rules normally cover:
- bad behaviour, such as fighting or drunkenness;
 - unsatisfactory work performance;
 - harassment or victimisation;
 - misuse of company facilities (for example email and internet);
 - poor timekeeping;
 - unauthorised absences; and
 - repeated or serious failure to follow instructions.

55. Rules should be specific, clear and recorded in writing. They also need to be readily available to employees, for instance on a noticeboard or, in larger organisations, in a staff handbook or on the intranet. Management should do all they can to ensure that every employee knows and understands the rules, including those employees whose first language is not English or who have trouble reading. This is often best done as part of an induction process.
56. Employers should inform employees of the likely consequences of breaking disciplinary rules. In particular, they should list examples of acts of gross misconduct that may warrant summary dismissal.
57. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and are best decided by organisations in the light of their own particular circumstances. However, examples of gross misconduct might include:
- theft or fraud;
 - physical violence or bullying;
 - deliberate and serious damage to property;
 - serious misuse of an organisation's property or name;
 - deliberately accessing internet sites containing pornographic, offensive or obscene material;
 - serious insubordination;
 - unlawful discrimination or harassment;
 - bringing the organisation into serious disrepute;
 - serious incapability at work brought on by alcohol or illegal drugs;
 - causing loss, damage or injury through serious negligence;
 - a serious breach of health and safety rules; and
 - a serious breach of confidence.

Procedures

58. Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement amongst employees whose conduct or performance is unsatisfactory. Some organisations may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying.

59. When drawing up and applying procedures employers should always bear in mind the requirements of natural justice. This means that employees should be given the opportunity of a meeting with someone who has not been involved in the matter. They should be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Employees should be given the opportunity to challenge the allegations before decisions are reached and should be provided with a right of appeal.

60. Good disciplinary procedures should:

- be put in writing;
- say to whom they apply;
- be non-discriminatory;
- allow for matters to be dealt without undue delay;
- allow for information to be kept confidential;
- tell employees what disciplinary action might be taken;
- say what levels of management have the authority to take disciplinary action;
- require employees to be informed of the complaints against them and supporting evidence, before a meeting;
- give employees a chance to have their say before management reaches a decision;
- provide employees with the right to be accompanied;
- provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
- require management to investigate fully before any disciplinary action is taken;
- ensure that employees are given an explanation for any sanction; and
- allow employees to appeal against a decision.

61. It is important to ensure that everyone in an organisation understands the disciplinary procedures including the statutory requirements. In small firms this is best done by making sure all employees have access to a copy of the procedures, for instance on a noticeboard, and by taking a few moments to run through the procedures with the employee. In large organisations formal training for those who use and operate the procedures may be appropriate.

Further action

62. It is sensible to keep rules and procedures under review to make sure they are always relevant and effective. New or additional rules should only be introduced after reasonable notice has been given to all employees and any employee representatives have been consulted.

Section 2

Grievance Procedures

At a glance

Drawing up grievance procedures

- Involve management, employees and their representatives where appropriate (Paragraph 90).
- Explain procedures to employees and make sure they have a copy or ready access to a copy of them (Paragraph 94).

Operating grievance procedures

- Many grievances can be settled informally with line managers (Paragraph 67).
- Employees should raise formal grievances with management (Paragraph 73).
- Invite the employee to a meeting and inform them about the right to be accompanied (Paragraph 77).
- Give the employee an opportunity to have their say at the meeting (Paragraph 78).
- Write with a response within a reasonable time and inform the employee of their right to appeal (Paragraph 81).

Appeals

- If possible, a more senior manager should handle the appeal (Paragraph 82).
- Tell the employee they have the right to be accompanied (Paragraph 82).
- The senior manager should respond to the grievance in writing after the appeal and tell the employee if it is the final stage in the grievance procedure (Paragraph 83).

Records

- Written records should be kept for future reference (Paragraph 87).

Guidance

Why have grievance procedures?

63. Grievances are concerns, problems or complaints that employees raise with their employers.
64. Grievance procedures are used by employers to deal with employees' grievances.
65. Grievance procedures allow employers to deal with grievances fairly, consistently and speedily. Employers must have procedures available to employees so that their grievances can be properly considered.
66. Guidance on drawing up grievance procedures is set out in paragraphs 90-95.

Dealing with grievances in the workplace

67. Employees should aim to resolve most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly.
68. If a grievance cannot be settled informally, the employee should raise it formally with management. There is a statutory grievance procedure that employees must invoke if they wish subsequently to use the grievance as the basis of certain applications to an employment tribunal.

69. Under the standard statutory procedure, employees must:

Step 1

Inform the employer of their grievance in writing.

Step 2

Be invited by the employer to a meeting to discuss the grievance where the right to be accompanied will apply and be notified in writing of the decision. The employee must take all reasonable steps to attend this meeting.

Step 3

Be given the right to an appeal meeting if they feel the grievance has not been satisfactorily resolved and be notified of the final decision.

More detail on the standard statutory procedure is set out in Annex C.

70. There are certain occasions when it is not necessary to follow the statutory procedure for example, if the employee is raising a concern in compliance with the Public Interest Disclosure Act or a grievance is raised on behalf of at least two employees by an appropriate representative such as an official of an independent trade union. A full list of exemptions is set out in Annex E.

71. It is important that employers and employees follow the statutory grievance procedure where it applies. The employee should (subject to the exemptions described in Annex E) at least have raised the grievance in writing and waited 28 days before presenting any tribunal claim relating to the matter. A premature claim will be automatically rejected by the tribunal although (subject to special time limit rules) it may be presented again once the written grievance has been raised. Furthermore if a grievance comes before an employment tribunal and either party has failed to follow the procedure then the tribunal will normally adjust any award by 10 per cent or, where it feels it just and equitable to do so, by up to 50 per cent, depending on which party has failed to follow the procedure. In exceptional cases compensation can be adjusted by less than 10 per cent or not at all.

72. Wherever possible a grievance should be dealt with before an employee leaves employment. A statutory grievance procedure (“the modified grievance procedure” described in Annex D), however, applies where an employee has already left employment, the standard procedure has not been commenced or completed before the employee left employment and both parties agree in writing that it should be used instead of the standard statutory procedure. Under the modified procedure the employee should write to the employer setting out the grievance as soon as possible after leaving employment and the employer must write back setting out its response.

Raising a grievance

73. Employees should normally raise a grievance with their line manager unless someone else is specified in the organisation’s procedure. If the complaint is against the person with whom the grievance would normally be raised the employee can approach that person’s manager or another manager in the organisation. In small businesses where this is not possible, the line manager should hear the grievance and deal with it as impartially as possible.
74. Managers should deal with all grievances raised, whether or not the grievance is presented in writing. However, employees need to be aware that if the statutory procedure applies, they will not subsequently be able to take the case to an employment tribunal unless they have first raised a grievance in writing and waited a further 28 days before presenting the tribunal claim.
75. Setting out a grievance in writing is not easy – especially for those employees whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee should be encouraged to seek help for example from a work colleague, a trade union or other employee representative. Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments which may include assisting employees to formulate a written grievance if they are unable to do so themselves because of a disability.
76. In circumstances where a grievance may apply to more than one person and where a trade union is recognised it may be appropriate for the problem to be resolved through collective agreements between the trade union(s) and the employer.

Grievance meetings

77. On receiving a formal grievance, a manager should invite the employee to a meeting as soon as possible and inform them that they have the right to be accompanied. It is good practice to agree a time and place for the meeting with the employee. Small organisations might not have private meeting rooms, but it is important that the meeting is not interrupted and that the employee feels their grievance is being treated confidentially. If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer. This five day time limit may be extended by mutual agreement.
78. The employee should be allowed to explain their complaint and say how they think it should be settled. If the employer reaches a point in the meeting where they are not sure how to deal with the grievance or feel that further investigation is necessary the meeting should be adjourned to get advice or make further investigation. This might be particularly useful in small organisations that lack experience of dealing with formal grievances. The employer should give the grievance careful consideration before responding.
79. Employers and employees will normally be expected to go through the statutory grievance procedures unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour, or they will be harassed. There will always be a certain amount of stress and anxiety for both parties when dealing with grievance cases, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.
80. Equally, the statutory procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but wherever possible the employer should consider appointing another manager to deal with the procedure.

81. The employer should respond in writing to the employee's grievance within a reasonable time and should let the employee know that they can appeal against the employer's decision if they are not satisfied with it. What is considered reasonable will vary from organisation to organisation, but five working days is normally long enough. If it is not possible to respond within five working days the employee should be given an explanation for the delay and told when a response can be expected.

Appeals

82. If an employee informs the employer that they are unhappy with the decision after a grievance meeting, the employer should arrange an appeal. It should be noted that the appeal stage is part of the statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal. As far as is reasonably practicable the appeal should be with a more senior manager than the one who dealt with the original grievance. In small organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If that is not an option, the person overseeing the case should act as impartially as possible. At the same time as inviting the employee to attend the appeal, the employer should remind them of their right to be accompanied at the appeal meeting.

83. As with the first meeting, the employer should write to the employee with a decision on their grievance as soon as possible. They should also tell the employee if the appeal meeting is the final stage of the grievance procedure.

84. In large organisations it is good practice to allow a further appeal to a higher level of management, such as a director. However, in smaller firms the first appeal will usually mark the end of the grievance procedure.

Special considerations

85. Complaints about discrimination, bullying and harassment in the workplace are sensitive issues, and large organisations often have separate grievance procedures for dealing with these. It is important that these procedures meet the statutory minimum requirements.
86. Organisations may also wish to consider whether they need a whistleblowing procedure in the light of the Public Interest Disclosure Act 1998. This Act provides protection to employees who raise concerns about certain kinds of wrongdoing in accordance with its procedures.

Keeping records

87. It is important, and in the interests of both employer and employee, to keep written records during the grievance process. Records should include:
- the nature of the grievance raised;
 - a copy of the written grievance;
 - the employer's response;
 - action taken;
 - reasons for action taken;
 - whether there was an appeal and, if so, the outcome; and
 - subsequent developments.
88. Records should be treated as confidential and kept in accordance with the Data Protection Act 1998, which gives individuals the right to request and have access to certain personal data.
89. Copies of meeting records should be given to the employee including any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

Drawing up grievance procedures

90. When employers draw up grievance procedures, it pays to involve everybody they will affect, including managers, employees and, where appropriate, their representatives.
91. Grievance procedures should make it easy for employees to raise issues with management and should:
- be simple and put in writing;
 - enable an employee's line manager to deal informally with a grievance, if possible;
 - keep proceedings confidential; and
 - allow the employee to have a companion at meetings.
92. Issues that may cause grievances include:
- terms and conditions of employment;
 - health and safety;
 - work relations;
 - bullying and harassment;
 - new working practices;
 - working environment;
 - organisational change; and
 - equal opportunities.
93. Where separate procedures exist for dealing with grievances on particular issues (for example, harassment and bullying) these should be used instead of the normal grievance procedure.

94. It's important to ensure that everyone in the organisation understands the grievance procedures including the statutory requirements and that, if necessary, supervisors, managers and employee representatives are trained in their use. Employees must be given a copy of the procedures or have ready access to them, for instance on a noticeboard. Large organisations can include them with disciplinary procedures as part of an induction process.
95. Take the time to explain the detail of grievance procedures to employees. This is particularly useful for people who do not speak English very well or who have difficulty with reading.

Section 3

*A worker's right to
be accompanied*

At a glance

The right to be accompanied

- All workers have the right to be accompanied at a disciplinary or grievance hearing (Paragraph 96).
- Workers must make a reasonable request to the employer if they want to be accompanied (Paragraph 96).
- Disciplinary hearings, for these purposes, include meetings where either disciplinary actions or some other actions might be taken against the worker. Appeal hearings are also covered (Paragraphs 97-99).
- Grievance hearings are defined as meetings where an employer deals with a worker's complaint about a duty owed to them by the employer (Paragraphs 100-102).

The companion

- The companion can be a fellow worker or a union official (Paragraph 104).
- Nobody has to accept an invitation to act as a companion (Paragraph 107).
- Fellow workers who are acting as companions can take paid time off to prepare for and go to a hearing (Paragraph 109).

Applying the right

- Agree a suitable date with the worker and the companion (Paragraph 110).
- The worker should tell the employer who the chosen companion is (Paragraph 112).
- The companion can have a say at the hearing but cannot answer questions for the worker (Paragraph 113-114).
- Do not disadvantage workers who have applied the right, or their companions (Paragraph 116).

Guidance

What is the right to be accompanied?

96. Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings. They must make a reasonable request to their employer to be accompanied. Further guidance on what is a reasonable request and who can accompany a worker appears at paragraphs 103-109.

What is a disciplinary hearing?

97. For the purposes of this right, disciplinary hearings are defined as meetings that could result in:

- a formal warning being issued to a worker (ie a warning that will be placed on the worker's record);
- the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action; or
- the confirmation of a warning or some other disciplinary action (such as an appeal hearing).

98. The right to be accompanied will also apply to any disciplinary meetings held as part of the statutory dismissal and disciplinary procedures. This includes any meetings held after an employee has left employment.

99. Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions. Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the worker will have the right to be accompanied.

What is a grievance hearing?

100. For the purposes of this right, a grievance hearing is a meeting at which an employer deals with a complaint about a duty owed by them to a worker, whether the duty arises from statute or common law (for example contractual commitments).

101. For instance, an individual's request for a pay rise is unlikely to fall within the definition, unless a right to an increase is specifically provided for in the contract or the request raises an issue about equal pay. Equally, most employers will be under no legal duty to provide their workers with car parking facilities, and a grievance about such facilities would carry no right to be accompanied at a hearing by a companion. However, if a worker were disabled and needed a car to get to and from work, they probably would be entitled to a companion at a grievance hearing, as an issue might arise as to whether the employer was meeting its obligations under the Disability Discrimination Act 1995.
102. The right to be accompanied will also apply to any meetings held as part of the statutory grievance procedures. This includes any meetings after the employee has left employment.

What is a reasonable request?

103. Whether a request for a companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. However, when workers are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for a worker to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

The companion

104. The companion may be:
- a fellow worker (ie another of the employer's workers);
 - an official employed by a trade union, or a lay trade union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.
105. Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative). If workers are disabled,

employers should consider whether it might be reasonable to allow them to be accompanied because of their disability.

106. Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether the union is recognised or not. However, where a union is recognised in a workplace, it is good practice for workers to ask an official from that union to accompany them.
107. Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
108. Trade unions should ensure that their officials are trained in the role of acting as a worker's companion. Even when a trade union official has experience of acting in the role, there may still be a need for periodic refresher training.
109. A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing. A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

Applying the right

110. Where possible, the employer should allow a companion to have a say in the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.
111. In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also cater for a companion's disability, for example providing for wheelchair access if necessary.

112. Before the hearing takes place, the worker should tell the employer who they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.
113. The companion should be allowed to address the hearing in order to:
- put the worker's case
 - sum up the worker's case
 - respond on the worker's behalf to any view expressed at the hearing.
114. The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The companion has no right to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.
115. Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to an employment tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay. This could be increased if, in addition, the tribunal finds that the worker has been unfairly dismissed.
116. Employers should be careful not to disadvantage workers for using their right to be accompanied or for being companions, as this is against the law and could lead to a claim to an employment tribunal.

Section 4

Annexes

Annex A: Standard statutory dismissal and disciplinary procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

This procedure applies to disciplinary action short of dismissal (excluding oral and written warnings and suspension on full pay) based on either conduct or capability. It also applies to dismissals (except for constructive dismissals) including dismissals on the basis of conduct, capability, expiry of a fixed-term contract, redundancy and retirement. However, it does not apply in certain kinds of excepted cases that are described in Annex E.

Step 1

Statement of grounds for action and invitation to meeting

- The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead them to contemplate dismissing or taking disciplinary action against the employee.
- The employer must send the statement or a copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

Step 2

The meeting

- The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.
- The meeting must not take place unless:
 - i) the employer has informed the employee what the basis was for including in the statement under Step 1 the ground or grounds given in it; and

ii) the employee has had a reasonable opportunity to consider their response to that information.

- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of their decision and notify them of the right to appeal against the decision if they are not satisfied with it.
- Employees have the right to be accompanied at the meeting (see section 3).

Step 3

Appeal

- If the employee wishes to appeal, they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a further meeting.
- The employee must take all reasonable steps to attend the meeting.
- The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- Where reasonably practicable, the appeal should be dealt with by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).
- After the appeal meeting, the employer must inform the employee of their final decision.
- Employees have the right to be accompanied at the appeal meeting (see section 3).

Annex B: Modified statutory dismissal and disciplinary procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

Step 1

Statement of grounds for action

- The employer must set out in writing:
 - i) the employee's alleged misconduct which has led to the dismissal;
 - ii) the reasons for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct; and
 - iii) the employee's right of appeal against dismissal.
- The employer must send the statement or a copy of it to the employee.

Step 2

Appeal

- If the employee does wish to appeal, they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a meeting.
- The employee must take all reasonable steps to attend the meeting.
- After the appeal meeting, the employer must inform the employee of their final decision.
- Where reasonably practicable the appeal should be dealt with by a more senior manager not involved in the earlier decision to dismiss.
- Employees have the right to be accompanied at the appeal meeting (see section 3).

Annex C: Standard statutory grievance procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

Step 1

Statement of grievance

- The employee must set out the grievance in writing and send the statement or a copy of it to the employer.

Step 2

Meeting

- The employer must invite the employee to attend a meeting to discuss the grievance.
- The meeting must not take place unless:
 - i) the employee has informed the employer what the basis for the grievance was when they made the statement under Step 1; and
 - ii) the employer has had a reasonable opportunity to consider their response to that information;
- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of their decision as to their response to the grievance and notify them of the right of appeal against the decision if they are not satisfied with it.
- Employees have the right to be accompanied at the meeting (see section 3).

Step 3

Appeal

- If the employee does wish to appeal, they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a further meeting.
- The employee must take all reasonable steps to attend the meeting.
- After the appeal meeting, the employer must inform the employee of their final decision.
- Where reasonably practicable, the appeal should be dealt with by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).
- Employees have the right to be accompanied at the appeal meeting (see section 3).

Annex D: Modified statutory grievance procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

Step 1

Statement of grievance

- The employee must set out in writing:
 - i) the grievance; and
 - ii) the basis for it.
- The employee must send the statement or a copy of it to the employer.

Step 2

Response

- The employer must set out their response in writing and send the statement or a copy of it to the employee.

Annex E: Statutory Procedures: Exemptions and Deemed Compliance

The Employment Act 2002 (Dispute Resolution) Regulations 2004 contain detailed provisions about the application of the Statutory Dispute Resolution Procedures. This Annex summarises the particular provisions of the 2004 Regulations which describe:

- (a) certain situations in which the statutory procedures will not apply at all; and
- (b) other situations in which a party who has not completed the applicable procedure will nevertheless be treated as though they had done so.

Where a statutory procedure applies and one of the conditions for extending time limits contained in the 2004 Regulations has been met, then the normal time limit for presenting an employment tribunal claim will be extended by three months. The guidance notes accompanying tribunal application forms describe those conditions. However, in cases where the procedures do not apply at all, there can be no such extension.

(a) Situations in which the Statutory Procedures do not apply at all

The Disciplinary and Dismissal Procedures do not apply where:

- factors beyond the control of either party make it impracticable to carry out or complete the procedure for the foreseeable future; or
- the employee is dismissed in circumstances covered by the modified dismissal procedure and presents a tribunal complaint before the employer has taken step 1; or
- all of the employees of the same description or category are dismissed and offered re-engagement either before or upon termination of their contract; or

- the dismissal is one of a group of redundancies covered by the duty of collective consultation of worker representatives under the Trade Union and Labour Relations (Consolidation) Act 1992; or
- the employee is dismissed while taking part in unofficial industrial action, or other industrial action which is not “protected action” under the 1992 Act, unless the employment tribunal has jurisdiction to hear a claim of unfair dismissal; or
- the employee is unfairly dismissed for taking part in industrial action which is “protected action” under the 1992 Act; or
- the employer’s business suddenly and unexpectedly ceases to function and it becomes impractical to employ any employees; or
- the employee cannot continue in the particular position without contravening a statutory requirement; or
- the employee is one to whom a dismissal procedure agreement designated under section 110 of the Employment Relations Act 1996 applies.

The Grievance Procedures do not apply where:

- the employee is no longer employed, and it is no longer practicable for the employee to take step 1 of the procedure; or
- the employee wishes to complain about an actual or threatened dismissal; or
- the employee raises a concern as a “protected disclosure” in compliance with the public interest disclosure provisions of the 1996 Act;
- the employee wishes to complain about (actual or threatened) action short of dismissal to which the standard disciplinary procedure applies, unless the grievance is that this involves unlawful discrimination (including under the Equal Pay Act) or is not genuinely on grounds of capability or conduct.

In addition, neither party need comply with an applicable statutory procedure where to do so would be contrary to the interests of national security.

(b) Situations in which the Statutory Procedures have not been completed but are treated as having been complied with

The Disciplinary and Dismissal Procedures are treated as having been complied with where all stages of the procedure have been completed, other than the right of appeal, and:

- the employee then applies to the employment tribunal for interim relief; or
- a collective agreement provides for a right of appeal, which the employee exercises.

The Grievance Procedures are treated as having been complied with where:

- the employee is complaining that action short of dismissal to which the standard disciplinary procedure applies is not genuinely on grounds of conduct or capability, or involves unlawful discrimination, and the employee has raised that complaint as a written grievance before any appeal hearing under a statutory procedure or, if none is being followed, before presenting a tribunal complaint; or
- the employment has ended and the employee has raised a written grievance, but it has become not reasonably practical to have a meeting or an appeal. However, the employer must still give the employee a written answer to the grievance; or
- an official of a recognised independent union or other appropriate representative has raised the grievance on behalf of two or more named employees. Employees sharing the grievance may choose one of their number to act as a representative; or
- the employee pursues the grievance using a procedure available under an industry-level collective agreement.

(c) Other Special Circumstances in which the Statutory Procedures need not be begun or completed

In addition, neither the employer nor employee need begin a procedure (which will then be treated as not applying), or comply with a particular requirement of it (but will still be deemed to have complied) if the reason for not beginning or not complying is:

- the reasonable belief that doing so would result in a significant threat to themselves, any other person, or their or any other persons' property;
- because they have been subjected to harassment and reasonably believe that doing so would result in further harassment; or
- because it is not practicable to do so within a reasonable period.

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In October 2007, the Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and the Equal Opportunities Commission (EOC) combined to form the Equality and Human Rights Commission (EHRC). The EHRC brings together the work of the CRE, DRC and EOC and also takes on responsibility for the other aspects of equality: age, sexual orientation and religion or belief, as well as human rights. Go to www.equalityhumanrights.com for further information.

Health and Safety Executive (HSE)

Controlling the risk to people's health and safety in the workplace
Infoline 08701 545500 www.hse.gov.uk

Office of the Information Commissioner

For information on the Data Protection Act 1998 and the Freedom of Information Act 2000
Tel 01625 545745 www.dataprotection.gov.uk

Acas Equality Services

A network of advisers on equality and diversity in employment
Tel 08457 47 47 47

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Impartial advice about starting and running a business
Tel 0845 600 9006 www.businesslink.org.uk

Information in this handbook has been revised up to the date of the last reprint – see date below.

Legal information is provided for guidance only and should not be regarded as an authoritative statement of the law, which can only be made by reference to the particular circumstances which apply. It may, therefore, be wise to seek legal advice.

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