

Inside this issue of Acas' Employment Relations Matters

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Employment Relations Matters appears every quarter and is distributed free of charge by email and print. Copies can also be downloaded from www.acas.org.uk

Employment Relations Matters is intended to provide accessible articles, focusing in particular on Acas' experience working with and helping managers, employees and their representatives in the world of work.

Features are normally written by members of the Acas strategy unit and there are regular contributions from colleagues in the research and evaluation section. From time to time articles may be commissioned or submitted externally.

We welcome your comments and opinions. These should be addressed to the Editor, John Purcell – jpurcell@acas.org.uk

The views expressed in Employment Relations Matters are those of the Editor and not the Acas Council.

Unravelling the code on discipline and grievance

For a document that has spent much of its life largely unchanged the Acas discipline and grievance code has undergone quite an upheaval in the last few years. In April, the latest incarnation of the code will come into effect taking account of the recommendations on workplace dispute resolution arising out of the review conducted by Michael Gibbons in 2007¹.

Before looking in detail at this latest version of the code it may be helpful to set out some of the history first.

The early years

Almost as old as Acas itself, the original code was introduced in 1977. Covering only discipline this short document provided practical guidance on how to draw up disciplinary rules and procedures and how to operate them effectively.

During the 1980s, consideration was given to expanding and revising the code but agreement could not be reached. Instead, Acas produced a handbook on discipline which took the basic principles set out in the code and expanded on them to provide detailed guidance on all aspects of discipline in the workplace from preparing for and holding meetings, to dealing with appeals and handling dismissals. This Handbook (*Discipline at Work*) also contained, in an annex, a copy of the code and it is probably no exaggeration to say that the two documents became the bible for organisations dealing with disciplinary situations.

The right to be accompanied

For over 20 years the code remained unaltered but in 2000 the Government introduced a statutory right for

individuals to be accompanied at disciplinary and grievance hearings – something the code had always recommended. Acas was asked to provide guidance on this new right and what had been a purely disciplinary code was expanded to provide guidance on dealing with grievances as well. Thus the current structure of the code was born: a section giving guidance on disciplinary situations, another providing guidance on grievances and a third dealing with the right to be accompanied.

The statutory dispute procedures

This new version of the code did not last long. Within four years it was changed again to deal with the new statutory dispute resolution procedures. In many ways this was a much more fundamental change compared to previous revisions. For the first time ever individuals and organisations had to follow a set procedure when dealing with disciplinary and grievance situations. If they didn't, a dismissal could be found to be automatically unfair or an applicant could be prevented from bringing a tribunal claim. Revising the code to take account of this new statutory process – whilst at the same time providing non-statutory good practice advice – meant that the code that emerged on 1 October 2004

was much longer. The code now ran to nearly 50 pages compared with the original slender five in the 1977 version. This growth in the size of the code reflected the increasing complexity of dealing with disciplinary and grievance situations and it was not long before the law, and by association the code became dogged by critics for being over complex.

Picking up on these concerns the Government commissioned Michael Gibbons to review the whole issue of workplace dispute resolution including the statutory procedures. In his final report he recommended that the statutory regulations, or the three step procedure as it had become known, be revoked. The Government accepted this recommendation and so we come to the third revision of the code in eight years.

A principles based code

The most noticeable thing about the new code is its brevity. In part this is understandable as all references to the current statutory procedure have been removed. But, much of the more detailed guidance has also disappeared and been transferred into a new non-statutory guide. This is quite deliberate and reflects a desire on the part of the Acas Council to make the code short and focused on the principles of good practice rather than detailed guidance.

One option would have been to simply return the code to how it was pre 2004, something supported by a number in the trade union movement. However the Acas Council was persuaded against this option in part because many of the respondents to the Government consultation on the Gibbons' recommendations wanted a shorter, principles based code. But, more importantly, it presented an opportunity to break away from the detailed prescription for handling disciplinary and grievance situations

that had been effectively discredited under the statutory procedure.

The principles based code provides employers and employees with general guidance that they can apply to their own unique situation and that employment tribunals can use as a general benchmark against which to judge relevant cases that come before them. For those who want more detailed advice this can be found in the non-statutory guide.

Adjusting tribunal rewards

Perhaps the most controversial aspect of the code however – one that has prompted most discussion and, certainly amongst the legal community, caused most angst – is the government's introduction of a 25% adjustment to tribunal awards where the tribunal considers that the employer or employee has failed to follow the Acas code without good reason. This effectively transposes the right contained in the statutory regulations that allowed 50% adjustment where either party had failed to follow the three step procedure, and was felt by Government to be an essential incentive to encourage both parties involved to follow the guidance laid down by the code.

The question that is now being asked is just how will tribunals apply this new provision. Unfortunately, the answer will only become clear as case law develops. But, in the meantime it is worth employers bearing in mind that the biggest risk they run is not having a compensatory award adjusted upwards but rather being found to have dismissed an employee unfairly. If they follow the principles set out in the code and deal with disciplinary and grievance situations in accordance with these principles then there is a very good chance that the adjustment provisions will never come into play.

Not a radical departure

There may be some who are worrying that the guidance in the code will represent a radical departure from what has gone before. If so they need not worry. The guidance contained in the new code is very much that which Acas has been offering since the code was first introduced in 1977. It is rather like an old painting that has just emerged from restoration. Old layers of paint and varnish have been removed to reveal the original painting that has been underneath all along.

As the new code comes into force people should resist becoming overly focused on its legal implications. Of course the legal status of the code is important but what is more important is the good practice advice it contains and this is what individuals and organisations should be concentrating on. Inevitably the statutory procedures are going to cast a long legal shadow over dispute resolution in this country. But what the new code and the other changes coming out of the Gibbons review are intended to do is to encourage a more practical and less legalistic approach to dispute resolution – one designed to help individuals resolve their problems in the workplace rather than at tribunal.

From 6 April employers and employees with the help of the new code have a chance to make a fresh start to handling disciplinary and grievance procedures unencumbered by the old statutory procedures. It is a chance they cannot afford to miss.

1. Gibbons, M (2007) *Better dispute resolution: a review of employment dispute resolution in Great Britain*. London: The Department for Business, Enterprise and Regulatory Reform.

Healthy work, healthy lives

In November 2008, the Government published its much-awaited response¹ to Dame Carol Black's review of the health of Britain's working age population².

Dame Carol Black's review was ground-breaking. As well as setting out the first ever baseline for the health of Britain's working age population, it articulated the growing realisation of the role the workplace can play in promoting health and wellbeing. It called for a new approach to health and wellbeing at work – responses to its call for evidence had shown that there was still uncertainty about the business case for investment in health and wellbeing. But research commissioned for the review found 'considerable evidence that health and wellbeing programmes produced economic benefits across all sectors and all sizes of business: in other words, that good health is good for business.'

Measuring the health benefits

The Government's response continues the theme that there are considerable benefits to the UK and its citizens in supporting people to be healthier and in work. Its vision captures this theme:

We want to create a society where the positive links between work and health are recognised by all, where everyone aspires to a healthy and fulfilling life, and where health conditions and disabilities are not a bar to enjoying the benefits of work.

Assessing the impact of *ill-health*, as opposed to *wellbeing*, on the economy has traditionally been a more recognised, and more tangible, practice. Accounting for sickness absence is one easily estimated and well established approach: for example, the CBI estimated that, in 2007, 172 million working days were lost due to absence, costing employers £13 billion. Dame Carol Black's review, meanwhile, estimated that the annual economic cost of ill-health in terms of working days lost and worklessness was over £100 billion.

Establishing the more distal causal links between health and wellbeing and organisational performance is more difficult, and further research is needed in order to establish the

'bottom line' metrics to indicate that improving the health of individuals results in improved productivity. However, there is a growing body of evidence that investing in workers' health does make business and organisational sense.

Health and wellbeing in the round

There are already indications that those employers that take a rounded approach to employee health reap the benefits. Acas subscribes to a holistic approach, and believes that successful health and wellbeing strategies within organisations extend beyond absence, attendance or occupational health policies and practices to include all initiatives designed to foster good organisational culture and boost employee engagement. These have the potential, in turn, to boost performance and profitability. This is because those employees working in such organisations are likely to be more committed, derive greater job satisfaction from their work and therefore be more prepared to exert greater discretionary effort on behalf of the organisation.

For example, the model proposed by Schmidt (2004)³ defines 'workplace wellbeing' as:

'a holistic approach to creating high performance organisations

through establishing the right conditions to generate high levels of employee engagement. This approach assumes that achieving high levels of organisational performance depends on employees who are strongly committed to achieving the goals of the organisation, and who show this through their actions. This behavioural objective is influenced in turn by levels of employee satisfaction, and by supportive, respectful and healthy work environments.'

The Government's response to Dame Carol Black's review also makes reference to the importance of a holistic approach, with no clear boundary between health and safety issues on the one hand and health and wellbeing on the other. As it states: 'We need to ensure that workplaces support individuals across this spectrum, from identifying risk, through supporting those with health conditions, to improvement in overall health and wellbeing.' The report asserts that 'only by taking such an holistic approach will employers be able to maximise the benefits to the bottom line than can accrue from addressing health, safety and wellbeing in the workplace.'

A rounded approach to health means that the roots of employee engagement lie in specific policies to

promote health, safety and wellbeing, such as providing interesting and good quality work that engenders job satisfaction. The Gallup Organization has built up a body of work linking wellbeing in the workplace and business outcomes⁴. It, like Acas, views ‘wellbeing’ as a broad category that encompasses a range of workplace factors. The study points out that as much as a fifth to a quarter of adult life satisfaction can be accounted for by satisfaction with work, and that the nature of work, such as routinisation, supervision and complexity, has been linked to an individual’s sense of control and depression.

The Gallup report summarises the findings of the researchers’ meta-analysis and other statistical approaches on the relationship between employee engagement and business outcomes and finds that:

- Work units at the 95th percentile (for employee engagement) have more than double the success rate (defined as ‘above-average composite performance’) of those at the 5th percentile; and
- For companies with higher turnover, the typical difference between highly engaged and less engaged work units represents approximately 20 percentage points in annualised turnover. In lower-turnover companies, the difference is more typically five to 10 percentage points.

But it has to be ‘good work’

Promoting the concept that work can be good for health does not mean advocating that ‘any job is better than none’. The emerging evidence indicates the importance of *good* work in encouraging the health and wellbeing of the working population. For example, the authoritative Whitehall II⁵ study found

that the health and wellbeing of public sector workers (and civil servants in particular) is not purely a function of the jobs they do but is affected by the circumstances in which people live and work. The two Whitehall studies dispel the myth that people in high status jobs are more at risk of heart disease due to stress and propose an important thesis: namely, that there is a gradient in the social determinants of health – the more senior and less disadvantaged you are, the longer you can expect to live.

Discussion on a framework for what ‘good’ work looks like is ongoing, but it will include approaches such as increasing flexible working, cutting red tape and promoting open and effective work cultures. These findings have major implications of how positive and proactive approaches to health and wellbeing could be developed in the workplace: for example, by focusing attention on factors such as the way work is organised, the degree of control and autonomy that people have over their work, and the management culture. Such approaches may be more challenging to implement, and require more creativity and planning on the part of managers, but they are the ones that hold the key to securing long-term improvements in employee health and wellbeing, attendance, stress and productivity levels.

A healthy workplace is one that has, for example, effective communication and consultation, policies for dealing with all the ‘people’ aspects of employment such as equality and diversity and dignity at work, and good leadership and management practices. One of Acas’ own service delivery offerings, the *Acas Model Workplace*, draws on our unique experience to set out a range of factors that can encourage good organisational health and is a tool that can be applied to any workplace. It provides employers with a yardstick

against which they can measure the healthiness and effectiveness of their employment relationships and identify areas for development.

The challenges ahead

The role of line managers in boosting health and performance in the workplace is a crucial one. As Dame Carol Black’s review acknowledges, ‘good line management can lead to good health, wellbeing and improved performance.’ And yet managing health and wellbeing, including tackling the underlying reasons for poor attendance and poor performance, can be one of the most challenging areas that line managers have to deal with.

Many managers are even less well prepared to manage the more sensitive areas around employees experiencing mental health issues. Acas finds that there is high demand for our ‘Having difficult conversations’ training course that helps equip managers with the ‘softer’ management skills – such as questioning and listening techniques – to encourage dialogue with employees. There is also considerable scope to radically improve attendance management training provided to line managers generally within organisations, particularly on the emerging issues of managing mental ill health in teams, and how to effectively use the support available from occupational health (OH) or other specialists, for example, a mental health adviser.

The Government’s response to Dame Carol Black’s review puts forward a raft of proposals, including a National Centre for Working-Age Health and Wellbeing, ‘fit notes’, pilots of ‘fit for work’ services and access to a fund that will encourage local initiatives that improve workplace health and wellbeing. All these are to be welcomed, but the critical role

that line managers play in supporting employee health and wellbeing must also not be forgotten. As the Government's response clearly states: 'We want to ensure that all businesses, regardless of size or sector, understand the necessity of good management skills and practices that will promote positive behaviours and create healthy workplaces.'

1. *Improving health and work: changing lives: The Government's Response to Dame Carol Black's Review of the health of Britain's working-age population,*

www.workingforhealth.gov.uk/Government-Response/Default.aspx

2. *Dame Carol Black's Review of the health of Britain's working age population: Working for a healthier tomorrow,* www.workingforhealth.gov.uk/Carol-Blacks-Review/Default.aspx
3. Schmidt, F (2004) *Workplace well-being in the public sector – a review of the literature and the road ahead for the Public Service Human Resources Management Agency of Canada.* Ottawa: PSHRMA.

Available online at www.hrma-agrh.gc.ca/hr-rh/wlbps-eeoppfps/documents/WorkplaceWell-Being.pdf

4. *Wellbeing in the workplace and its relationship to business outcomes: a review of the Gallup studies,* James K Harter, Frank L Schmidt and Corey LM Keyes, American Psychological Association, November 2003.
5. *Work, stress, health: the Whitehall II Study,* www.ucl.ac.uk/whitehallII/findings/Whitehallbooklet.pdf

Employee engagement: is it still relevant in a recession?

There is currently a top level government Review headed by David MacLeod on employee engagement which will report to the Secretary of State, Lord Mandelson, in the spring. But what is engagement, why is it so important, where does it come from, can it be managed and is it still relevant in a recession?

Employee engagement is more than a current fad in the world of work. It is a recognition that now, for most employees, the jobs they do are no longer mechanical or routine repetition but require judgement and choice and working with others whether in teams or in serving customers. Employers increasingly have to rely on staff and the way in which they make these everyday decisions on how well to do their job: in other words the discretionary effort they are prepared to make on behalf of the organisation.

For many years reference has been made to 'motivated competencies' where the employee has the competence to do the job and is motivated to do so, perhaps stimulated by an incentive payment scheme. It is recognised now that this is not enough and attention has turned to employee engagement. The evidence stacks up that employees who are psychologically as well financially engaged with the work they

do and their employer will be more likely to do good work and 'go the extra mile' and are less likely to want to leave.

What is employee engagement?

In essence employee engagement is a combination of attitudes and beliefs held by employees about their job, their workmates, their manager and the organisation they work for which then influences their behaviour. This behaviour, or the 'doing of work', is sometimes called 'organisation citizenship behaviour' or, more broadly, 'pro social behaviour' and comes from the exercise of discretion.

For all but a relative few in routine, mechanised jobs, people at work can influence speed of response, quality of operation and interactions with others such as colleagues, line managers, customers and suppliers. They can

choose to take part in innovating better ways of working, problem solving and collaborative activities to improve both performance and working lives.

It is this type of behaviour which marks the difference between the low and high performing firm – the latter being able to make better use of technologies, satisfy customers and react more quickly to changing circumstances¹. This discretionary effort cannot be effectively ordered or directed by management since it is something given by the employee.

The link with attitudes is crucial here. Research has shown that 'positive work attitudes create value'². These work attitudes are those concerned with commitment, especially 'affective commitment', to the employing organisation. Typically, an employee engagement survey will ask people if they agree or disagree with statements like 'I am proud to tell

people where I work', 'I share the values of the organisation' and 'I feel loyal to my organisation'. Commitment can also be to the person's immediate manager which is often higher than to the organisation.

Job satisfaction is important, too, and this often feeds into commitment to the organisation and to positive job based behaviour. Good jobs tend to be those where the job holder has reasonable autonomy over how the work is done and find the job demanding or difficult. For some, most often professional employees, gaining job satisfaction is more important than working for a good employer, although both are important.

The fully engaged employee is a person who scores highly on all of the dimensions of employee engagement. Ipsos Mori, one of the leading survey companies, for example, test for:

- Discretionary effort – willingly goes beyond what is normally required
- Pride – is proud to work for their organisation
- Advocacy – speaks highly of their organisation as an employer
- Job satisfaction – is satisfied with their job
- Valued – feels valued and recognised by their organisation.

Each of these attributes is explored through a battery of attitudinal questions with tests done to show their validity and interconnections. Towers Perrin-ISR, another of the leading survey companies, reports that around two thirds of employees in the UK have 'favourable' employee engagement (compared to three-quarters in the USA and less in France). But the fully engaged employee is harder to find.

It is rare to have a majority of fully engaged employees but rare also to

find employees who are disengaged. Levels of engagement can vary between firms in the same sector and within an organisation between different departments, branches or areas. The different performance levels between bank or department store branches in the same organisation, where employment policies are identical, is usually attributed to the quality of the line manager and his or her influence on employee perceptions and levels of engagement³.

How is employee engagement created?

In itself the idea of employee engagement is not very helpful until the causal chain is understood, both in terms of how it is created or influenced and how it leads to better performance. Some analysts pay particular attention to leadership and organisational culture, especially a culture of inclusion or togetherness. It is possible to test employees' perceptions of these and to see the influence of line managers on levels of employee engagement.

A more theory based approach, but with strong practical implications, is a focus on social exchange or reciprocity. The key issue here is that employees who believe that their organisation is supporting them to achieve their goals, work on decent jobs and have their wellbeing at heart are most likely to reciprocate with positive discretionary behaviour. In what is often referred to as the 'psychological contract' the concern is to show how the employment and human resource policies of the organisation help 'shape workers' attitudes and behaviour and in particular their satisfaction and wellbeing⁴.

This focuses attention on the quality and range of employment policies ranging from selection – to ensure that

the new starter fits the organisation – through to performance management, communication and involvement, discipline and grievance handling and worker wellbeing and so on.

The key is how these policies are actually applied by line managers to become employment practices. Employees react to what they experience, not to what is in the HR handbook, and there is often a large gap between what is intended and what happens in practice. This is where the role of the line manager becomes crucial⁵. Not only is there reciprocity between the organisation and the employee in the psychological contract but there is a vital relationship between the line manager and members of the team.

Organisations with effective HR and employment practices, supported by strong cultures emphasising inclusion and fairness and 'brought to life' by line managers, are most likely to reap the benefits of employee engagement and employee wellbeing.

Is employee engagement relevant in a recession?

The initial growth in interest in employee engagement can be traced to the problem of growing labour turnover that occurred when unemployment was low. There was clear evidence that engaged employees were much less likely to leave their job than others, and that throwing money at the problem of these voluntary leavers was often ineffective. This is why employee surveys often ask questions about 'intention to leave'. But in a recession, with unemployment forecast to top three million, the number of resignations is expected to fall sharply. Maybe employee engagement can now be taken for granted?

In fact, the Acas experience is quite the opposite. Encouraging employee

engagement is even more important when times get tough. Finding ways to cut costs, as well as wage costs, becomes paramount as revenues fall. This requires innovation and collaboration both from those who are leaving their jobs and those who remain. How the organisation handles a downturn will strongly influence employees' willingness to work together to seek to solve the crisis. In particular, employees will be affected by the way in which management first communicated the problems to them, consulted with them on corrective measures and made decisions on redundancies.

Management decisions are judged by the extent to which they are fair and just in the circumstances. One of the strongest factors influencing employee commitment to their employer is the extent of meaningful consultation and communication⁶.

Where there is already a high level of trust between management and employees, and this is typically found where levels of employee engagement are positive, people tend to blame outside agencies, whether the banks, the government or competitors, for the problems rather than their employer. This is when the Dunkirk spirit is likely to kick in: working together with high levels of cooperation to save the firm. Gaining employee commitment and engagement is paramount both in periods of transition and to ensure effectiveness when business conditions eventually improve.

1. Fulmer, I., Gerhart, B. and Scott, K. (2003) 'Are the 100 best better? An empirical investigation of the relationship between being a "great place to work" and firm performance'. *Personnel Psychology*, 56, 965-993.

2. Gerhart, B. (2005) 'Human Resource Management and Business Performance: findings, unanswered questions and an alternative approach'. *Management Review* 16(2): 174-185.

3. Bartel, (2004) A 'Human Resource Management and organisational performance: evidence from retail banking' *Industrial and Labor Relations Review* 57(2), 181-203

4. Guest, D. (2007) 'HRM and the worker: towards a new psychological contract' in P. Boxhall, J. Purcell and P. Wright *The Oxford Handbook of Human Resource Management*. Oxford: Oxford University Press. Pp128-146.

5. Purcell, J. and Hutchinson, S. (2007) 'Front-line managers as agents in the HRM-performance casual chain: theory, analysis and evidence'. *Human Resource Management Journal* 17(1) 3-20.

6. Bryson, A. and White, M. (2008) 'Organisational commitment: Do workplace practices matter'? *Centre for Economic Performance Discussion Paper* No 881.

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