

Draft for consultation

Draft Code of Practice on discipline
and grievance

May 2008

Further information is available
from www.acas.org.uk

CONSULTATION ON REVISED ACAS CODE OF PRACTICE ON DISCIPLINE AND GRIEVANCE

In 2006 the Government invited Michael Gibbons to review the options for simplifying and improving all aspects of employment dispute resolution, to make the system work better for employers and employees. Michael Gibbons reported on his review in early 2007¹ and building on the recommendations contained in his report the Government undertook a public consultation on measures to help resolve disputes successfully in the workplace². Following this public consultation the Government introduced an Employment Bill at the end of 2007 setting out a number of changes to the law relating to workplace dispute resolution including the repeal of the statutory dismissal and discipline procedures introduced in 2004.

The removal of the statutory dismissal and discipline procedure will have an impact on Acas' code of practice on discipline and grievance and we are therefore revising the code to take account of the changes set out in the Employment Bill. In revising the code we have been conscious that many of the responses to the Government's consultation undertaken following the Gibbon's review called for a shorter code which concentrates on the key principles that underpin the handling of disciplinary and grievance situations in the workplace. As a result the revised code is concise and principles-based.

We understand that the Government plan to introduce the changes in workplace dispute resolution in April 2009 and we intend that the revised Acas code will come into effect on the same date. At the same time Acas will also be publishing fuller, freestanding, non-statutory guidance providing supporting information on handling workplace disciplinary and grievance issues.

A copy of our proposed revised code is attached and we would welcome comments on the draft. It is divided into four main sections

- 1) A foreword, which does not form part of the statutory code
- 2) An introduction setting out some key principles to be followed when handling disciplinary and grievance situations
- 3) A section on discipline
- 4) A section on grievances

¹ 'Better Dispute Resolution: a review of employment dispute resolution in Great Britain' Michael Gibbons DTI March 2007

² 'Success at Work: Resolving disputes in the workplace – A consultation' DTI March 2007

Comments on the content and structure of the revised code should be sent via post, e-mail or fax by **25 July 2008** to:

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When responding, please state whether you are responding as an individual, or representing the views of an organisation. If responding on behalf of an organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Comments received as part of this consultation may be made publicly available. If you do not wish all, or part of your response (including your identity) to be made public please state clearly in your comments which parts you wish to be kept confidential. Where confidentiality is **NOT** requested we may make responses available to enquirers to publish them by any means.

Further copies of this consultation document can be obtained from the Acas website at www.acas.org.uk/dandgcode.

Acas
2 May 2008

DRAFT FOR CONSULTATION

Draft Acas Code of Practice on discipline and grievance

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DRAFT CODE OF PRACTICE - DISCIPLINE AND GRIEVANCE

Foreword

The Acas statutory Code of Practice on discipline and grievance is set out at paras 1 to 43 on the following pages. It provides basic practical guidance to employers, employees and their representatives and sets out principles for handling disciplinary and grievance situations in the workplace.

A failure to follow the 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. Tribunals will also be able to adjust any awards made in relevant cases by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

Employers and employees should do all that they can to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using a third party to help resolve the problem. Recourse to an employment tribunal should only be a last resort.

More comprehensive advice and guidance on dealing with disciplinary and grievance situations is contained in the Acas guidance booklet [name to be decided]. The booklet also contains model disciplinary and grievance procedures. Copies of the guidance can be obtained from Acas.

INTRODUCTION

1. This code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.
2. Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve a problem. However, where informality does not work the matter may be pursued formally.
3. Fairness and transparency are promoted by developing rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear and be agreed wherever applicable with trade unions or employee representatives. It is also important to ensure that employees and managers understand how they are to be used.
4. Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. The size and resources of the employer should always be taken into account. In small organisations it may sometimes not be practicable to take all of the steps set out in this Code. However, the key elements of good practice that employers and employees should work to are set out in the paragraphs that follow.
5. Employers and employees should do all that they can to resolve disciplinary and grievance issues in the workplace. Recourse to an employment tribunal should only be a last resort.
6. Whenever a formal process is being followed it is important to deal with issues fairly. There are a number of elements to this.
 - Issues should be dealt with **promptly**. Meetings and decisions should not be unduly delayed.
 - Employers should act **consistently** and ensure that like cases are treated alike.
 - Appropriate **investigations** should be made, to establish the facts of the case.
 - Any grievance or disciplinary meeting should, so far as possible, be conducted by a manager who was **not involved** in the matter giving rise to the dispute.
 - Where the employer is raising a **performance** problem the immediate manager would be involved.
 - An employee should be **informed** of the basis of the problem and have an opportunity to **put their case** in response before any decisions are made.
 - An employee has the right to be **accompanied** at any disciplinary or grievance meeting.
 - An employee should be allowed to **appeal** against any formal decision made.
7. It is good practice to keep written records during disciplinary and grievance cases. A written record should be kept of the outcome.

DISCIPLINE

Keys to handling disciplinary problems in the workplace

Establish the facts of each case

8. It is important to investigate potential disciplinary matters promptly to establish the facts of the case before memories of events fade.

9. If there is a purely investigatory meeting this will not by itself result in any disciplinary action. However, it should be made clear to the employee that the investigation may lead to disciplinary charges being raised. The statutory right of accompaniment will not apply, but it is good practice to allow the employee to be accompanied.

10. In those cases where a period of suspension with pay is considered necessary, this period should be kept as brief as possible.

Inform the employee of the problem

11. If, in light of the investigation, it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing.

12. This notification should contain sufficient information to let the employee know what the alleged problem is and its possible consequences.

Hold a meeting with the employee to discuss the problem

13. Before holding a disciplinary meeting ensure that the employee has been notified of the nature of the problem and the basis of the allegations against them. The meeting should then be held promptly whilst allowing the employee reasonable time to prepare their case.

14. At the meeting allow the employee to set out their case and answer any allegations that have been made.

Allow the employee to be accompanied at the meeting

15. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in

- a formal warning being issued; or
- the taking of some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action (appeal hearings).

16. The chosen companion may be a fellow worker, a lay trade union official, or an official employed by a trade union. A lay official must have been certified by their union as being able to accompany a worker.

17. To exercise the right to be accompanied workers must first make a reasonable request.

Decide on appropriate action

18. Following the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly.

19. Where the employee is found guilty of misconduct or to be performing poorly they should be given a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.

20. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. In small organisations this might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

21. A first or final written warning should set out the nature of the misconduct or poor performance, the change in behaviour or improvement in performance required (with timescale). The employee should be told of a specified period after which the warning will be disregarded.

22. The employee should be informed that a further act of misconduct, or failure to improve performance, within the set period following a final warning, may result in dismissal or some other penalty such as demotion or loss of seniority.

23. Some acts, termed gross misconduct, are so serious that they may call for summary dismissal for a first offence. But a fair disciplinary process, including a right of appeal, should always be followed, before deciding whether gross misconduct has occurred.

24. Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence or serious insubordination.

Provide employees with an opportunity to appeal

25. Appeals should be heard promptly and ideally at an agreed time and place.

26. Wherever possible the appeal should be dealt with by a manager who is more senior than the manager who conducted the first hearing.

27. Workers have a statutory right to be accompanied at appeal hearings.

28. Employees should be informed in writing of the results of the appeal hearing as soon as possible.

Special cases

29. If it is necessary to discipline a trade union lay official the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

30. If an employee is charged with, or convicted of a criminal offence this is not in itself reason for disciplinary action. Consideration needs to be given to the effect of the charge or conviction on the employee's ability to do their job.

GRIEVANCE

Keys to handling grievances in the workplace

Let the employer know the nature of the grievance

31. This is best done in writing and to the employee's line manager.
32. Where the grievance is against the line manager the employee should approach another manager in the organisation if possible.

Hold a meeting with the employee to discuss the grievance

33. Arrange for a formal meeting to be held promptly after a grievance is received.
34. Allow the employee to explain their grievance and how they think it should be resolved.

Allow the employee to be accompanied at the meeting

35. Workers have a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the worker. So this would apply where the complaint is, for example, that the employer is not honouring the worker's contract, or is in breach of legislation.
36. The chosen companion may be a fellow worker a lay trade union official or an official employed by a trade union. A lay official must have been certified by their union as being able to accompany a worker.
37. To exercise the right to be accompanied a worker must first make a reasonable request.

Decide on appropriate action

38. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee without undue delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance.

Allow the employee to take the grievance further if not resolved

39. If an employee feels that their grievance has not been satisfactorily dealt with they should be allowed to take the matter further on appeal.

40. Appeals should be heard promptly and at an agreed time and place which should be notified to the employee.

41. Where possible the appeal should be dealt with by a manager who is more senior than the manager who dealt with the first hearing.

42. Workers have a statutory right to be accompanied at any such appeal hearing.

Special cases

43. It is good practice to consider dealing separately with issues involving bullying, harassment or whistleblowing.

