

Research Paper

Evaluation of the Acas Code of Practice on Disciplinary and Grievance Procedures

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Executive Summary

In 2009, the statutory 3-step procedures (2004) for dispute resolution in the workplace were replaced by the Acas statutory Code on disciplinary and grievance procedures (from here on referred to as the Code). The revised Code introduced a principles-based good practice approach rather than a detailed and prescriptive procedural requirement. The changes to the Code prompted research to explore how the new Code was understood and used by employers, employees and their representatives and to explore the impact of Code upon disciplinary and grievance procedures. Acas commissioned the National Centre for Social Research (NatCen) to conduct qualitative interviews with a total of 36 employers, employees and their representatives to address these objectives.

Understanding of the Code

Awareness of and access to of the Code and guidance

- Overall, the Code was felt to be well-publicised and easily accessible. The guidance was seen as less easy to find in internet searches.
- Knowledge about the content of the Code varied between participant groups and was influenced by the following factors: organisational roles and responsibilities for disciplinary and grievance, the extent of use of organisational discipline and grievance policies, and relying on a briefing of the Code in lieu of reading it. Taking these factors into account, HR staff and employee representatives were generally more knowledgeable about the content of the Code and Guidance than line managers. Employee representatives reported that some employers remained unaware of the existence of the Code.

Understanding and views on the approach and purpose of the Code and guidance

- The aims of the Code were perceived to be: to encourage resolution of disputes earlier through informal means; i.e. through action taken prior to and without recourse to a formal disciplinary or grievance procedure, to achieve consistency in disciplinary and grievance policy and practice and, to a lesser extent, to make processes less procedurally driven.
- The principles of the Code were understood as: increased flexibility (within the parameters of 'reasonableness') and clear and transparent communication with employees. These were welcomed by employers. However, there was concern that employers, employee representatives and employees could ignore the spirit of the Code because they were not bound by legal obligation to follow it.
- Understanding of the wider aims and key principles underpinning the Code also varied across participant groups: line managers and employees were less knowledgeable than HR and employee representatives.

Accessibility of the Code and guidance

- The visual presentation, length, language and the Code were generally viewed positively and seen as an improvement on the 3-step procedure. Terms such as 'reasonable' were however, considered to challenging to implement consistently and confidently and for this reason doubts were expressed about the accessibility of the Code to groups such as smaller employers without professional HR functions as well as employees.
- There was a good level of understanding that the Code should be used in revising organisational policies and handling cases. However, the legal status of the Code was less well understood. This may be caused by the more flexible and less prescriptive approach of the Code compared to its predecessor.

Training, advice and information on the Code and guidance

- Training courses delivered by Acas helped embed key messages about the approach and application of the Code. However, gaps in comprehension occurred when participants did not feel that a course had clarified how the legal status and procedural content of the Code differed to the 3-step procedure.
- A range of alternative sources of training, advice and information about the Code and guidance were also accessed either in addition to or instead of Acas training and these facilitated comprehension of the Code.
- Aspects of training, advice and information which were highlighted as having particularly aided comprehension were: summarised information about key points of the Code, training that included practical elements, sources of information on grey areas, having a point of contact for dialogue on issues and gaining advice on the practical application of Code.

Use of Code

Organisational policy development

- Disciplinary and grievance policy review was driven by both proactive and reactive reasons. Where an organisation was proactive in reviewing its disciplinary and grievance policy, the regular review of organisational policies was routine in the organisation and as such was unaffected by other factors. The exception to this was where organisations bought forward a planned review in response to the Code.
- When the review was reactive the Code was reported to have been a key legislative trigger which had prompted review. Six factors affected whether such a review had had been initiated since the Code was introduced. These were: capacity, time and financial resources, number of disciplinary or grievances, perceived effectiveness of existing disciplinary and grievance policy and procedure, awareness of legislative and policy change, perceptions of the status of the new Code and of legal obligations, and awareness of the adjustment made in tribunal awards.
- The Code and guidance were referred to when carrying out a review of disciplinary and grievance policy. The exception to this was some smaller

organisations who had relied on alternative sources of advice and guidance such as HR and legal advice services.

- Experiences of using the Code/guidance to review the disciplinary and grievance policy were affected by comprehension and confidence in using a principles-based Code. Additionally, enablers to reviewing policy were the usability and accessibility of Code and the nature of the existing policy.

Handling disciplinary and grievances

- Organisational policy was used as the primary reference for handling disciplinary and grievances. There were three circumstances under which this was not the case: the organisation did not have a grievance policy, the policy had not reflected the Code or legal advice had been prioritised.
- The Code and/ or guidance were used in addition to the organisation policy in two ways: the Code was referred to in every case of disciplinary or grievance or the Code was referred to only when handling serious or complex cases or when guidance was sought on a specific issue. Alternative sources of advice and guidance were accessed in lieu of or in addition to the Code.
- Views on using a principles-based Code for handling disciplinary and grievance cases were mixed and related to ease and confidence in interpreting and applying the principles of the Code to cases. Additionally, when views were less positive they were influenced by a concern that parties involved in handling may interpret the Code differently or ignore the spirit of Code.

Impact of the Code

Impact on policies, procedures and handling

- The Code affected organisational policies and procedures in the following ways: increasing an emphasis on early resolution, clarifying, simplifying and providing guidance on existing policies as well as driving revisions to specific aspects of existing policies.
- Beneficial changes to organisational policies and procedures were reflected in more positive handling of cases and in faster resolution of issues. The Code was felt to have had a negative impact on case handling in specific employers who used the flexibility enabled by the Code to 'weaken' the employee position.
- Organisational culture, line managers' handling skills and relationships with trade unions were seen as key factors working alongside the Code in exerting a positive or negative impact on organisational policies and case handling.

Impacts on profile of disciplinary and grievance

- The Code was seen as able to lever a decrease in the number of disciplinary and grievance cases within an organisation by stimulating earlier resolution, before issues reached a formal grievance or disciplinary procedure.
- Lay representatives and particularly full-time officers (FTOs) described a changing profile of cases with a more exclusive focus on complex or serious cases. This was thought likely to be a result of more straightforward cases reaching a resolution prior to their involvement.

- There were also organisations reporting an *increase* in the number of disciplinary and grievances. Other factors were often more important than the Code here although there was a concern that the lack of legally binding processes could encourage some employers to file more disciplinary cases.

Impact on escalation toward Employment Tribunal

- Where implementation of the Code had resulted in an increase in early resolution, it was anticipated there would be a concurrent *decrease* in the number of Employment Tribunal claims in an organisation. Other factors, however, were seen as more important in case escalation. Where cases did reach Tribunal, it was anticipated that the Code would assist employers to gain a fairer outcome.

Conclusion

Awareness and understanding

- Increased, targeted and regular promotion of the Code may help to address limited or lacking levels of awareness amongst groups of employers, such as those with less formalised HR functions. This may help promote the adoption and enshrining of the Code within organisational policies on grievance and disciplinary cases and disseminate the principles of the Code at an organisational-wide level.

Earlier resolution

- To meet the aim of encouraging earlier resolution, more could be done to encourage an earlier embedding of the principles of the Code in organisational culture. This could help to minimise the number of cases reaching formal processes.
- Promoting the status of the Code may encourage employers without an organisational culture geared toward early, in-house resolution, to see the benefits of this approach and raise awareness and accessibility of alternative solutions such as mediation.

Working with a principles-based Code

- Working with a principles-based Code was deemed successful where it was experienced as striking a balance in providing guidance without being overly prescriptive. Dissatisfaction stemmed from uncertainty about the legal status of the Code and concern that the interpretation required in acting in a 'fair' and 'reasonable' way may not be one shared by different parties.
- Confidence in interpreting and applying the Code may be aided through a combination of: summaries about the basic principles of the Code, clarification of the legal status of the Code, practical training on applying the Code and having a point of contact for ongoing case-specific advice and guidance.

Tipping the balance; a fairer for system for employers or weakening the employee position?

- Concerns were raised by employee representatives about employers interpreting the lack of legally required processes as an opportunity to 'weaken' the employee position.
- A tendency towards this was described in organisations where the wider organisational approach was less focused on fostering good relations with employees or on conflict management.
- Employers were likely to describe the Code as redressing a previous imbalance and improving fairness for employers. Despite this view, concerns were expressed by some employers that the Code did not go far enough in protecting them against unsubstantiated claims from employees.
- The findings in this report present two key challenges: how to drive a cultural shift toward early resolution that sees recourse to formal procedures as a last resort. And how to engage employers who do not have an organisational culture that supports early resolution or fair practice and who are either unaware of the Code or who see a best practice Code as a lessening of their obligations.

1 Introduction

1.1 Policy context

In April 2009, the 2004 statutory procedures on dispute resolution¹ (referred to as the 3-step procedures from this point) were replaced by a new Acas statutory Code of Practice on disciplinary and grievance procedures (from here on in referred to as the Code). This was one outcome of Michael Gibbons' earlier review of all aspects of employment dispute resolution, including the statutory procedures. The review sought to identify options for simplifying and improving national policy in this area (Acas, 2009:2). According to Gibbons (2007), the previous 3-step process for the handling of disciplinary and grievance situations had been designed to deliver a number of benefits: employers and employees gained a better understanding of the requirements for formal processes for disciplinary procedures and grievances and the introduction of the procedures was followed by a fall in single claimant employment tribunal claims. Despite these intentions, the Review found that the 3-step process was seen as being overly prescriptive and complex (Gibbons, 2007:8).

The final report of the Gibbons Review was published in 2007. It highlighted a number of unintended consequences arising from the statutory disciplinary and grievance procedures. Under the 3-step process, businesses had reported a higher number of disputes and an increased early recourse to formal processes to address issues that might have otherwise been resolved prior to a grievance or disciplinary procedure. It found that the procedures were being implemented in situations where they were not applicable or were unnecessary. Most problematically, they were seen to encourage employees unnecessarily down the path of an Employment Tribunal claim; a route the 3-step procedures had been designed to help employers and employees avoid (Gibbons, 2007:10-11).

The review called for a shift towards early solutions for dispute resolution. This was because employment tribunals were described as highly bureaucratic and complicated processes that had incurred significant financial and non financial costs to employees, employers and the government. To meet this aim, the review recommended a repeal of the 3-step procedures in favour of a principles-based code and set of less prescriptive guidelines on disciplinary and grievance issues (Gibbons, 2007:10-11).

In response to the Gibbons Review, the new statutory Code of Practice on disciplinary and grievance procedures was published by Acas in 2009. It comprised a set of principles based on general good practice rather than detailed and prescriptive procedural guidance. It was intended to allow the parties involved to tailor approaches to their own situation, and encourage less legalistic and more practical solutions, within the framework of principles outlined in the Code (Acas, 2009:2). To accompany the new Code, Acas also produced a new non-statutory guide providing more detailed information on handling discipline and grievance situations in the workplace.

1.2 Research aims and objectives

Within this context, this evaluation sought to explore how the Code was understood, used and experienced from a range of perspectives. The main aims of this research study were to explore comprehension of and experiences of using the Code amongst employers, employees and their representatives; and to examine the Code's impact on workplace and individual behaviour. This aim can be broken down into three key objectives:

- Identify the range of understanding of the Code amongst employers, employees and their representatives;
 - How the Code is understood by different groups.
 - The extent to which different groups properly comprehend their duties under the Code.
 - Views on the accessibility of the language and design of the Code.
- Describe the range of experiences of using the Code amongst employers, employees and their representatives;
 - Whether and how the Code has been used to amend/prepare company procedures.
 - Views on the practicability of the Code when involved in disciplinary action or individual grievances.
 - How the Code is used in practice during procedures by employers, employees and their representatives.
 - Whether it is used in conjunction with the guidance and views on how they work together.
- Explore the impact of the Code on policy and practice for disciplinary and grievance procedures;
 - Whether and how employers have reviewed their procedures in light of the Code.
 - Impact of the Code on efficiency of handling cases.
 - Influence of the Code on dispute escalation and employment tribunals.

An entirely qualitative research methodology was designed for this study. This approach was best equipped to fulfil the research objectives which were largely exploratory; with little known about the way in which employers, employees and their representatives interpreted and employed the Code. Qualitative research was best suited to provide rich and fulsome answers to how the Code was understood, to describe in detail experiences of using the Code, describe processes and outcomes as well as to explore perceptions of the kind of effect the Code has had on efficiency and escalation in dispute handling.

1.3 Research design

The original research design proposed to address the study objectives comprised of a total of 36 qualitative in-depth interviews split across:

- A target of 18 employers (including HR staff and line managers)
- A target of 10 employee representatives (including full time officers and lay representatives) and
- A target of 8 employees.

1.3.1 Sampling and Recruitment

The achieved sample was as follows:

Table 1.1 Achieved sample		
Group	Type	No.interviews
Employer	<i>HR staff employed in organisations</i>	11
	<i>HR consultants – self employed</i>	4
	<i>Line managers</i>	4
Total Employers		19
Employee representatives	<i>Full time officials</i>	7
	<i>Lay representatives</i>	8
Total Employee representatives		15
Employees		2
All interviews total		36

Fewer employee interviews were achieved than proposed in the original design. Employees were difficult to identify in the sample frames and were less willing to participate as they were not as likely to feel they had sufficient awareness and knowledge to contribute to an evaluation of the Code. 120 letters were sent out to potential employees – i.e. individuals having purchased a single copy of the Code via the Acas website who had provided ostensibly personal rather than professional email addresses. This yielded only one opt in response. However, although employees' own experiences are important, the Code is likely to be used much more regularly and on a day-to-day basis by employers and employee representatives. This means that a lack of wider-ranging employee perspectives need not undermine the usefulness of this evaluation.

Selecting participants to interview

The ability to draw wider inference from qualitative research depends, in part, on the nature and quality of sampling. The rationale in selecting those to be interviewed is to ensure diversity of coverage across certain key variables rather than to select a sample that is statistically representative of the wider population. Purposive sampling of this kind provides the opportunity to identify the full range of factors, influences and experiences underlying the research questions.

Potential participants were selected from Acas records of purchasers of the Code and the accompanying guidance booklet from its website; as well as delegates from a selection of relevant Acas training courses on disciplinary and grievance issues. Employer organisations who featured in all three records – purchasers of the Code, guidance and training – were selected, as were employers who had attended a relevant training course and bought either the Code or guidance. This was later supplemented with additional sample of employers who had either purchased the Code, guidance or attending a training course. The 110 employer organisations were each sent a letter and information leaflet inviting them to participate in the evaluation and providing the option of opting out of the study. Follow-up phone calls were made to explain the research further, screen participants and arrange interviews. Of the 110 employer organisations who were invited to take part, 95 either opted out of the study, were unreachable by

phone, had unrecognised numbers or, after initial discussions about the research, either decided not to take part or were not eligible to do so.

While recruiting HR staff was relatively straightforward, accessing line managers was more challenging as this was reliant on HR staff identifying, approaching and passing on the details of line managers willing to take part. As with employee interviews, line managers often felt they lacked the relevant knowledge to comment on the Code. Of the four line managers interviewed, three worked in the same organisations as HR staff who had already participated in an interview. Full employer sample characteristics are detailed in Appendix C.

Letters and information leaflets were also sent out to 35 employee representatives identified in the records of Code and guidance purchasers, and also to training delegates. Of these, seven trade union full-time officers (FTOs) agreed to take part. Of the eight lay representatives recruited, three had been identified in the Code and guidance purchaser records and training delegate lists and five were approached through FTOs. The characteristics of the employee representatives are detailed in Appendix C.

Of the two employee interviews, one opted in from the mail out to purchasers of a single copy of the Code. The other was an employee who was contacted via an FTO and was himself a lay representative but who had been dismissed by his employer and was considering taking his case to an employment tribunal. Employers who participated in the research were asked whether they would be willing to pass information about the research either to all their employees or just those who had been involved in either a grievance or disciplinary case since the introduction of the Code. Two employers agreed although no opt in responses were received from their employees. The remaining employers declined. Reasons for declining included major structural change within an organisation and an unwillingness to 'stir up' issues that had been difficult.

1.3.2 Conducting research interviews

The in-depth interviews were conducted using a topic guide to ensure similar sets of issues were discussed. Interviews were conducted using responsive questioning and probing so that all relevant issues were explored as fully as possible. The topic guide was designed in collaboration with Acas and is shown in Appendix B. Not all topics detailed by the guide were relevant in every interview.

In depth interviews took place between January and March 2011. Interviews usually lasted between 45 and 60 minutes. Interviews were conducted by telephone at times convenient to participants.

Interviews were audio recorded, with participants' permission, transcribed verbatim and stored in secure electronic files with access restricted to the research team.

1.3.3 Analysis of data

Verbatim transcripts of the interviews were analysed using 'Framework', a method developed by the Qualitative Research Unit at NatCen (Ritchie, Spencer and O'Connor, 2003). The first stage involved familiarisation with the transcribed data and identification of emerging issues. This informed the development of a thematic framework, and data was summarised using NatCen's Framework

software. Essentially this produces a series of thematic matrices or charts, each chart representing one key theme. The column headings on each thematic chart related to key sub-topics and the rows to individual participants. Data from each case was then summarised in the relevant cell. The context of the information was retained and the page of the transcript from which it comes noted so that it was possible to return to a transcript to explore a point in more detail or extract a verbatim quotation.

The interpretation involved reviewing the full range of views and experiences about the Code of Practice, identifying patterns, drawing comparisons between individual cases and groups of cases, and seeking explanations for views, decisions, experiences and diversity through detailed within, and between, case analysis.

1.4 Reading this research report

Verbatim quotations and case illustrations are used to illuminate findings. They are labelled to indicate participant group e.g. HR or lay rep. Further information is not given in order to protect the anonymity of research participants. Quotes and case studies are drawn from across the sample. Data from 19 individuals were used.

The report deliberately avoids giving numerical findings, since qualitative research cannot support numerical analysis. This is because purposive sampling seeks to achieve range and diversity among sample members rather than to build a statistically representative sample, and because the questioning methods used are designed to explore issues in depth within individual contexts rather than to generate data that can be analysed numerically. What qualitative research does do is to provide in-depth insight into the range of experiences, views and recommendations. Wider inference can be drawn on these bases rather than on the basis of prevalence.

1.5 Structure of the report

The next three chapters of this report examine the main objectives of the study. Chapter 2 looks at participants' understanding of the Code, including awareness and accessibility of the Code, views about its aims and principles as well as sources of training, information and advice about the Code. Chapter 3 explores participants' use of the Code. It covers the nature of and process for the development of participating organisations' disciplinary and grievance policies and procedures and the role of the Code in policy change. Chapter 4 focuses on the impacts of the Code on policies and procedures and the handling and representation of cases. It also looks at the impacts of the Code on the profile of disciplinary and grievance situations arising in participating organisations and its impact on escalation to employment tribunal. The final chapter draws conclusions from the findings of the evaluation and discusses participants' recommendations for improving awareness, use and impact of the Code.

¹Under which employers were required to follow three specified steps before dismissing an employee. In most situations an employee was required to follow similar procedures before making an employment tribunal claim.

2 Understanding of the Code

This chapter explores understanding of the *Acas Code of Practice on disciplinary and grievances procedures* (from now on referred to as the Code) and *Disciplinary and grievance at work – The Acas guide* (from now on referred to as ‘the guidance’). In particular, it looks at participants’ awareness of the Code and guidance (2.1) and participants’ understanding and views of the approach of the Code (2.2). This chapter then examines the accessibility of the Code and guidance; and finally looks at views and experiences of the available training, advice and information on the Code and guidance.

2.1 Awareness and Access of the Code and guidance

This section looks at sources of awareness of the Code and guidance, levels of knowledge of the contents of the Code and Guidance and lastly, the way in which the Code had been accessed.

2.1.1 Sources of awareness for the Code and guidance: Proactive, passive and reactive

Sources through which participants became aware of the Code were:

- Acas itself - through its website, email alerts and newsletters as well as invitations to take part in the consultation process for the Code prior to it being published.
- The CIPD, specialist HR consultancies, employment law solicitors and trade union lawyers alerted clients or members to the existence of the Code via email updates on employment law developments, professional journals and magazines, and promotional materials about courses and seminars covering the Code.
- Trade union officials and HR departments disseminated changes in employment law within their organisations or professional networks and informed people about the Code.
- Internet search engines were used in searches which took participants to the Code.
- The Code was also reported to have briefly featured in radio/television news, in newspapers and in discussions within HR and employee representative communities although these were not primary sources of awareness.

The ways in which participants became aware of the Code varied by participant group. One group including HR staff, FTOs and lay representatives appeared to take a proactive approach to maintaining an updated awareness of developments such as the Code. This approach was a reflection of a sense of a professional duty to keep abreast of HR and employment relations issues. This group had heard about the Code through memberships to HR related services and professional bodies, such as the CIPD, subscription to HR related literature (such as Acas newsletter and updates), or through specialist HR consultancies or employment law solicitors. These participants engaged with the Code early,

initially reading it in draft when extracts were circulated as part of the consultation process, upon publication or in preparation for the training course on the Code.

Others were made aware of the Code via the cascading of information within their organisation. This more **passive** approach can be seen to have been taken by participants such as line managers and lay representatives who had been made aware of the Code by their HR departments or trade union. These participants were made aware of the Code after its publication and reported being unlikely to know about it at all without such communication.

Employees and some line managers can be seen to have taken a **reactive** approach to seeking information about the Code. Employers and representatives perceived that employees were unlikely to be aware of the existence of the Code and guidance. Findings from interviews with employee representatives suggest that awareness of the Code amongst employees was prompted only by experiencing a disciplinary or grievance case. Furthermore, an HR consultant had observed that until cases arose, employees typically lacked knowledge of their organisational policies. Similarly, line managers reported being informed about the Code only when they approached their HR department with a query relating to a disciplinary or grievance case.

A final group of participants had come across the Code unintentionally or had not come across it at all². Employers fitting this description had less formalised internal HR functions and had handled few disciplinary and grievance cases. For example, a participant working for a small employer reported chancing across the Code when searching for HR courses on handling disciplinary and grievance online. HR staff and consultants also speculated that employers with less formalised internal HR functions were less likely to keep up with policy developments due to limited time and capacity. FTOs reported that they had dealt with private sector employers who had no awareness of the Code.

2.1.2 Knowledge of the content of the Code and guidance

There was no clear link between participants' levels of knowledge of the contents of the Code/ guidance and the sources through which they became aware of the Code. Factors better explaining different levels of knowledge included organisational responsibilities for disciplinary and grievance cases, the use of organisational policies in handling cases and relying on a briefing of the Code in lieu of reading it.

The job roles performed by participants in relation to disciplinary and grievance policy and practice influenced the depth of their knowledge of the separate Code and guidance documents. For example, an HR manager who was more knowledgeable about the Code than the guidance was responsible for revising organisational policies rather than handling individual cases. There was greater awareness and knowledge of the guidance among HR staff who were involved in the handling of cases.

Another factor affecting participants' levels of knowledge of the Code and guidance documents was the use of organisational policies in handling cases.

Where organisational policies were the primary reference for case handling, there had been little need to refer back to the Code itself.

Finally, relying on a briefing rather than a first hand reading of the Code influenced participants' depth of knowledge. Line managers who had read a summary of key points sent to them by their HR departments rather than the full Code knew less about the Code's content than HR staff and employee representatives.

2.1.3 Accessing the Code and guidance

Participants were selected from Acas records of Code and guidance purchasers and a list of delegates of training courses relevant to the Code. Copies of the Code and guidance had been purchased in hard copy either for participants' own use or to distribute to FTOs, lay representatives or line managers. Copies of the Code had been given to delegates who had attended Acas training. In addition, the two documents were also accessed on the internet or given to participants by their colleagues. Overall, participants viewed the Code as having been well-publicised and easily accessible on the Acas website and websites of CIPD or specialist HR consultancies. The guidance was seen as less accessible than the Code because unlike the Code itself, the Guidance was reported to not feature amongst the top hits returned when using major internet search engines.

2.2 Understanding and views of the approach and purpose of the Code and guidance

The following section looks first at participants' perceptions of the aims of the Code. It goes on to explore views of the principles underpinning the Code.

2.2.1 The aims of the Code

The Code aims to encourage employers and employees to resolve workplace problems more effectively within the workplace. It is intended to set out the basic requirements of fairness and standard of reasonable behaviour that will be applicable for most cases (Acas, 2009:1-2 the Code). The awareness of the aims of the Code was highest among HR staff and employee representatives. Line managers and employees were not as knowledgeable about the wider aims of the Code.

The perceived reasons for introducing the Code and repealing the 3-step procedures were:

- To resolve disputes earlier without recourse to formal procedures
- To make processes less procedurally driven and
- To achieve consistency in disciplinary and grievance policy and practice.

Across participant groups, resolving disputes earlier through informal means was seen as an aim of the new Code. By 'informal means', participants referred to addressing issues internally, *before* initiating the steps outlined in their formal disciplinary and grievance policies. As phrased by one participant, the Code was understood *"to provide a framework for organisations to resolve disciplinary and grievances internally wherever*

possible". (Lay representative, AB1) HR staff and employee representatives perceived the rationale behind this aim as an attempt to ultimately the number of disputes escalating into employment tribunal claims.

Participants felt the Code aimed to help employers minimise the risk of escalating issues into formal disciplinary and grievance cases by encouraging earlier resolutions prior to formal recourse

"I think the main difference is ... the idea of the informal approach that you could use, and then there was also mediation to try and resolve things before they escalated". (HR, B14)

Participants saw value in what they saw as a greater emphasis on earlier (informal) resolution, especially in reducing dispute escalation. Initial concerns about informality were allayed for one HR staff member once they realised it was possible to document early resolutions without it becoming a formal procedure and that the more formal processes were still available where necessary.

Removing the focus on procedure was seen to improve fairness for employers as well as bringing the substantive substance of a case back to the fore. This was welcomed by HR staff in allowing the focus to return to the issues within a case rather than procedure. A view held by employers was that the previous 3-step procedure worked to employees' advantage because it made it possible for employers to lose an employment tribunal case purely by failing to follow the 3-step procedures exactly. This was perceived by an HR staff member working for medium sized-employer to be particularly unfair for smaller employers with limited time and HR expertise. Where lay representatives disagreed they did so because they felt the 3-step procedures were fair and useful, despite their increased likelihood of resulting in employment tribunal claims.

Finally, employee representatives thought another main aim of the Code was to achieve consistency in disciplinary and grievance policy and practice across all organisations and sectors. There was a perception across participant groups that the 3-step procedure had not been applied consistently. A perceived objective of the Code was to set the standard by which all employers should deal with disciplinary and grievance situations in a fair and reasonable way. In addition, it was felt that issuing the Code would reinforce employers' and employees' understanding of the law. As a result, employee representatives hoped the new Code would give all employees a level of protection in the way they are treated by employers.

This aim was welcomed by employee representatives who hoped that at a regional level the Code would enable trade union representatives from one sector to step into a completely different industry and still be able to work to a set of shared principles. Within organisations the Code was expected to help lay representatives to ensure disciplinary and grievance processes were applied fairly in employer organisations.

2.2.2 The principles underpinning the Code

Although the principles underpinning the Code were not perceived to have changed significantly from those underpinning the 3-step procedure, they were

seen to be more focused on the aims and goals of dispute resolution. The key principles described by participants were:

- Increased flexibility and less prescription (within the parameters of 'reasonableness' and 'fairness') and
- Ensuring fair treatment of employees through clear and transparent communication.

HR staff, FTOs and lay representatives generally demonstrated high levels of awareness of the key principles and approach of the new Code. In contrast, line managers generally seemed less able to articulate these principles.

Flexibility

Amongst HR staff and employee representatives, increased flexibility was seen to be a key principle underpinning the Code. Although these participants recognised broad similarities with the Code's predecessor, the increased flexibility afforded to employers was seen as a major difference between the Code and the 3-step procedure. The Code was described as less formal, less structured and less focused on procedural detail. It allowed employers the flexibility to apply their own procedure but against the guiding principles of 'reasonableness' and 'fairness'. Specific examples given of the flexibility understood within the Code included allowing sufficient timescales for investigations and cases overall, arriving at decisions for appropriate action through thorough and objective investigations, and ensuring managers receive sufficient training in handling and investigating cases.

" ... it does give employers a bit more freedom in terms of how they approach cases, as long as they're doing things, you know, reasonably and fairly" (HR, B16)

A perceived benefit of the less structured approach of the Code was that it would give employers the freedom to tailor their approaches to disciplinary and grievance cases to their organisation. For example, an HR department head of a small employer described being obliged under the 3-step procedure to communicate to staff by letter. For a small organisation this was considered an overly formal and unsuitable form of communication.

Employers welcomed the fact that they could now set their own timeframes whereas the ones endorsed by the 3-step procedure were felt to be too rigid, tight and unrealistic. Employers also felt the Code made it easier for employers to dismiss employees on the grounds of capability or misconduct which had previously been long winded and difficult. Finally, a small employer stated that the Code helped to alleviate their anxieties about being taken to employment tribunal for not having followed a procedure to the letter.

Concerns about the flexibility – room for interpretation

While of clear benefit for some, the absence of clear guidance on procedures and timeframes raised concerns among other employers who interpreted the Code as being vague. A further concern raised by employers themselves as well as FTOs, was that some employers would take advantage of the lack of clear guidelines

and exploit the flexibility of the Code. Employers were also concerned that without firm guidelines on timeframes, cases could 'drag on'.

The Code's flexibility was viewed by some employers as potentially counterproductive in the aim of reducing the number of cases going to employment tribunal. This was because it was felt to provide more scope for employees and their representatives to challenge the 'reasonableness' of employers' decisions. In an example provided by an employer, under the 3-step procedure employers had been able to make a final decision on a case if an employee did not turn up to a disciplinary hearing three times. Under the Code it was left up to the employer to decide how many opportunities they would give an employee to attend a meeting before making a decision on the case.

Employee representatives generally welcomed the more flexible and 'common sense' approach of the Code and some felt the guidance helped to alleviate areas where the Code could be seen as vague. However, like employers, employee representatives found it problematic that the Code could be interpreted differently by different parties. One FTO described having disagreed with employers about how long it should take to make a final decision on a case – an issue not specified in the Code or guidance.

Finally, line managers held the view that the flexible approach of the Code, rather than helping line managers, gave them *more* to think about and do, particularly compared to what it asked of employees.

Ensuring fair treatment of employees through clear and transparent communication

Amongst employers, clear and transparent communication with employees in disciplinary and grievance cases was felt to be a guiding principle of Code, helping ensure fair treatment. Participants described this principle as having two parts. First, it involved keeping employees fully aware of the process to be followed and of what would be expected of them.

"I think it was trying to get organisations to have a more, closer and open relationship with their employees. ... Why not spend some time working with them to find out what the issues are rather than trying to end the relationship over something which if we'd had a proper discussion about, maybe we could've been able to sort it out before it escalated." (HR, B14)

Secondly, it meant respecting and enabling employees to exercise their statutory rights such as their right to accompaniment. For employers who reported having been confused about employees' rights, the Code had provided them with some clarity.

2.3 Accessibility of the Code and guidance

This section explores participants' views on at the visual and linguistic accessibility, then at the understanding of how Acas intended the Code and Guidance to be used and finally at participants' views of separate Code and Guidance documents.

Accessibility

The Code was generally seen as being well presented, well structured, clear and accessible across participant groups. The Code was also seen as being more accessible to lay representatives and employees than the 3-step procedure had been.

There were those, however, that thought it less accessible. There was a view amongst some participants that the Code was 'vague' and subject to interpretation. This, however, is likely to relate more to the principles-based nature of the Code, rather than the language used as it was a view expressed by those who felt concerned about the interpretation required in applying the Code.

Some HR staff raised concerns that it was not completely accessible for line managers, employees, small employers and less experienced lay representatives. However, this was not a view shared by all HR staff or by employee representatives.

Visual presentation

Visually, the Code was described across participant groups as modern, well presented, logically structured, well formatted with reasonably sized paragraphs and good line spacing. These factors contributed to the Code being considered highly readable.

"I like the space thing. I've read so many things where everything is crammed together and you're struggling to read each line but I mean I've got a copy of it here in front of me and it is so well spaced out. Whoever put their effort in there deserves a round of applause really. Very simple, clear headings, marked out, spaces between the lines, absolutely brilliant textbook for me." (HR, B1)

The accompanying guidance was also praised across participant groups for being user friendly and even more clearly structured than the Code. Summarising information in boxes was thought of as particularly useful.

Length

Across participant groups the brevity of the Code was considered a particular attribute, both because participants felt longer documents tended to go unread and because in practical terms it was easy to carry around.

"I think it's perfect. It's not too long. It's not too weighty. You don't have to trawl through it for hours to find a tiny little bit that you need. But equally, it is as informative as it needs to be." (HR, G5)

The length of the Code was a key reason why HR staff who trained line managers in handling cases issued the Code to them. Participants generally viewed the length of the guidance document as appropriate and found it easily readable. HR staff who saw the length of the guidance as adequate for their own uses believed it would seem long and unwieldy for line managers and thought, if issued to them, it would go unread.

Language

Views about the language used in the Code were mixed. In terms of its overall readability, the Code was described across user groups as being clear, concise, well written, straightforward, user-friendly and easy to read and understand. Participants particularly appreciated that the Code was written in plain English and that the language used was accessible. *"[The Code is], easy to follow, easy to read, without trying to use clever posh legal words."* (U7, HR) However among employee representatives there were perceptions of legalistic jargon in the Code, for example where the Code explains employees' rights to accompaniment.

Despite the language being clear and written in plain English, terms such as 'reasonable' were considered vague and operationally difficult to grasp, (as discussed in the previous section exploring the principles of the Code), particularly compared to the language used in the 3-step procedure. One participant explained:

"I do fully understand it, but I've got to say, you know, [it] doesn't matter how [well] it's written; you'll always get a different interpretation of it by somebody else. That's the problem." (HR, U12)

The guidance was also seen as well-written and easy to understand. In some respects the guidance was regarded by some HR staff as more helpful than the Code. It was easier to understand both in terms of readability and it was felt easier to operationalise.

"I think it fires lowest common denominator quite well." (HR, B14)

Participants working in smaller organisations without formalised internal HR functions demonstrated a high level of comprehension of the Code and reported finding it accessible. However, the perceptions of HR consultants and FTOs on how well smaller employers that they dealt with understood the Code were that smaller employers who were not as accustomed to looking at such documents would find the Code less clear and understandable.

2.3.1 Understanding of the intended use of the Code

There were two main ways in which participants thought Acas intended the Code to be used. The first was to improve their organisational policies so that: *"every point in this Code of Practice should be identifiable within the policy"* (HR, A4) and so that it was then possible to handle cases using the policy alone rather than returning to the Code or guidance.

Secondly, participants thought the Code and guidance should be used as best practice guides in relation to handling cases. For employee representatives it was important that those responsible for handling cases should receive appropriate training in order to use the Code and apply it in practice; the view here was that the Code alone did not equip a line manager in case handling. An FTO asserted that 'sensible employers' should ensure that:

" ... managers who are dealing with it are properly trained, and not just given the document at some stage and said, 'You go and do this discipline or you hear this grievance'." (FTO, U9)

HR staff were aware that employment tribunal decisions would be based on evidence that the employer had followed a fair and reasonable procedure. They were also conscious that if the tribunal felt that an employer had unreasonably failed to follow the guidance set out in the Code they could increase any award they had made by up to twenty five per cent.

"I think when you work in HR, we all know that this is not law, but we also know that, you know, by failing to align our own internal processes with the Acas code, we are absolutely setting ourselves up for a fall if it ever goes to a tribunal. So, you know, it is guidance. It's guidance for employers. But you'd be very foolish not to use that guidance." (HR, G5)

However, the legal status of the Code was misunderstood across the sample. In particular the differences in statutory requirements between the 3-step procedure and the Code were unclear and participants did not all seem aware that the 3-step procedure had been repealed. It is possible that perceptions of the basic procedural similarities between the two documents contributed to the uncertainty. There was also a view that, due to the lack of firm guidance (which was present in the 3-step procedure), employees would find it difficult to discern the legal status of the Code and particularly whether their employer was bound by the Code and how their case should be handled.

2.3.2 Views of separate Code and guidance documents

As discussed in section 2.1, line managers and employees had a lower level of awareness of both the existence and content of the accompanying guidance document compared to the Code itself. Participants who were aware of both the Code and guidance looked favourably upon the idea of having two separate documents instead of one. Having an accompanying guidance document was seen to enable the Code itself to be kept short and hence likelier to be read by its target audiences.

There were, however, participants in the HR group who would have preferred one stand-alone document for the purposes of simplicity.

Using the Code and guidance in conjunction with each other was seen by HR staff and employee representatives to maximise understanding of the Code because the guidance: *"aids understanding of what [the] Code means" (FTO, U11)*. In particular using the guidance alongside the Code was seen to provide employers with detailed practical guidance and illustrative examples on how to implement the Code. For example, it includes case studies to demonstrate the ways in which procedures can be applied. Example letters were seen as a particularly helpful resource.

The guidance was also seen by HR staff to play a useful role in increasing understanding about how to approach more complex and difficult cases and what to do if a situation escalated. They also believed the guidance should

be used alongside the Code because it built on the Code's explanation of employers' minimum legal responsibilities by further clarifying their statutory obligations.

2.4 Training, advice and information on the Code and guidance

This section describes views and experiences of the courses run by Acas as well as those of additional sources of training, advice and information on the Code and guidance documents accessed by participants.

2.4.1 Courses run by Acas

The Acas courses *Discipline and Grievance – A new approach* and (the BERR-funded) *Discipline and Grievance – Educating Employers* were key sources of training, advice and information about the Code. Participants chose to attend these courses for a more in-depth knowledge about the approach and application of the Code and to enhance their own competence in handling disciplinary procedures and grievances. Training courses were also seen as opportunities to meet other users of the Code who worked in similar roles.

The training attended by participants included sessions on the meaning of disciplinary and grievance (i.e. the definition of the words and intended use of the procedures), the principles of the Code and the stages of disciplinary and grievance procedures. Training was jointly delivered by Acas representatives and employment tribunal judges. Opportunities were provided for delegates to ask questions. HR staff and FTOs had attended Acas training courses, while line managers and employees had not.

The overall views of the training courses, and Acas training courses, were positive:

"I always come away feeling far more confident and also getting slightly more knowledge[able] about the particular practice that they [Acas] are, you know, that they've brought in, so yes. No, I find them [Acas] very good." (HR, B8)

Participants emphasised the role and value of the training in further embedding the key messages about the Code, which simply having access to the Code and guidance documents may not have achieved:

"... if you'd have just sent every HR person in the country a copy of the Code [then] you're not really embedding it, because you know what happens with the post- we all say 'oh I'll read that in a minute' and you don't do you? So, for me it's, it's kind of like one is not so good without the other." (HR, B4)

Another aspect of the training that participants found useful, was the explanation of the purpose of the Code and what was expected of employers in relation to the way Acas intended the key principles of 'reasonableness' and 'fairness' to be applied in practice. For employers who were not confident about their own

handling of cases, this helped to allay their anxieties about not using the correct approach.

The courses were generally reported to be pitched at the right level and to be relevant to the needs of all delegates, considering the range of delegates' perspectives and levels of experience. Participants also valued being given the opportunity to ask questions about the Code around for example, earlier handling of cases, and felt their questions were answered well. A final aspect of the courses which was highly appreciated was that some of them were free. Employers including a large voluntary sector employer and a consultant for small and medium sized organisations both felt that a charge would have prohibited their attendance.

On a less positive note, some participants reported that questions they had about how the legal status and procedural content of the Code differed to the 3-step procedure were left unanswered by the course. They wanted clarification on whether continuing with the 3-step procedure would contravene the Code. Explanations of whether the 3-step procedure could be used by employers as policy were not perceived to have been as categorical as participants wished and seemed open to interpretation. It is possible this comment stemmed from a discomfort with the more flexible and less nature of the Code compared to its predecessor.

Some delegates who attended shorter training sessions on the Code would have preferred a smaller number of attendees and more interactive, practical sessions on how to apply the Code to specific case studies. These participants may have benefited from attending one of the longer courses on the Code since these courses were reported to have delivered these elements.

2.4.2 Additional sources of training, advice and information

There were a group of participants who reported needing little or no additional information on the Code and guidance to enhance their understanding. These were senior HR staff and FTOs who had one or more of the following characteristics: being experienced in handling cases; being conversant in disciplinary and grievance issues and more generally in employment relations policy; and having experience of running training on the use of the Code themselves.

For those who wanted more information, additional sources of information were sought. Those sources felt to aid understanding of the Code included the Acas website, DirectGov, websites of relevant government departments such as BIS, HR related websites such as CIPD and HR Zone and websites accessed by employee representatives such as the TUC website and union.representatives.org. The Acas and CIPD helplines were also accessed, as well as seminars, training and information sessions (including general employment law update seminars), training for those sitting on employment tribunals, training by trade union umbrella bodies and internal training sessions run by HR departments. Other sources of information included advice from employers' own HR departments and company resources e.g. staff handbook.

These additional sources of training, information and guidance were said to have enhanced participants' comprehension. The websites listed above provided summaries and factsheets which were found helpful by HR staff and employee representatives because they provided quick and easy access to the main points of the Code. Participants also received summarised information on the Code when attending general employment law information sessions and seminars run by other sources which condensed the key points of the Code. Specialist HR resources such as the XpertHR system provided by the Reed Group and news reports about the Code were also found useful in providing information about the Code. Line managers received summarised information on the Code from their HR departments and could also find summaries in company resources such as staff handbooks.

Training that included practical elements was valued across participant groups for demonstrating the application of the Code to different situations. Participants appreciated additional guidance on practical application because they felt that the lower level of prescription in the Code left them unclear about the way in which it they should interpret principles and apply the Code. Trade union umbrella bodies and HR departments ran training that comprised practical elements for employee representatives and line managers respectively. Line managers whose employers had not provided practical training on the Code felt they would benefit from accessing training delivered directly by Acas that was pitched at managers and supervisors. They felt this would provide them with a better grasp of the Code and make them less reliant on their HR departments for advice and guidance on handling disciplinary cases and grievances.

Additional sources of information were sought on areas where understanding was less clear, such as the legal status of the Code and differences between the Code and the earlier 3-step procedure. Seminars run by legal firms helped to clarify confusion for participants. However, there were reports of training and information sessions failing to address this issue thoroughly enough. For example a participant who sat on an employment tribunal reported attending training on the changes in the Code, but which provided limited guidance on how the Code should be taken into account by employment tribunals.

The Acas helpline and other organisations' web forums provided participants with a point of contact for dialogue on issues and to gain advice on the practical application of Code. These sources were found useful because they helped to answer questions about situations arising in disciplinary and grievance cases that the Code and guidance could not answer. In particular, the Acas helpline assisted employers by clarifying the way in which the Code should be applied in specific cases, providing advice and guidance on how to interpret the Code and providing information about how to go about using mediation if this was felt appropriate. Participants did however comment that, at the time of the publication of the Code, it had been difficult to get through to the Acas helpline. Web forums such as the TUC union representatives web portal³ were valued by lay representatives for allowing them to seek advice and support from others working in similar roles. Line managers relied on their HR departments to discuss arising issues about disciplinary and grievance procedures generally as well as the Code.

2.5 Chapter Summary

Awareness of the Code was raised among HR staff and employee representatives by Acas itself and professional bodies, consultancies and solicitors specialising in HR and employment relations. Line managers were more likely to hear of the Code through their HR departments. Employees were seen as unlikely to know about the Code unless they were going through a disciplinary or grievance situation. Overall, the Code was viewed as well-publicised and easily accessible. The guidance, however, was seen as less easy to find.

HR staff and employee representatives were generally more knowledgeable about the contents of the Code and Guidance than line managers. Factors affecting how knowledgeable participants were included: organisational roles and responsibilities for disciplinary and grievance issues; the extent of use of organisational discipline and grievance policies; and relying on a briefing of the Code in lieu of reading it.

The perceived aims of the Code were to resolve disputes earlier prior to recourse to formal procedures. This, it was felt, aimed to make processes less procedurally driven and to achieve consistency in disciplinary and grievance policy and practice. Views held about these aims were that they would lead to a reduction in dispute escalation, were fairer to employers and would bring substantive reasons for disputes back to the fore. Participants also believed the Code would set the standard for fair handling of disciplinary cases and grievances across sectors.

The perceived principles of the Code – that is, increased flexibility (within the parameters of ‘reasonableness’) and clear and transparent communication with employees – were welcomed by employers. However concerns were raised that increased flexibility opened up the possibility of employers acting exploitatively and employees and their representatives questioning the reasonableness of employers’ decisions. The correct awareness of the aims and principles underpinning the Code was highest among HR staff and employee representatives.

The visual presentation, length, language and the Code were generally viewed positively and seen as an improvement to the 3-step procedure. Terms such as ‘reasonable’ were however considered challenging to implement consistently in a way all parties might agree with. Having a Code and separate Guidance was viewed positively. While participants understood the use of the Code in relation to revising organisational policies and handling cases, its legal status was less well understood.

Training courses run by Acas helped to embed key messages relating to the approach and application of the Code. In terms of understanding the intended principles and basic approach of the Code and its legal status, some participants reported having had their questions answered, but others were left unclear. A number of factors were said to affect the understanding of the Code gained from both Acas courses and other sources of training advice and information on the Code. These included summarised information about key points of the Code, training that included practical elements, sources of information on grey areas and having a point of contact for dialogue on issues as well as gaining advice on the practical application of Code.

² While HR participants and FTOs were sampled directly from a list of those who had purchased the Code, guidance or attended training, line managers and lay representatives were largely identified through contact with HR staff and FTOs. Even where these participants had mentioned the Code in a screening and recruitment phone call, they were not always necessarily aware of the current Code.

³ www.unionrep.org.uk

3 Use of the Code

This chapter describes HR staff and employee representatives' experiences of using the Code and guidance to review organisational disciplinary and grievance policy and procedure (3.1). It also details employers' and employee representatives' experiences of the using the Code and the guidance when handling or going through a disciplinary or grievance in the workplace (3.2).

3.1 Organisational disciplinary and grievance policy and procedure

This section covers the nature of organisational disciplinary and grievance policy and procedure before moving on to describe disciplinary and grievance policy development, specifically focusing on the role of the Code and the guidance in policy change.

3.1.1 Nature of organisational disciplinary and grievance policy and procedure

Participants from across the sample – i.e. HR and line managers and employee representatives – reported that their organisation had a formal disciplinary and grievance policy. Formal policy was understood by employers and employee representatives to be synonymous with written policy. When policies were formalised these were documented in a number of locations: staff handbook, policy document, employment contract and/or staff intranet. HR staff and employee representatives reported that organisations with a smaller number of employees were less likely to have a written (read formal) policy. This view is supported by The Workplace Employment Relations Survey 2004 (WERS2004) which found that a significant minority of small workplaces⁴ had no formal grievance (37 per cent) or disciplinary (31 per cent) procedure⁵.

When a larger organisation in the sample did not have a written grievance procedure this was because the organisation had sought to review its written grievance policy, but the parties involved had been unable to reach agreement about the nature of changes to that procedure. After a period of time a decision was taken by the employer to use the Code when handling grievances, rather than to continue the review process. The Union in this case had felt that the revised procedure left the employee in a weaker position than they had been under the previous procedures. This concern about the Code is explored in chapter 4.

3.2 Organisational policy development

Employers and employee representatives described two reasons for reviewing organisational disciplinary and grievance policy in view of the Code. These can be categorised as proactive and reactive reasons (see table 3.1). Changes to the Code of Practice in 2009 (and before that in 2004) were said by some HR staff to have been the principle trigger for *reactive* disciplinary and grievance policy

review. HR staff and full-time officials also reported that legislative change more generally was an important factor prompting policy review. Other organisations, where the review was reactive, reported that two or more triggers (including changes to the Code) had coincided to prompt the review. The implication here is that an organisation may not have reviewed their disciplinary and grievance policy if legislative change had not coincided with another trigger, such as organisational change. Quantitative evidence on the proportion of private sector companies making changes to their policies and procedures as a result of the code is provided in another Acas research report⁶.

Table 3.1 Reasons for policy review	
Reactive	Proactive
<i>Legislative change (Code of Practice 2009, 2004, Equality Act 2010)</i> <i>Organisational change</i> <i>Time elapsed since last policy review</i> <i>Disciplinary or grievance case arising</i> <i>Advice of external partner (e.g. consultant)</i>	<i>Planned policy review (e.g. annual, bi-annual)</i>

Proactive policy review occurred within some private sector small/ medium enterprises (smaller employers) that either had a formalised HR function or contracted the services of an HR consultant. Additionally a large, public sector organisation was also reported by a lay representative to proactively review policy on an annual basis. Where an organisation was proactive in reviewing its disciplinary and grievance policy, it may have chosen to carry out an additional review triggered by changes to the Code rather than waiting until the planned review to update policy in line with the Code.

3.2.1 Factors affecting whether a policy review had been initiated

Six key factors were identified by HR and employee representatives that affected whether a **reactive** policy review had been initiated since the Code came into effect. These were: resources, numbers of disciplinary or grievance cases, effectiveness of current disciplinary and grievance policy and procedures, awareness of legislative and policy change, status of the Code and perceptions of obligation and adjusting tribunal awards.

Resources

Resources were perceived by some HR staff to be an important factor influencing whether an organisation had initiated a reactive policy review. In particular, lack of capacity, time and finance was perceived to have been a barrier to policy review for some, especially where other priorities were more pressing.

An HR consultant reported that resources were sometimes a barrier to proactive policy review in large public sector bodies. Proactive review was felt by the HR consultant to be particularly challenging for these organisations because the HR

function had been reduced or outsourced in response to reductions in organisations' budgets.

HR expertise may also have affected whether a policy review had been initiated. Some employers commissioned an HR consultant to review their disciplinary and grievance policy where they lacked the required expertise in house.

Number of disciplinary or grievances

The number of disciplinary or grievance instances was also perceived to have an effect on whether an organisation carried out a policy review. Organisations with a low number of cases were reported by an HR consultant as not having seen any need to review policies until a case had arisen. In these circumstances, it was reported by the HR consultant that policy review was put 'on the back burner' and higher priority was assigned to the day-to-day running of the business. When a disciplinary or grievance case arose the employers commissioned an HR consultant to support them in handling the case. At this point the HR consultant had reviewed the disciplinary and grievance policy:

"[They] only ever want to sort of suddenly get me involved because they're suddenly dealing with an issue, often for the first time." (HR, B8)

Effectiveness of existing disciplinary and grievance policy and procedure

Employers who felt that their existing policy and procedure was already effective in handling disciplinary and grievances cases were reported by HR consultants and HR staff to have been less likely to give priority to a policy review. This was felt to be particularly the case when the existing policy was found to have been effective and the employer had limited resources to undertake the review:

" ... if things seem to be working okay then you know, if its not broke don't fix it or I mean it is quite a demanding piece work ... I think there is often higher priorities on the list and it, its one of those things that, you do if you've got the time or you've got sufficient staff and I think it often falls off the list really." (HR, B16)

Awareness of legislative and policy change

There was a perception amongst some HR consultants and employee representatives that awareness of the Code was more limited amongst some organisations they had come into contact with. This was reported to have included, small businesses and large private sector organisations (in the transport sector). Additionally, as discussed in Chapter 2 (2.1) participants reported coming across the Code unintentionally. Some employers in this group were described as having less formalised internal HR functions and had handled few disciplinary and grievance cases. FTO's reported this experience in organisations where they had represented employees in grievance and disciplinary procedures.

Status of the Code and perceptions legal obligations

An employer's views on employment legislation and policy were perceived by some HR consultants and FTOs to have influenced whether policy review had been initiated in organisations they had worked with. It was reported by a FTO that a barrier to some smaller organisations updating their policy in line with the

Code was a mindset amongst some employers that they can 'do what they like' when running their business. Similarly, an HR consultant supporting SMEs reported that some employers did not 'take notice' of employment legislation in general, until they were prompted to do so.

"[The Code is seen as] constricting and oh yeah, another piece of legislation that we have to understand ... they're very much of a mindset [that] they want to get on with the business that they're managing, running." (HR, B8)

This was not a uniform experience, however - an FTO working with a range of private sector organisations reported that employers viewed the Code as best practice and therefore often wanted to reflect it in their organisational policy.

Adjusting tribunal rewards

A further factor which was reported by FTOs to have influenced reactive review of disciplinary and grievance policy was the introduction of a 25 per cent adjustment to tribunal awards when an employer or employee was found to have not followed the Code without good reason. This was felt to have incentivised employers to ensure their policy reflected the principles of the Code:

"I mean in terms of tribunals I think companies are aware that tribunals do look at cases favourably if the Acas Code is being followed and if not then it's at detriment to the potential costs". (FTO, U4)

Whether organisations had initiated a policy review reactively was reported by HR staff and employee representatives to have been driven by these key factors. However, although initiated, some reviews remained incomplete at the time of interview.

Incomplete policy review

A policy review had been initiated but was incomplete where an organisation had recently begun the review process or because the parties involved were unable to reach agreement on the proposed changes to policy. The latter was reported to have occurred only within public sector organisations. Agreement had not been reached because there was a perception amongst employee representatives that the proposed changes to the disciplinary or grievance policy *weakened* the position of employees going through a disciplinary or grievance:

"If policies are very long and they've got a lot of employee protections in them already; for instance, giving 20 days notice that's the sort of thing that unions wouldn't really want to negotiate out of [the organisational policy]" (HR, B16)

Some employee representatives reported that employers had not reflected the spirit of Code in handling disciplinary and grievance issues because they were not bound by the letter of the Code (see Chapter 4.2 for further discussion). An implication here may be that reticence by unions to agree changes to organisational policy was driven by concern that revisions were contrary to the spirit of the Code.

3.2.2 Process of policy development

The process for reviewing disciplinary and grievance policy varied in the extent to which it was formalised: smaller organisations tended to describe less formalised review processes. In organisations of varying sizes HR staff or HR consultants led the process for reviewing disciplinary and grievance policy. Additionally, management were involved in the review process in some SME organisations. For example, line managers were reported by HR staff to have been given the opportunity to comment on draft policy and the managing director was required to 'sign off' the policy in some SMEs.

Where there was a recognised trade union, lay representatives were involved in the process for developing policies. There were two exceptions to this: lay representatives had not been involved in policy development when they lacked the resources – time, skills and expertise – to do so. In addition, an organisation that had a voluntary agreement with a trade union did not expect the union to have a role in policy development. The agreed remit of the trade union in this case was exclusively focused on representation of members in specific cases. Employers also reported that FTOs had been involved in the review process but this was not something FTOs participating in the research had themselves experienced.

When there was not a recognised trade union, employers had in some SMEs consulted with employees over proposed revisions to the policy. In one example, a draft policy had been shared with a staff committee which was given three weeks to consult with other employees and feed back on the proposed changes to the policy. It was reported by the HR staff member that feedback on the disciplinary and grievance policy had been less than in other policy areas. This was felt to be because the staff committee were informed that changes were aligned with the Code and employees were:

"... very respectful for the fact that its a legal process and they don't want to undermine that" (HR, B4)

Finally, employers of varying size and level of HR expertise also sought advice and guidance, for example, legal advice, when undertaking the review process.

3.2.3 Role of the Code and guidance in policy development

It was reported by HR and employee representatives that since 2009, the Code – and in some cases the guidance– had been referred to when a disciplinary and grievance policy was being reviewed. The Code/ guidance had been used as a key source of information when adapting organisational policy to reflect the updated Code. It had been used to 'sense check' the existing policy and where relevant was used as a framework for making revisions to the policy (see Chapter 4 for impacts of the Code on organisational policy).

In a smaller organisation HR staff reported that the Code had not been referred to as part of the policy review. In this case the HR staff member had consulted other sources of guidance. These were: an online legal and HR document template provider⁷ and legal advice. These sources of advice and guidance were chosen because they provided a template which could be adapted to reflect the

circumstances of the business. In addition, it enabled the HR staff member to discuss the proposed changes to the policy with a legal adviser. In this case the HR staff member was confident that the policy reflected the Code because it was felt that the source of advice and guidance which had been consulted was 'in line' with the Code.

Where an existing policy was already in place at the time of the Code's introduction, this was usually checked against Code and in some cases the guidance, rather than being replaced wholesale by a brand new policy. Conversely, in the case where no written policy already existed, one was developed from scratch using the Code as a framework. Some HR staff found the process of writing a new policy easier than adapting a pre-existing policy to reflect the new Code:

"[The organisation] didn't have any policies at all and I put policies in place. And that was in 2009 and, I adhered to, the Code ... it was nice and easy 'cause they didn't have anything so I could just more or less roll out what was recommended" (HR, B16)

Other HR staff found checking their existing disciplinary and grievance policies against the new Code to be an effective process.

" ... I mean I just went through all our stages [in the organisational policy], made sure that everything was in there, made sure that it was it would be compliant [with the Code]" (HR, A21)

3.2.4 Experiences of using the Code and guidance in policy development

There were five factors which affected ease of reviewing disciplinary and grievance policy in line with the Code. These were: comprehension; usability and accessibility of the Code and guidance; confidence in using a principles-based code; and the nature of existing policies.

Comprehension of the Code

The ease of undertaking a review was necessarily affected by HR staff's comprehension of the Code itself. Where these staff were less clear about the status of the old '3-step procedures' in relation to the new Code, it was more challenging for them to identify what implications the new Code had for policy:

"Very little [was changed in our policy] because when I spoke to this lady at the training course and I said If we carry on operating the 3-step, will we fall foul of the Code? And she said, 'No'. So, what we have done, the one change that we've made, and it's not really a change, it's an amplification, we have made full reference to Acas in all of our disciplinary and grievance procedures" (HR, B1)

Conversely, there were HR staff who found reviewing organisational policy straightforward because the principles-based Code placed less emphasis upon procedure and encouraged the streamlining and simplification of disciplinary and

grievance policy. The implication here is that greater comprehension of the Code improved the ease of review.

Usability and accessibility of the Code and the guidance

As reported in Chapter 2 (section 2.3), employers and employee representatives were generally positive about the usability of the Code and the guidance. The usability of the documents was also felt to have facilitated ease of reviewing policy.

Three aspects were highlighted as particularly valuable. First, the documents were said to be written in clear, accessible language – which helped HR staff in wording their own organisational policies. Second, the level of guidance provided across the two documents was felt to be sufficient to enable employers and employee representatives to interpret the principles and reflect these in the amended policy:

Case Illustration

An HR staff member working in a small private sector organisation referred to the Code when updating their disciplinary and grievance policy. In particular, referring to the Code helped the HR staff member to draw up the appeal procedure and to 'word' this aspect of the policy. (B4-HR)

The sample disciplinary and grievance policy and the 'handling disciplinary and grievance' flow charts contained in guidance were cited as particularly helpful:

"I think one of the things I like - because I'm fairly pragmatic- is there was a flow chart and so [we did some] matching of the flow chart and the document to what our current procedures was and I felt there were gaps in our current procedure". (HR, T13)

Third, the ready availability of the Code, particularly on the internet, was felt to have eased the process for reviewing policy. It was easy to look up the Code and check specific changes, or comments received on policy drafts, against the Code.

Confidence in using principles-based Code

The Code comprises a set of principles based on good practice rather than detailed and prescriptive procedure guidance. This is one of the key features that distinguishes it from previous legislation. Experience of reviewing organisational policy was affected by confidence in using a code which was principles rather than procedurally based. There were HR staff who felt less confident in using a principles-based Code and who expressed a preference for a more prescriptive code:

"I would prefer if there was firmer guidance as opposed to vagueness and openness because its down to people's own interpretation which differs"
(HR, B14)

Where confidence was lower, accessing additional sources of advice and guidance was felt to have been beneficial.

For other HR staff, there was an appreciation of the flexibility in a principles-based Code, coupled with a confidence about reflecting the principles in their policies. The relationship between confidence in using a principles-based Code and experience in handling disciplinary and grievance or HR experience more generally is unclear. For example, there were HR staff who were less confident about using a principle-base Code who had performed an HR role for a significant length of time.

Continuity of Code and '3-step procedure' / nature of existing policy

Not surprisingly, reviewing policy was felt to be particularly easy where the level of change required was minimal and where existing policies were already seen to be effective in resolving the issues. Minimal change was seen to be required in the following circumstances:

- The existing disciplinary and grievance policy was felt to already have largely reflected the Code. This was because there was perceived to be continuity between the '3-step procedure' and the new Code. This may have resulted from limited comprehension about the differences between the '3-step procedure' and the new Code (see Chapter 4).
- The existing policy was seen as having gone beyond the '3-step procedure' and was already reflective of best practice e.g. resolving disciplinary or grievance through early action where appropriate.

3.3 Handling Disciplinary and Grievances Cases

This section describes the nature and frequency of disciplinary and grievance cases within organisations and the procedures followed when handling them. It also explores experiences of using the Code and the guidance when handling disciplinary and grievance cases in the workplace.

3.3.1 Profile and level of disciplinary and grievances

Table 3.2 describes the types of disciplinary and grievance cases which had arisen within organisations. The average number of disciplinary and grievance cases per year which have arisen within organisations since the Code was reviewed in 2009 ranged from one to hundreds, and the number of cases going to employment tribunal ranged from none to four. This range is likely to result from variation in the size of employers within the sample as well as differences in workplace culture (see below).

Table 3.2 shows the types of issues reported as typically causing disciplinary and grievance cases.

Table 3.2 Profile of disciplinary and grievance cases	
<i>Disciplinary cases</i>	<i>Grievance cases</i>
<i>unauthorised absence</i>	<i>discrimination</i>
<i>timekeeping</i>	<i>harassment</i>
<i>failure to follow procedure</i>	<i>bullying</i>
<i>dishonesty</i>	<i>unfair treatment (including workload issues)</i>
<i>insubordination</i>	<i>terms and conditions (including flexible working, bonuses)</i>
<i>fraud</i>	
<i>misuse of equipment</i>	
<i>inappropriate behaviour towards colleague unfit for work capability</i>	

Balance between disciplinary and grievance cases

The balance of disciplinary and grievance cases arising within organisations can be classified into three groups. These were: where the numbers of disciplinary and grievances were balanced; where the number of disciplinary cases exceeded the number of grievances; and where grievances were more frequent than disciplinary cases. Organisations varied in the balance and volume of cases they experienced. This appeared important because it has a bearing on how the Code could be used; those with few cases or with just a handful of disciplinary cases were likely to have different considerations in thinking about organisational policy compared to organisations that initiated hundreds of disciplinary cases in any given year.

Organisational culture

The balance of grievance and disciplinary cases was felt by participants to, in part, reflect an organisational culture. Definitions of organisational culture, where described, were seen as a combination: of the approach taken by management to issues that could result in disciplinary procedures; the quality of relationships between staff and management; and relationships between staff themselves.

The degree of formality and informality in communication and workplace relations was also seen as an important aspect of an organisation's culture. Organisational culture was described as sometimes reflecting the values of the field in which an organisation worked – for example a member of HR staff in a large charity felt employee relations were marked by 'good will' because employees worked specifically to try to benefit others. Organisational culture could also be influenced by or reflected in relationships with recognised unions. Where there was no union presence in an organisation this was sometimes seen as 'natural' and unproblematic and in other circumstances was attributed to an employer's negative attitude toward unions. Organisational culture was seen as having a key influence on the balance and level of disciplinary and grievance cases.

"The one grievance [since 2009] was very unusual for us because our culture isn't to have grievances so it was very unusual, it is out of our normal practice of operations you know of employee relations" (HR, B4)

When the numbers of disciplinary and grievance cases were balanced this seemed to relate to a history of low numbers of both. A higher number of disciplinary cases (than grievances) occurred for three key reasons. These were: lack of employee awareness about the procedure for raising a formal grievance; the nature of the business; and organisational culture. The nature of the business was perceived to have contributed to a larger number of potential disciplinary issues. For example, an employee of a large transport organisation reported that the volume of disciplinary cases was influenced by the high number of employees who worked largely unsupervised. Additionally, an employee representative reported that there had been a higher number of disciplinary cases in the large public sector organisation they worked for. The high number of disciplinary cases was attributed to the public interface; any complaint from a member of the public usually became a disciplinary process and was then investigated. This was coupled with a culture of formal, rather than early resolution of disciplinary issues: where the first step was recourse to a formal disciplinary or grievance procedure.

Where the number of grievances was higher than the number of disciplinary cases this was because it was perceived that formal grievance procedures were used by employee representatives to address workplace disputes during a period of challenging industrial relations. An additional factor which was perceived to have contributed to a higher number of grievances than disciplinary cases was organisational change. An example of this, reported by an HR staff member, was the merger of two private sector organisations. The HR staff member reported that in the period following the merger employees raised grievances about terms and conditions which were perceived by employees to differ across the organisation.

Contrastingly, when organisational culture was reported by HR staff to have facilitated positive relations between employees and therefore encouraged earlier informal resolution of disputes, this was perceived to have contributed to low numbers of formal grievances. It was therefore reported by some HR staff that organisational culture was an important factor in determining how a dispute would be resolved within the workplace:

I think that [approach to handling] goes back to the type of culture and environment you work within, rather than the guidelines. (G5, HR)

3.3.2 Use of organisational policy, Code and guidance in disciplinary and grievance situations

Employer and employee representatives' default position was to use organisational policy as the primary reference for handling disciplinary and grievance situations. Line managers used their organisational policy directly or else received guidance in line with organisational policy from HR colleagues. This organisational policy was the primary reference because it was perceived to have been sufficient for handling disciplinary and grievance situations and, in some cases, reflected the Code.

Three aspects of organisational policy were reported to make it an effective tool for handling disciplinary cases and grievances. These were: clarity and the provision of practical guidance on handling; a good 'fit' between the policy and

the particular disciplinary or grievance case; and if the options for handling permitted the disciplinary or grievance case to reach a satisfactory outcome.

Where the organisational policy was not reported to have been the primary reference for handling disciplinary and grievance cases this happened because either:

- the organisation did not have a grievance policy;
- there was a policy but this was seen by an FTO or lay representative as failing to reflect the Code; or
- legal advice had been prioritised.

In cases where the organisation did not have a formal grievance policy a member of HR staff and FTO's reported that the Code was used as the primary reference when handling disciplinary and grievance situations. FTOs reported giving the Code to employers who had previously been unaware of it. Another organisation reported that an employment law service was the primary reference point for handling cases. This was because the organisation had taken out indemnity cover for disciplinary and grievance cases and did not itself have a policy which reflected the Code. Legal support was reported by the HR staff member to have been satisfactory for handling disciplinary and grievance cases. The organisation was also in the early stages of revising their organisational policy to reflect the Code.

There were two different circumstances under which the Code and/ or the guidance were referred to in addition to the organisational policy.

- Some HR staff and employee representatives adopted a 'belt and braces' approach to handling discipline and grievance situations, referring to the Code and/ or the guidance when handling all such situations. These HR staff referred to the Code for reassurance and/or for guidance.
- Other HR staff and employee representatives referred to the Code and/ or the guidance either only when handling complex or serious cases or when guidance was sought on specific issues not covered by the organisational policy. Examples of this included referring to the Code if dismissal was a possible result of a case and checking for guidance on the anonymity or identifiability of witnesses in disciplinary cases and the process for carrying out an appeal. The Code was reported to have been valuable in supporting HR staff and employee representatives in handling serious or complex cases and in deciding upon a course of action in relation to specific issues which had arisen during a case of disciplinary or grievance.

HR staff made explicit reference to the Code when explaining decisions about handling to employees/employee representatives. Similarly, employee representatives referred employers to the Code when disciplinary and grievance handling was seen to be contrary to the principles/ guidance of the Code:

"I used the Acas code against [the employer] because they didn't do a thorough investigation ... they basically decided to interview a few people"
(FTO, U12)

There were two circumstances under which alternative sources of advice and guidance had been used in addition to organisational policy. These alternative sources were accessed instead of or in addition to the Code. HR staff who were less experienced in handling disciplinary and grievance situations discussed cases with HR and legal advice services rather than referring to the Code themselves. This type of advice and guidance was particularly valued in place of the Code when the HR staff member was the sole employee with HR responsibility as it enabled the HR staff member to discuss handling with someone else.

Additional and alternative sources such as the Acas helpline and legal advice were also referred to where a case was particularly serious or complex, for example a disciplinary case that had been submitted to tribunal, where guidance was sought on a particular issue or when an organisation had indemnity cover for disciplinary and grievance problems.

3.4 Views on using the Code in handling disciplinary and grievance cases

As discussed in section 1.1, the Code is principles-based and comprises a set of principles based on general good practice rather than detailed and prescriptive procedural guidance. HR staff and employee representatives had two views on using a principles-based Code for handling disciplinary and grievance cases:

HR staff and employee representatives were **positive about the flexibility** offered by handling disciplinary and grievance situations under a principles-based code. This was because flexibility was considered to be important for ensuring that each case could be resolved in a way which was reasonable from the perspective of employer and employee. In addition, HR staff were positive about the usability of the Code and were confident about interpreting and applying the principles in the Code to disciplinary and grievance issues. In this view, more prescriptive guidance would have been challenging to implement because focusing on procedure when handling disciplinary or grievances *'could get you tied in knots'* (HR, B16).

As in using the Code to revise policy, other HR staff and employee representatives were less positive about using a principles-based code. For HR staff this was because they were less confident in using a code which did not provide detailed operational guidance. Some HR staff found it challenging to interpret aspects of the Code - for example, what constituted a reasonable period of time before proceeding with a disciplinary case in an employee's absence.

The less prescriptive approach was seen by HR staff to have made employers potentially vulnerable in two ways. These were: employee representatives may ignore the spirit of the Code when representing members; and employment tribunals may interpret the Code differently to an employer.

When lay representatives and FTOs had concerns about using a principles-based code for handling disciplinary and grievance cases, this was because they perceived that the Code had *weakened* the position of employees and employee representatives. This was because it was perceived that employers could ignore the spirit of the Code because they were not bound by the letter.

3.5 Summary

The introduction of the Code was reported to have been a key trigger which had prompted organisations to reactively review their organisational disciplinary or grievance policy. Other factors which may have coincided with changes to the Code to prompt a reactive review were time elapsed since last policy review, disciplinary or grievance cases arising or the advice of an external partner and organisational change. In other cases disciplinary and grievance policy review was more proactive, e.g. when organisations plan to review policies on a regular basis.

Whether or not an organisation had initiated a policy review reactively was driven by six key factors. These were: resources; number of disciplinary or grievances; effectiveness of existing disciplinary and grievance policy and procedure; awareness of legislative and policy change; status of Code and perceptions of legal obligations and: adjusting tribunal rewards. When a policy review had been initiated but was incomplete at the time of interview, this was because the review process had begun recently or the parties involved were unable to reach agreement on the proposed changes to the policy.

The Code and guidance were referred to when carrying out a review of disciplinary and grievance policy. The exception to this was that some smaller organisations had referred to alternative sources of advice and guidance. When an existing policy was in place it was usually checked against the Code rather than being replaced by a new policy. Alternatively, when there was not a written policy, one was developed from scratch using the Code as a framework. Both approaches to revising policy were viewed to be effective.

Five factors affected the ease of reviewing disciplinary and grievance policy in line with the Code. These were: comprehension; usability and accessibility of Code and guidance; confidence in using a principles-based code; and the nature of existing policies. When comprehension of the Code was limited or confidence in using a principles-based code was low, then reviewing policy was felt to be more challenging. Alternatively, when comprehension was high and there was an appreciation of the flexibility in a principles-based Code, then the review was seen as being easier.

Organisational policies were used as the primary reference for handling disciplinary and grievance cases. Where this was not the case, this was because: the organisation did not have a grievance policy; the policy had not reflected the Code; or legal advice had been prioritised. While policy was the primary reference tool, the Code/ and or guidance was used in addition to organisation policy in two ways: the Code was referred to in every disciplinary or grievance case or the Code was referred to when handling particularly serious or complex cases or when guidance was sought on a specific issue.

There were two views on using the Code in handling disciplinary and grievance situations. When the Code was viewed positively this was due to the ease of interpreting and applying the principles of the Code to individual cases. In addition, flexibility in handling disciplinary and grievance issues was also appreciated. When the Code was viewed less positively this was due to the participant being less confident in interpreting and applying the Code. It was also

influenced by a concern that the parties involved in handling disciplinary or grievance cases may interpret the Code differently or ignore the 'spirit' of Code.

⁴ Those with fewer than 50 employees

⁵ J. Forth, H. Bewley and A. Bryson (2004) *Small and Medium-sized Enterprises: Findings from the 2004 Workplace Employment Relations Survey*, London: ESRC/ACAS/PSI

⁶ *Workplace conflict management: awareness and use of Acas code of practice and workplace mediation – A poll of business* (Acas Research Paper, Matthew Williams and Acas Research and Evaluation Section).

⁷ e.g. simply-docs.co.uk

4 Impacts of the Code

This chapter addresses the third objective of the evaluation: evaluating the impact of the Code. The following sections examine perceptions of impact on the nature of organisational policies and procedures in disciplinary and grievance cases; case handling; the profile of disciplinary and grievance cases; and the impact of the Code on escalation to employment tribunal.

Other factors which were seen to influence policies, handling, case profiles and escalation in addition to the Code are also described. These factors are important context, sometimes working alongside and sometimes working in opposition to the Code.

The chapter concludes with a discussion of the key facilitators and barriers to the Code having a positive impact.

4.1 Impact of Code on policies and procedures

Participants described two groups of employers; those where the Code had exerted an impact on organisational policies and procedures and those where no impact was evident. These differences were described by HR staff and employee representatives alike. (See chapter 3.2 for why there was a lack of impact).

Where the Code was perceived as having had an impact, the extent of this varied from minimal to more extensive change. Extensive change happened either because previous policy was seen as not having provided enough detailed guidance about handling a grievance or disciplinary case or where what had stood prior to the Code failed to encourage a resolution prior to recourse to formal procedures.

Changes to organisational policies and procedures were described as increasing emphasis on early resolution; clarifying, simplifying and providing guidance; and revisions to specific elements of policies and procedures.

4.1.1 Increased emphasis on early resolution of disciplinary cases and conflict

Some revisions to organisational policies in response to the Code sought to increase emphasis on early and 'informal' resolution, that is - action taken prior to and without the need for recourse to a formal disciplinary or grievance procedure or legal action. Where explicitly written into a policy, this was done with the aim of producing a shared set of expectations for employer and employees that the first recourse, wherever possible, would be an attempt to resolve issues informally. In some cases this also included clarification that a record could be kept of an informal attempt at resolution without this in itself making a process formal.

"[Changes made to policy based on the Code] for the grievance it was having a large informal bit and explaining what a grievance is and what isn't a grievance importantly as well so it's building people's understanding

really of, of what it is and that there's an informal stage and that we should be using that where we can ... explaining the timescales within the stages and what people can expect. For the discipline [cases] I'd say it's more again, it was the investigation piece wasn't in [policy] previously, or representation or anything like that so it's, it was building out the kind of, the earlier stages within each policy." (HR, AB2)

HR staff in particular described placing an increased emphasis on seeking resolution prior to the use of formal grievance or disciplinary processes, even where this had not been included in the revised written policy. This aim was communicated to line managers and also reflected in HR discussions when seeking access to mediation services, should it be appropriate. For some, the introduction of mediation into an organisational approach was prompted by a review of policies in light of the Code:

"Our procedure as per the Code is [to] try to resolve things informally and try to only go to formal when needed. It made us more aware of mediation as an option. It made us think about how we would afford [to] do mediation. It [the Code] raised the idea of mediation - I've known about mediation for years but it makes you think about it" (HR, B41)

Increased emphasis on early resolution was also covered in a facilities agreement with a recognised trade union and was an aim shared with union representatives, rather than written into the disciplinary or grievance procedure.

4.1.2 Clarification, simplification and guidance

Other changes made to organisational discipline and grievance policies sought to clarify, simplify and offer additional guidance – particularly for line managers handling discipline and grievance situations as well as for employees who may go through the process.

Clarifications were made to a policy's purpose or to specific aspects of it such as the different steps within a procedure (such as informal early stages, investigations and appeals) or individual procedural elements (such as the circumstances in which an employee has the right to be accompanied).

Changes to policies and procedures were also aimed at making them simpler and clearer for line managers to use. This involved providing guidance and in some cases extended to toolkits of resources - like checklists and template letters.

"[After the review prompted by the Code] We had a more clear and structured policy document and previously our disciplinary policy had just been part of the company handbook - and it had, it was a couple of pages of what would happen - now we actually have a more in depth and, and concise policy document and along with a tool kit for, for managers so we have more guidance, template letter, checklists for investigation meetings, that kind of thing. So we've provided a whole suite of documents to go along with the policy document." (HR, C18)

Other revisions sought to offer clear definitions for key terms (e.g. disciplinary, grievance, gross misconduct) and to harmonise language across separate grievance and disciplinary processes.

Changes to policies and procedures could also involve a simplification and streamlining of a document (e.g. a reduction from 15 pages to three).

"[the organisational disciplinary and grievance policy] was written in that civil service speak that isn't plain English, two people can read it and come up with different meaning. This is one of the things I liked [about] the new code, it's easy to read and that's what were going to try and get for our revised code it should be simple, it doesn't need to be two volumes thick" (FTO, U11)

4.1.3 Revisions to specific aspects of existing policies

Revisions sometimes also included changes to specific aspects of existing policies. The examples given by HR staff and lay representatives were:

- Reducing the timescales in which both discipline and grievance cases were aimed to be processed;
- Separating out policies for handling discipline and grievance cases. One organisation had also separated policies on capability and discipline where these had been previously combined;
- Changes to policy on investigating grievances filed by ex-employees. In one sector, a FTO described the time and effort saved in no longer responding to grievances filed by ex-employees. In another example, grievances filed by ex-employees were dealt with by letter rather than using a long and full investigatory process.

4.2 Handling cases

Discipline or grievance cases were handled using informal and/ or formal procedures. Where participants discussed informal approaches they defined this as action to address an issue which occurred prior to and without the need for recourse to a formal disciplinary or grievance procedure. Examples given by participants included informal '*chats*' and counselling to address conduct or capability as well as '*mediation*' undertaken by internal HR staff.

Two examples were given, though, where participants felt an employer had failed to handle a case by any approach. In one case a formal grievance had been raised by an employee but was reported by the employee to have been overlooked by the employer. In another case an employee representative reported that a colleague had been dismissed for unauthorised absence, without the employer following a procedure. An appeal was made and the individual in this case was subsequently reinstated.

Decisions about how to handle disciplinary cases were made by the employer. In addition, employee representatives felt they had, on occasion, influenced an

employer's decision to handle a disciplinary case informally rather than formally. For example, a lay representative reported that they had influenced an employer's decision to handle a case of serious misconduct - which had taken place outside the workplace - informally. The lay representative had directed the employer to the Code to support their recommendation that the case be handled informally.

Decisions about handling grievances were made by the employee and in some cases the employee representative and employer also had involvement. This was reported by HR staff and representatives where an employee approached them to discuss what course of action to take. In addition to the organisation's disciplinary and grievance policy and the Code, the factors which were reported by employers and employee representatives to have influenced handling of disciplinary and grievance issues were: employee and line manager awareness of options, nature and circumstances of the disciplinary or grievance case, expected outcome of the procedure, the involvement of employee representatives and organisational culture.

HR staff and line managers working in organisations varying in size reported that the nature of the disciplinary case influenced handling, regardless of changes made as a result of the Code. When a case was perceived to have been sufficiently serious and where dismissal was seen as a possible outcome, early handling without recourse to formal procedures was not considered appropriate by employers.

Examples of cases which were felt by HR staff and line managers to have warranted formal handling due to their seriousness included: inappropriate behaviour such as harassment and intimidation, attending work under the influence and breach of contract. HR staff also reported having considered the particular circumstances of the disciplinary situation when deciding upon how to proceed with a case. For example, an employer had attempted to resolve a disciplinary issue related to capability without recourse to formal procedures because poor performance was being driven by the employee's difficult personal circumstances.

A key influencing factor in how cases were handled was reported to be organisational culture. This factor was cited as key across participant groups. When HR staff reported that there was a culture of resolving disputes informally it was reported by HR staff that employees were less likely to submit a formal grievance and employers would try to resolve disciplinary cases without recourse to formal processes. Contrastingly, other HR staff reported a 'cultural element' within areas of the business which had resulted in employees using grievances as a 'first port of call' to highlight an issue. Similarly, some lay representatives also reported that since the introduction of the new Code they had submitted formal grievances to address workplace disputes. This was due to deteriorations in workplace relations rather than as a result of the Code. Lay representatives also reported that it was common practice for some employers to handle complaints about employees through the formal disciplinary procedures.

Handling overlapping disciplinary and grievances

HR and employee representatives reported that they had handled or expected they would handle overlapping disciplinary and grievance cases in three ways. These were:

- halting the disciplinary case in order to deal with the grievance in every circumstance;
- making the decision on a case-by-case basis;
- or following the guidance outlined in the Code. This was understood to be: halt the disciplinary case or handle the disciplinary and grievance case concurrently.

In one instance organisational policy did not allow a grievance to be submitted when it was related to an on-going disciplinary case.

Case illustration

An employee went through the formal disciplinary procedure and appealed the outcome of the disciplinary action. The appeal was not upheld. The employee then submitted a grievance which was related to the disciplinary. The employer, after referring to the Code, decided not to take action on the grievance because the reasons for submitting the grievance were the same as the reasons for appealing the outcome of the disciplinary. The employer was confident that the grounds for the grievance issue had therefore already been addressed during the disciplinary case.

HR staff and FTOs also reported a sense that some employees submitted a formal grievance in order to 'stall' a disciplinary procedure. This was seen, by HR staff, to be contrary to the spirit of the Code. Alternatively, other employees were perceived to have submitted grievances where a complaint about a disciplinary issue could have been properly addressed within the disciplinary procedure. This had resulted in delays to handling because the employer was unsure about how to proceed with the overlapping issues. Some employee representatives were also concerned about the flexibility in handling overlapping disciplinary and grievance cases which was enabled by the Code. It was reported by employee representatives that employers had used the flexibility of the Code to handle cases in a way which was contrary to the spirit of the Code.

4.3 Impact of the Code on handling and representation of cases

As with policies and procedures, the handling and representation of cases was an area where one group of participants described impacts and others perceived a lack of change since the introduction of the Code.

Where no impact was perceived in this respect, this was closely related to a lack of change in policies and procedures. This lack of impact on case handling was because practice was already said to be good and in line with the Code. However, it was also described in organisations where handling cases was seen to be done in a way which did not comply with good practice. This was reported by FTOs, speaking about organisations they had worked with which had been

unaware of the Code and either lacked any policies or procedures, or had inconsistent approaches to disciplinary issues.

Where impacts were described in the handling and representation of cases as a result of the Code, both positive and negative changes were identified. The Code was described as affecting handling by:

- Increasing flexibility and earlier resolution without recourse to formal procedures
- Being reasonable; allowing an appropriate process for the case
- Providing a set of shared expectations for both parties
- Changing the timescales in which disciplinary or grievances were processed
- Changing the power balance: 'weakening the employee position'

Each of these impacts are described in turn in the following sections:

4.3.1 Increasing flexibility and earlier resolution without recourse to formal procedures

Policies and organisational emphases that sought earlier resolution were translated into informal handling of cases – i.e. without using formal procedures. Employers, employees and trade union representatives, all reported this kind of change.

Where informal handling had increased, employers were described by both HR staff and lay representatives as becoming more 'reasonable'; for example, addressing minor issues of conduct without reverting to taking formal disciplinary action. HR staff described briefing, training and supporting line managers to deal with issues as early as possible.

This was seen by HR staff to be facilitated by regular contact between line managers and employees, for example in regular supervision. Training line managers was also viewed by both HR staff and FTOs to help them tackle issues 'head on' as early as possible, rather than waiting for a grievance or disciplinary process to take place in the appropriate formal forum which they may have done in the past. Increased use of informal mechanisms to address problems on the part of the employer was reported by HR staff to have the knock-on impact of improving relations between management and employees.

"Having this procedure, having the Code there has helped us really to build up a better relationship with our staff. Before it could've been sometimes very much sort of like you've got a stick and you wave it over them and there was no conversation with your staff members for them to, for them to understand better why they need to do certain things and for you to understand better the issues that are stopping them from doing things properly" (HR, B14)

Lay representatives in some organisations reported an increased involvement earlier in cases. This enabled them to take part in seeking solutions prior to a formal grievance or disciplinary procedure as well as helping avoid escalation to grievances by discussing options and likely outcomes with employees. It also

enabled them to help an employee understand some of the likely pressures and stresses in undertaking a grievance; and so to make a more informed decision.

The use of informality was also reported to be driven by employee attitudes toward formal grievances. Here, there were opposing views on the stances of employees, which is likely to reflect different organisational cultures. In some organisations employees were described as filing a grievance only as a 'last resort'. In others there was a view reported by a lay representative that, prior to the Code, seeking to handle a case without recourse to formal process was viewed as a 'cop out'. The Code had helped shift employee attitudes in this case by emphasising informal resolution as recognised best practice – the representative described himself and colleagues giving the Code to employees to help convince them of the value of an informal discussion rather than formal grievance procedure.

Mediation

Mediation was used in two ways: in place of formal disciplinary action outlined in organisational policies, or after a formal grievance had reached an outcome. While mediation had been used prior to the Code in some organisations, for others the use of mediation was described by HR staff as an impact of the Code.

Case illustration:

An employee submitted a grievance about the conduct of a manager. The formal grievance procedures were followed and the outcome was that the grievance was not upheld. Once the grievance had reached an outcome the employer accessed the Acas mediation service. Mediation was perceived by the employer to have successfully restored the working relationship between the parties. However, some time after the grievance had reached an outcome the employee resigned and 12 months later submitted a claim to employment tribunal. The case was not upheld.

When mediation was used in place of a formal disciplinary action it was reported by HR staff to have worked successfully to resolve low level disputes between colleagues. Mediation was not expected by some HR staff to be effective in resolving disciplinary or grievance cases where the relationship between the parties involved had deteriorated to the extent that they did not wish to communicate with one another. HR staff reported that in this circumstance they had chosen to address the issue through formal procedures rather than through mediation.

4.3.2 'Being reasonable'; using an appropriate process for the case

From the perspective of HR staff and line managers, the Code had meant that they were more able to employ a 'reasonable' process appropriate to the circumstances of a particular case, rather than engaging with the full 3-step procedure each time.

The ability to implement a 'reasonable' process according to the case meant not only a greater emphasis on earlier resolution but also had a beneficial impact on the resources required for dealing with grievance and disciplinary issues. Here a senior member of HR staff felt that simpler cases were more likely to be handled

by a line manager alone, in a single meeting where previously a more formal approach would have required more time and input from HR and more of the line manager's time in multiple meetings and formal evidence gathering.

This approach was also seen by HR staff as benefiting the employee in cases where progressing a more minor case under the 3-step procedure could have seemed more 'heavy handed' than necessary and less accommodating to the requests of the employee. The changed approach was seen by HR staff as being potentially less 'aggravating' to the employee.

4.3.3 Providing a set of shared expectations for both parties

Improved policies and guidance based on the Code were seen to provide all parties with a shared set of expectations for their conduct in grievance and disciplinary cases. This was closely related to increased emphasis on solutions without recourse to formal procedures and improved dialogue between managers and employees because of explicit policy commitments to early and informal handling, but also related specifically to formal grievance and disciplinary processes.

"Without it [the Code] it'd be a free for all. They would just do what they wanted to do so at least we got some guides which guides both us and the employer and says 'look, this is how you should conduct yourself'." (FTO, U12)

One FTO described bringing the Code to investigatory meetings where employers seemed unaware of the changes introduced. Using the Code in this way could, he felt, elicit a better response from management in an investigation because the expectations laid out came from Acas. There was more employer receptiveness in the mind of the FTO, to this set of 'independent' expectations compared to a union officer asking management to behave in a particular way.

4.3.4 Changing the timescales in which disciplinary or grievances are processed

Where new policies, procedures and improved handling were seen to have helped speed up disciplinary and grievance procedures, this was a welcome change. This was in part as a result of increased recourse to earlier resolutions but also reflected swifter handling of full grievance and disciplinary processes.

Participants also described organisations in which resolution of grievance and disciplinary cases had slowed down, although the role of the Code in this in relation to other factors was unclear. FTOs cited examples where they felt employers had 'dragged their heels'; being slow to appoint an investigating officer and the process then being slowed by the constraints of the investigating officer's busy diary. Convening all parties for meetings could also be challenging, especially where employees worked away from an office, worked shift patterns or cases took place at times of year where many employees take leave.

However, managers were not always the source of the delay. Lay representatives described themselves as sometimes deliberately seeking to draw out a process. This was done to give more time for preparing for meetings or collecting

evidence. Where speed was a priority on the part of the employer, lay representatives could be concerned that put at risk a thorough and fair investigation into claims against their members. The involvement of a FTO could also contribute to the slowing down of the timescales in which meetings took place because of their diary constraints.

4.3.5 Changing the power balance: ‘weakening the employee position’

The Code was also seen as having negative impacts on case handling in grievance and disciplinary cases by some lay representatives, FTOs and an employee (it should be noted that lay representatives and FTOs were also amongst those describing the positive impacts above).

The Code was seen by these FTOs, lay representatives and employee as ‘weakening’ the employee position because the repeal of the 3-step procedure had removed any obligation for employers to comply with a particular set of processes. The Code was perceived as changing the status of following a fair process from an obligation to a recommendation.

Trade union representatives reported that some employers had effectively interpreted the Code as a downgrading in the care and due process given to the handling of disciplinary and grievance issues. This was in part because of the lack of obligation to follow a particular set of processes as well as an understanding that employers could no longer be penalised for failing to follow process at employment tribunal.

This was seen as resulting in a ‘weakening of an employee position’ as it removed the ability of employees or their representatives to hold employers accountable to a particular process during a disciplinary and grievance case. For some this represented a general approach and attitude to case handling, for others it was described as a ‘downgrading’ of specific elements of case handling.

“[The Code] It gave employers more scope to be a lot more lax with their own procedures for want of a better word, even though the Code does recommend that the procedures are followed... I think that then that gave them the opportunity to treat staff worse than they did before” (FTO, U4b03)

This was illustrated by this FTO in an example case:

Case Illustration

This disciplinary case took place in early 2011 in a private sector retail employer without trade union recognition. An employee was accused of bullying and was suspended, pending investigation. The FTO attended the investigatory meeting where, in her view, the employer had been unable to provide sufficient evidence to substantiate the bullying claim. The employer adjourned the investigation in order to gather further evidence and reconvene at a later date. The next contact the employee reportedly received from the employer (whilst still suspended) was a letter of dismissal. An appeal was being considered at the time of interview. (FTO, U4b 03)

The FTO describing this case felt that, under the previous legislation, this would have been a clear case of unfair dismissal whereas under the new Code there is nothing to prevent an employer conducting an investigation in such an 'unfair' manner.

In another example of a 'downgrading' of case handling, an employee described an employer's revised approach to overlapping grievance and disciplinary cases. In the employee's case, the employer was reported to have cited the Code as the reason they no longer felt compelled to halt disciplinary action in order to deal with a related grievance first – a practice they had previously adhered to. This disciplinary case resulted in dismissal and the related grievance was heard six months after the employee was dismissed.

"The moment you use the 'may' instead of 'should' or 'must', the management would use that as a, a non-binding rule, so they could say, 'Well, it's a matter of us, our choice', and we always try, choose not to do the grievance complaint first." (employee, U28)

FTOs and lay representatives also reported cases where they received relevant supporting paperwork just ahead of a hearing, while in the past they used to receive these same documents with time to prepare. Dealing with sickness absence as a disciplinary or capability issue was another area in which the Code was seen to leave a 'grey area' with room for employers to interpret to their advantage.

4.4 Impacts on the profile of disciplinary and grievance cases

The Code was perceived to have influenced the profile of disciplinary and grievance cases in different ways in different organisations. These can be grouped into employers where:

- decreases were reported in either disciplinary cases, grievances or both;
- an increase in disciplinary cases or grievances were reported;
- the number was largely unchanged but the nature of cases had altered; and
- those where no change was reported.

4.4.1 Decreases in disciplinary cases, grievances or both

Participants were asked to reflect on the impact of the Code, thinking about the levels seen in their organisation or (in the case of FTOs), the organisations where they represented members, before and after the Code. Decreases in the numbers of cases were perceived and reported specifically as a result of increased emphasis on earlier resolution. This was seen as a direct impact of the Code.

The repeal of the 3-step process was also said to have decreased the number of grievances. Under the previous legislation, FTOs and lay representatives explained that they had felt the need to file every potentially relevant grievance

in a case to ensure the best chance of success should there be an employment tribunal. This meant, for example, that in a case where an employee's capability was assessed using a disciplinary procedure, the union would encourage a formal grievance against the employee's line manager if they were felt to be unfairly victimising the employee or lacking in management skills.

Factors beyond the Code were also seen to have reduced the number of cases. These were changes in employer approach – for example, deciding whether disciplinary action is instigated based on an assessment of intent on the part of the employee – with genuine mistakes instead being addressed through alternative processes. The recession, rising unemployment and increased redundancy were seen to make employees more careful in their conduct and less willing to 'rock the boat' by filing a grievance.

4.4.2 Increases in disciplinary cases and/or grievances

Reported increases in disciplinary cases were described where employers were seen to use the lack of compulsory processes to strengthen their position. This was described by employee representatives. In some cases this was reported as resulting in an increase in disciplinary cases because employers were less afraid a case would escalate.

Factors beyond the Code were responsible for other increases in grievances and disciplinary action, where specific problems had occurred in relations between management, unions and/or employees or where significant organisational change had recently taken place (e.g. a merger).

4.4.3 Changing profile of disciplinary and grievance cases

While some FTOs and lay representatives described changes in the number of cases they dealt with since the advent of the Code, for others the number had remained unchanged but, they were now more likely to see more serious or complex cases than they had prior to 2009. This was attributed to an increase in earlier resolution prior to union involvement in a case. This was reported as a marked change for FTOs who only dealt with cases once they had escalated to a formal process.

4.4.4 No change in number and nature of cases

Where there was no change in the cases seen since 2009, this was underpinned by two different factors. In organisations where policies, procedures and handling of cases were unchanged by the Code, it follows that the profile of cases was also unchanged. In other organisations, despite changes in policy and handling that could have resulted in a decrease in disciplinary and grievance cases, other influences had had the opposite effect. A limited union remit for involvement in decision making and poor employment relations were examples of these other factors working to keep the level of grievances high, despite changes instigated because of the Code.

4.5 Impact on escalation toward employment tribunal

Participants found it difficult to judge whether the Code had made any difference to the number of cases escalating to employment tribunal. This was in part because the number of employment tribunals any individual was involved in was small and varied from year to year both before and since the introduction of the Code.

When discussing the impact of the Code on escalation, participants discussed their expectations and anticipated changes, rather than citing any experience of change.

The Code was seen as one of a range of factors that was likely to have an impact on the likelihood of a case escalating to employment tribunal.

Participants anticipated that the level of employment tribunal cases would either:

- **Decrease as a result of earlier resolution.** The Code was seen to play an important role in this anticipated change but only in conjunction with employers adopting the ethos of the Code and training line managers in case handling and early resolution; or
- **Remain unchanged.** In this view the Code was seen as likely to have little impact on whether a case is resolved through formal procedures or not because other factors are more significant in predicting escalation. One of these factors was seen as employee motivation. If an employee is determined to take a case to tribunal, the Code will have no impact on this decision. Another factor was the perceived lack of risk or penalty for an employee. This view was held by a senior line manager within a small company. Even where an employee loses a case it was felt they are rarely asked to pay the employer's costs and employees' solicitors work on a no-win no-fee basis. This was seen as motivating employees to take a case to employment tribunal, regardless of the Code.

Even where participants did not feel that the Code would have any impact on cases escalating to employment tribunal, it was felt likely to have an impact on case outcomes. HR staff and line managers saw the introduction of the Code as making employment tribunals fairer for employers. This was because it was understood that an employer could no longer be 'struck down' for failing to follow exact and specific process and that the substantive issues within the case would have more prominence. This, it was recognised, depended on an employer having acted fairly and reasonably. This shift in anticipated employment tribunal outcomes was seen to be particularly helpful to small employers who had struggled to have the resource or HR expertise in the past to follow the 3-step procedure to the letter.

4.6 Other factors affecting policies, procedures and handling of grievances and disciplinary matters

The Code – while often cited as the primary catalyst in changes in the policies, procedures and the handling of grievance and disciplinary cases – was not the

only factor affecting change. The organisation's culture, handling skills of line managers and the relationship between employer and union were also seen as factors affecting policies and case handling.

Organisations characterised by better employee-employer relations were those where management was inclined toward policies that were 'fair' to employees. They were also more likely to be those 'on top of' conflict management and early resolution. They were seen by FTOs and HR consultants as well as HR staff as the kind of organisations more likely to have reviewed policies, procedures and practices in response to the Code and were more likely to have trained their line managers in conflict management. The positive impacts of the Code in this type of organisation can be seen as an reflection of the wider organisational culture.

Those organisations where employment relations were described as being less positive and less of a priority were described as likely to either be unaware of the Code or more likely to use the lack of legally required process to 'downgrade' or 'weaken' the employee position.

4.7 Facilitators and barriers to impact of the Code

The Code was reported across the sample groups as having a positive impact on policies, procedures, case handling and the profile of disciplinary and grievance cases within an organisation. This positive impact was, however, not an experience shared uniformly by participant groups and employee representatives were more likely to report either a lack of impact or negative impacts. The ability of the Code to have an impact can be seen as assisted or mitigated by other factors. These factors were:

- **Awareness of the Code** for both employers and employees. FTOs in the study pointed to examples where employers remained unaware of the Code. These employers were described as typically smaller, private sector and lacking an HR professional function. Without awareness, there is little impact the Code could have for these employers. Related to this, benefit was seen in increasing employee awareness of the Code. An HR consultant expressed the view that 'in a recession, employee rights go out the window' and to know about the Code could assist employees in maintaining those rights. Awareness of the Code amongst employees was also seen by employers as helpful in cases where grievances and disciplinary cases were underway. The Code was seen as allowing employees to understand that early resolution without recourse to formal procedures was seen as 'best practice' by Acas, not just the employer, and to demonstrate that the employer was following a 'reasonable' procedure.
- **Organisational culture, interpretation and appropriate expertise.** How an employer was likely to interpret the Code was, in part, related to their organisational culture. Organisations with a culture that embraces early resolution were those most likely to embed the principles of the Code at the heart of their policies and practice. A concern remained that the Code was less likely to have positive impact where an organisational culture was less receptive *or* where a company lacked a professional or expert HR function. A principles-based Code requires more interpretation than its predecessor, which was prescriptive in precise procedure. This

interpretation was seen by both HR staff and employee representatives as something that takes relevant skill and knowledge as well as good will.

4.8 Chapter Summary

The Code, in conjunction with other factors, was seen across respondent groups to be able to have an impact on organisational policies and procedures, case handling, the profile of disciplinary and grievance cases as well as some bearing on the likelihood of a case escalating to employment tribunal.

Where the Code had affected organisational policies and procedures it was described as increasing an emphasis on early resolution, clarifying, simplifying and providing guidance on existing policies as well as driving revisions to specific aspects of existing policies.

Where organisational policies and procedures were said to have changed for the better, this was reflected in more positive handling of cases and in faster resolution of issues. Amongst trade union officers and lay representatives there were reports that the Code had had a negative impact on case handling for specific employers. Here some employers were reported to have interpreted the lack of legally required processes as an opportunity to 'weaken' the employee position. This was seen in employers not following 'fair' procedures or 'downgrading' some practices – such as a policy on not halting a disciplinary to hear a related grievance.

Organisational culture, line managers' handling skills and relationships with trade unions were seen as key factors working alongside the Code in exerting a positive or negative impact on organisational policies and case handling. Organisations with a culture amenable to early resolution and where relations with employees were positive were seen as more likely to have adopted the Code in their practice.

Where earlier resolution had been implemented the Code was also seen as able to produce a decrease in the number of disciplinary and grievance cases within an organisation. Lay representatives and particularly FTOs described a changing profile of cases – less involvement in less serious cases. There were also organisations reporting an increase in the number of disciplinary cases and grievances. Other factors were often said to be more important than the Code here although there was a concern that the lack of legally binding processes could encourage employers to file more disciplinary cases.

Participants' perceptions of the Code's impact on escalation to employment tribunal were based on what they expected to happen rather than what they felt they had seen so far. Where implementation of the Code had brought about increased early resolution it was anticipated that there would be a concurrent decrease in employment tribunals. Other factors, however, were seen as more important in case escalation. These were employee motivation and the perceived lack of risk or costs for employees in going to Tribunals. Where cases did reach Tribunal, it was anticipated by HR staff and line managers that the Code would assist employers to gain a fairer outcome.

The capacity of the Code to have a positive impact is helped or hindered by other factors relating to awareness of the Code, organisational culture, expertise and the room for interpretation left by the Code.

5 Conclusions

The new Acas Code of Practice on Disciplinary and Grievance Procedures (the Code) was introduced in April 2009, following recommendations made in Michael Gibbons' review of employment dispute resolution in Great Britain (2007). The Gibbons Review called for a shift towards informal rather than formal solutions for dispute resolution. This was because employment tribunals were described as highly bureaucratic and complicated processes that had incurred significant financial and non financial costs to employees, employers and the government. To meet this aim, the Review recommended a repeal of the 3-step procedures in favour of "clear, simple, non-prescriptive guidelines on grievances, discipline and dismissal in the workplace, for employers and employees" (Gibbons, 2007:10–11).

This report presents findings from a qualitative evaluation of the Code. The findings are drawn from interviews with employers, employee representatives and employees. The employer perspective is drawn from interviews with self-employed HR consultants and HR staff and line managers working in employer organisations. Employee representatives include both full time union officials (FTOs) and lay representatives. Findings from the two employee interviews are also included.

These findings relate to the key evaluation objectives of exploring the understanding, use and impacts of the Code and guidance documents. This chapter discusses the key findings from the evaluation, their implications and the suggestions made by participants for improving the impact of the Code.

5.1 Awareness and understanding of the Code

There were high levels of awareness and understanding of the Code among HR staff and employee representatives, particularly staff who receive updates from professional networks, associations and relevant services. Awareness of the Code was, however, inconsistent and the awareness was reported to be lowest amongst employers with less formalised HR functions. A limited or lacking awareness amongst groups of employers can mean that the Code has not been adopted and enshrined within organisational policies on grievance and disciplinary cases.

To address this, participants saw value in continued and increased promotion of the Code, targeted particularly at 'harder to reach' employers (such as those with less formalised HR functions; often smaller employers in the private sector), as well as employee representatives, line managers, and employees. Raising awareness of the Code amongst employees and their representatives was seen as particularly pertinent in the context of an economic downturn. It was during these times that employees' rights were seen, in the view of an HR consultant, to be at heightened risk of being overridden. To this end, participants highlighted the importance of continuing efforts to raise awareness of the Code since its launch to keep the Code fresh in employers' and employees' minds.

While some employers used the Code to revise or check organisational policies, this was not an approach taken by all employers. Where the Code was not incorporated into policies, there could arguably be benefit in increasing employer understanding of the usefulness and relevance of the Code for their policies. Secondly, there may be value in educating employers in the good practice of organisation-wide communication about policy change; an approach advocated by some FTOs and HR consultants. Communication on this level might serve to increase awareness of the principles underpinning the Code among groups perceived to have lower awareness such as line managers, lay representatives and employees.

Although employees and their representatives saw the Code as being largely accessible, in terms of meaning, language and style, there was concern expressed from some quarters that it may not be entirely accessible to employees in its current form. One suggestion for improving the accessibility of the Code for employees, and particularly for those with learning disabilities, was to produce a separate version which utilised colour and illustrations in order to increase accessibility.

5.2 Early resolution without recourse to formal procedures

Organisations that had revised their policies and procedures in line with the Code reported an increased procedural emphasis on early resolution before formal grievance or disciplinary procedures were used. This was described as a key impact of the Code. The fact that this was not a uniform experience might suggest that how employers adopt the Code is a wider reflection of their organisational culture and attitude. For instance, those employers whose organisational policies and procedures enshrined the Code's principles were those already likely to be engaged in fostering positive employee engagement and good employment relations and were working to avert conflict or look for early resolution. In contrast, employers who were aware of the Code but who had not revised organisational policies to reflect it were likely to be organisations whose culture placed less emphasis on nurturing good relationships with employees. These findings imply that alongside the need for increased employer awareness, more may be done to promote the status of the Code to encourage employers without an organisational culture geared toward earlier resolution to see the benefits of this approach.

Some employers reported using the Code or organisational policy in reference to specific cases, without having revised organisational policies or seemingly having embedded the principles of the Code into the organisational culture. The use of the Code at this point may be construed as being too late; when the disciplinary or grievance had already reached a formal stage. This points towards the need for earlier adoption of the principles of the Code to reduce the number of issues resulting in disciplinary and grievance cases. To meet this aim the Code was seen to advocate careful recruitment of employees, ongoing provision of work-related training and support and effective communication with employees about performance and obligations. These steps may be reinforced by rearticulating employer-employee obligations to ensure both parties are aware of their responsibilities to one another.

Where organisational policies had been revised in line with the Code, this was reflected in more positive handling as well as earlier and faster resolution of cases. There were employers who reported using mediation to handle a case as a direct result of implementing the Code. Where this was not the case, employers could be encouraged to review the behaviours or offences that currently constitute formal disciplinary action as well as their decision-making about appropriate processes. This, alongside better awareness of the Code and its relevance, may encourage an increase in case handling without recourse to formal procedures.

Increasing awareness and accessibility of the range of options for early and internal dispute resolution could be a further means of increasing early resolutions. Participants emphasised the need for raising awareness of mediation as an option for early resolution. The costs of external mediation were perceived as prohibitive, particularly for public and third sector employers. Employers from these sectors suggested arrangements such as "*third sector organisations paying into a pool to be able to use external mediation*" (HR, B4). Increasing awareness of Acas' services for resolving workplace issues such as its helpline, online information and training courses were other options valued by participants. From the employee representative perspective, compulsory involvement of lay representatives before the use of formal action was suggested as a helpful means for encouraging early and internal resolutions without recourse to legal action.

5.3 Working with a principles-based code

Experiences of working with the Code have reflected clear benefits and disadvantages of a principles-based approach. This approach was deemed successful where it was experienced as striking a balance in providing guidance without being overly prescriptive and where flexibility in procedural detail, such as timeframes and communication of decisions, allowed employers to tailor procedures to better suit the organisation. Importantly, it freed employers from unnecessarily imposing disproportionate formality and using unnecessary senior staff time to do so. Freedom to use the most appropriate process for a given case also helped to bring the substantive issues within a case back to the fore.

There was however dissatisfaction expressed with the flexibility of a principles-based Code amongst some participants including some of those who were HR staff. This stemmed from uncertainty about the legal status of the Code and the interpretation required in the guiding principles of 'fair' and 'reasonable'. Nervousness that such subjective terms could be disputed by employees and their representatives has, for some, increased the anxiety associated with being taken to employment tribunal. For employers who were less confident about interpreting and applying the principles-based Code, the Code has not always seemed preferable to the 3-step procedure. Participants expressing these views saw value in the Code not applying a 'one size fits all' approach that for example prescribed the same timeframes across the board. However, they suggested the Code include slightly more specific guidelines that take difference into account, such as timeframes that varied by sector. Providing more case examples in the guidance document was also suggested as a helpful way to help employers in interpreting principles in practice.

Views on Acas' training courses and services such as its helpline were seen as key to increasing confidence in working with a principles-based Code, alongside additional sources of information. Line managers interviewed felt access to Acas training would be of particular benefit to them as it would increase confidence and understanding of applying the Code. For any individual involved in disciplinary and grievance policy development or handling, an understanding of the principles in the new Code could be maximised through a combination of: summaries about the basic principles of the Code, clarification of the legal status of the Code, practical training on applying the Code and having a point of contact for ongoing case-specific advice and guidance.

There was however a perception that for employers with less formal HR functions interpreting and implementing the principles in the Code may be challenging. For these employers, more precise guidance in the Code would be helpful in overcoming the perceived time and cost implications of getting advice from Acas or legal services.

5.4 Tipping the balance; a fairer for system for employers or weakening the employee position?

For some employers the Code had succeeded in increasing flexibility without compromising the rights of employees. It had introduced what was perceived to be a fairer system for employers as it meant they could no longer be penalised in an employment tribunal for failing on process regardless of the substantive content of case. However, a concern among employee representatives was that some employers had interpreted the lack of legally required processes as an opportunity to 'weaken' the employee position. This interpretation was perhaps driven by employers' lack of understanding about the implications at employment tribunal if they had not been seen to act 'fairly and reasonably' alongside the understanding of a sharper focus on the substantive issues in a case. Against this interpretation, the shift away from the 3-step's focus on procedure is problematic because it allows employers to use processes that are inappropriate for cases without being held to account. This includes using formal processes when an earlier resolution would have sufficed and informal discussions in cases that should have been dealt with using formal procedures. In light of this, employee representatives called for better promotion of the legal weight of the Code to employers and some for a strengthening of its legal status.

There were arguments from employers that the Code did not go far enough in 'tipping the balance' and protecting them against unsubstantiated claims from employees. The fact that employees could go through an employment tribunal process, lose and still incur no legal costs was seen as being particularly unfair; some employers saw this as an incentive for employees to raise an employment tribunal claim. These employers wanted an introduction of penalties for employees who lost at employment tribunal to make the process fairer to employers and to reduce the number of unsubstantiated claims.

Findings from this evaluation suggest that the Code has gone some way to redressing the perceived imbalance of fairness to employers and has increased awareness and use of earlier resolution. However the findings raise questions about whether the Code is enough to drive a cultural shift toward early resolution

and increase the notion that recourse to formal procedures and dismissal are a last resort. Furthermore, the way in which organisations interpret the Code is possibly a reflection of their wider approach, rather than the Code operating as a key driver for change in organisations with an approach less focused on conflict management. That is, it brings about positive change in organisations that already have a more positive culture and has had no impact or even a negative affect in organisations with a less positive approach. This implies a key challenge; how to engage employers who do not have an organisational culture that supports early resolution and who are either unaware of the Code or who see a best practice Code as a lessening of obligation?

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Appendix A – Approach Letter

Dear Madam/Sir,

Research on the Acas Statutory Code of Practice on Disciplinary and Grievance Procedures

We would like to invite you to take part in a study evaluating the Acas Statutory Code of Practice on Disciplinary and Grievance Procedures, introduced in. Acas would like to find out how employers understand the Code, how they use it and what impact it has had on disciplinary and grievance procedures.

Acas would like to know how the new Code is working from the perspective of employers, particularly HR staff and Line Managers who have handled a disciplinary or grievance case since the Code was introduced. Acas also wants to include the views of trade union representatives and employees. This research is crucial in helping us review the success of the Code. Acas also plans to use this study in helping to inform our thinking about the format of future codes. In taking part, you will play an important role in helping Acas understand how well the Code is working.

Acas has commissioned the National Centre for Social Research (NatCen) to conduct this research. NatCen is Britain's largest independent, not-for-profit social research organisation. NatCen will be conducting telephone interviews with employers, trade union representatives and employees.

You have been contacted because you bought a copy of the Code or attended a training course relevant to the Code. As a possible user of the Code we are really interested in hearing your views on how well the Code is working.

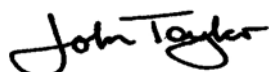
Taking part in the study will involve one telephone interview with a NatCen researcher lasting no longer than one hour. The interview will take place **in the last two weeks of February 2011**, at a time, and date convenient for you. The interview will aim to seek your views about how well *the Code has worked for you* rather than how well *you have used the Code*. **NatCen are evaluating the Code itself and not your implementation of it.**

Taking part is entirely voluntary, and any answers given will be treated in the strictest confidence in accordance with the Data Protection Act. NatCen will write up a report summarising key findings in March 2011. NatCen will not share the identity of participating employers with Acas and it will not be possible to identify s in the report.

We very much hope you will agree to take part in this research. A member of the team at NatCen will be in touch with you shortly by telephone to ask for some further information about your organisation and to discuss participation. They will be happy to answer any questions you may have. In the meantime, please read the information leaflet also attached to the covering email. If you have any further queries about the research, please contact Nilufer Rahim at NatCen on 020 7549 9545 (nilufer.rahim@natcen.ac.uk) or Andrew Sutherland at Acas on 0207 210 3673 (asutherland@acas.org.uk).

If you do not wish to take part you can opt-out of the study by calling 0800 652 9296 or emailing codeofpracticeresearch@natcen.ac.uk and stating your name and the name of the organisation you work for.

Thanks and best wishes,



John Taylor, Acas Chief Executive

Appendix B – Topic Guide

P3069 – Evaluation of Acas Code of Practice on Disciplinary and Grievances

Topic Guide

Aims of the study

The interview aims to explore:

- o Participant's understanding of the Code
- o Participant's experience of using the Code in relation to:
 - o organisational policies and procedures
 - o disciplinary and grievance processes
- o Impact of Code on disciplinary and grievance policy and practice

The guide will be used for both HR personnel and line managers with difference in depth of coverage in different topics according to awareness, knowledge and the s' job role. We have indicated which topics are likely to have more relevance for which type.

A) Researcher introduction

- **Thank** for participation
- **Introduce** self and **NatCen** (as **independent** research contractor)
- We have been **commissioned by Acas** to evaluate its **Code of Practice** on Disciplinary and Grievances which was introduced in 2009. Acas would like to find out how **employers, employee representatives** and **employees** understand the code. We are interviewing all of these groups as part of this research.
- The interview will last no longer than **1 hour**. We have a range of topics in mind that we'd like to speak to you about but compared to a survey questionnaire the interview will be **discursive** in style – not a survey. We would like to cover the following **topic areas**:
 - o Your **understanding** of the Code
 - o Your **experience of using** the Code in relation to:
 - organisational policies and procedures
 - disciplinary and grievance procedures in practice
 - o The **difference** the Code has made to disciplinary and grievance policy and practice
- This research is crucial in helping Acas to **review the success of the Code** and to help inform Acas' thinking about the format of future codes. We would value your views on the Code with a view to potentially improving it
- There are **no right or wrong answers**. If you're not sure how to answer a question feel free to say so. We're not expecting you to be an expert on the Code

- We want to hear your views about how well the Code has worked for you and your organisation. **We are evaluating the Code itself and not your implementation of it**
- Participation is completely **voluntary** and you do not have to answer any questions you do not want to
- What you say is **confidential**, it will **not be possible to identify anyone** in the report and we will not inform Acas or anyone else about who has taken part. When speaking about disciplinary or grievance cases please do not identify any individuals.
- We would like to record the interview and data will be stored securely in accordance with the **Data Protection Act**. Recordings are only accessible to the research team and are destroyed after the research is finished
- Check if any **questions** before we start and ask permission to **start recording**

B) Participant background and contextual Information

Aim: to obtain information about the Participant and organisation.

- Role and responsibilities
 - Description of role and responsibilities
 - Length of time working in organisation and posts held
 - Description of team – purpose, how many people, line management responsibilities
 - Responsibilities in relation to disciplinary and grievance policy and procedures
- Organisation
 - What it does/ provides
 - Sector
 - Size of organisation (no. employees, no. branches, whether multinational)
 - Nature of HR function (whether formal HR team/ who role fulfilled by if not, size of team, how long in existence, extent to which presence felt)
 - Approx percentage of workforce unionised
 - Role of union in disciplinary and grievance policy development and processes
- Disciplinary and grievances in organisation
 - Number of formal disciplinary or grievance cases that arise in average year

- Types of grievances that have been raised e.g. pay and conditions, unfair treatment by manager, bullying, performance appraisals, work practices, working time, career development etc.
- How last 18 months compares to average
- Number of cases that have gone to employment tribunal in recent years
- Summary of accessing and using the Code
 - Awareness and reading of Code and Guidance,
 - How became aware
 - When first became aware
 - Whether and when first read code
 - How and why Code and Guidance accessed by organisation
 - For revising disciplinary and grievance policies
 - For use in disciplinary and grievance situation
 - Number of disciplinary and grievance cases involved in since Code and Guidance introduced
 - Awareness of old procedures, if any

C) Understanding of the Code and Guidance

Aim: to explore s understanding of the Code and views of how clear and easy the Code is to understand

- Understanding of rationale behind changing from structured procedure to principles based Code
 - Approach of new Code
 - Aim of new Code
 - Purpose of the Code
 - Comparison of new Code to old statutory procedures
- Understanding of how Code and Guidance should be used
 - Use of Code and Guidance in conjunction with one another
 - Use of Code and Guidance in relation to existing organisational disciplinary and grievance policies

- Understanding of content of Code and Guidance
 - Principles underpinning the Code
 - Factors affecting comprehension
 - Visual design - Format, size/ length
 - Language - how technical, how clear and simple/ complex

- What informs understanding of Code and Guidance e.g. information and advice, training and literature
 - Who each provided by e.g. Acas, employer, colleagues, Trade Union, research on internet, advice giving organisations e.g. CAB
 - Views of the quality of each of the above
 - Extent to which each provided understanding of Code and Guidance
 - Sufficiency of support/training received around the Code

- Facilitators of fuller understanding of Code
 - Code itself
 - Guidance
 - Training (work, union, Acas)
 - Literature

- Ease of understanding of Code and Guidance compared to 3 step procedures (where appropriate)
 - Statutory requirements
 - Length
 - Complexity

D) Use of Code

Aim: to explore existing policies and procedures around disciplinary and grievances, understand how the Code and Guidance have been used in relation to existing policies and procedures and to examine the way in which the Code and Guidance have been used in practice

D1) Organisational policies and procedures (*topics in this section to be covered in detail by HR staff and union representatives*)

- Current policies/ procedures for disciplinary and grievance
 - Form of existing policies and procedures for disciplinary and grievance
 - Formal/ informal (differences between 'formal' and 'written' procedures i.e. whether inextricably linked; whether possible for formal procedures to be unwritten, or written procedures to be informal)
 - Overview of policies
 - Interaction of policies e.g. what happens if grievance filed during disciplinary process
 - When policies first introduced
 - Process of policy development
 - System by which policies developed
 - Staff members leading and involved in policy development

- Changes to policies since first introduced
 - Reasons for making changes e.g. regular review of policies, 3 step procedure, Code of Practice
 - Nature of changes
 - Planned changes to policy in future and reasons for them

- Role of Code of Practice and Guidance in policy change
 - Nature & extent of change (e.g. completely new policy / amended to incorporate Code/ no change at all)
 - If no change how Code and Guidance used e.g. standalones in conjunction with existing policies
 - If policies revised, experience of process for revising existing policy
 - Interpreting principles and adapting policies accordingly
 - Adapting policies to reflect Guidance
 - Extent to which original Code/Guidance revisited
 - Views of how much Code has informed new/existing policies

- Views of how well the Code is reflected in new/existing policies
- Practicability and usability of principles based Code with accompanying guidance in relation to developing organisational policies
 - Usability compared with prescriptive statutory procedure
 - Facilitators and barriers to effectively implementing the Code

D2) Application of Code and Guidance in disciplinary and grievance situations (*this section is likely to form the bulk of the Line Managers and Employee interviews*)

Aim: to explore existing policies and procedures around disciplinary and grievances, understand how the Code and Guidance have been used in relation to existing policies and procedures

Recap no. separate disciplinary and grievance incidents Participant involved in since first became aware of Code and Guidance

- For each incident ask for a brief description of the situation:
 - Disciplinary or grievance or both
 - Number of employees involved i.e. single or multiple grievance claim
 - Types of disciplinary/ grievance e.g. pay and conditions, unfair treatment by manager, bullying, performance appraisals, work practices, working time, career development etc.
 - Length of case
 - Seriousness of the case
 - Parties involved in case e.g. line manager, HR manager, trade union rep,
 - Desired outcome
 - Nature of process followed e.g. formal, informal, combination of both
 - Nature and involvement of mediation e.g. internal or external/third party mediation
 - Length of process
 - Achieved outcome
 - Perception of difference to how situation enacted if under old procedure
 - Appeals

- Use of disciplinary and grievance policies e.g. Code and Guidance, organisational policies
 - Any use of organisational policies
 - Any use of principles in Code and or Guidance
 - Separate or combined use of Code and Guidance
 - Any use of information, advice or guidance from another source e.g. HR, Union, employee assistance organisation
 - Practicability of using the Code and Guidance or organisational policy in deciding how to approach situation:
 - Suitability of Code and Guidance to situation (or policy)
 - Level of guidance provided by Code and Guidance (or policy) e.g. how comfortable with level to which flexible/ prescriptive
 - Breadth of options provided in Code/Guidance e.g. use of third party mediator
 - Range of solutions felt to be encouraged by Code e.g. informal, formal, third party
 - Effectiveness of using Code and Guidance together (if relevant)
 - Effectiveness of Code without Guidance
 - Types of disciplinary/grievance incident Code most and least effective for dealing with e.g. bullying or dismissal
 - Extent to which received support and training in implementing policy or principles in Code e.g. by HR, senior management
 - What worked well and what presented challenges
 - Any suggestions for improving the usability of the Code

- Whether employee has gone through employment tribunal and way in which Code has had an impact
- Any other uses to which the Code is put, how and why

E) Impacts of the Code

- The impact had by the Code on company procedures
 - What impact
 - How this impact is viewed

- Views on improving the impact of the Code
- Any impact on handling of cases including informal approaches to dispute resolution
 - What impact it has had – efficiency, elapsed time taken, ease
 - How this impact is viewed
 - Views on improving the impact of the Code
- Any impact the Code had on preventing escalation to disciplinary and grievance procedures and dispute escalation to employment tribunals
 - What impact
 - How this impact is viewed
 - Views on improving the impact of the Code

F) Overall Reflections on the Code

- Effectiveness of Code and Guidance for dealing with disciplinary and grievance situations
- Difference Code and Guidance have made to way disciplinary and grievance are dealt with
- Ways in which Code and Guidance could be improved
- Two key messages to Acas about Code and Guidance

Ask if anything else to add * Stop recording * Thank * Reassure about confidentiality * Explain next steps of research

Check whether has questions

Appendix C – Sample Characteristics

6.1 Employers

Primary Sampling Criteria	
HR staff	19
Line managers	4
Total Employer Interviews	19
Secondary Sampling Criteria	
Organisation Size	
Small (less than 50 employees)	5
Medium (more than 50, less than 250)	8
Large (over 250 employees)	6
Sector	
Private	1
Public	15
Third	3
Whether organisation have its own formal D & G policies	
Disciplinary	0
Grievance	0
Both	19
Procedures organisation has used/been through since November 2008	
Individual Discipline	1
Individual Grievance	3
Both	14
Not known	1
Status of case	
Ongoing	3
Pending final outcome	1
Fully concluded	15
Type of approach used in these procedures	
Formal	4
Informal	2
3 rd Party	0
Mixture of approaches	12
Not known	1
Whether the employer has been taken to an employment tribunal	
Yes	7
No	11
Not known	1

6.2 Employee representatives

Primary Sampling Criteria	
Full-time officers	7
Lay Representatives	8
Total Employee Representative Interviews	15
Secondary Sampling Criteria	
Reason for purchase of Code	
Used in own role	8
Used in thinking about implications for members	1
Used in supporting or training org. based reps	1
Not known	5
Involvement in specific D & G cases since April 2009	
Advising/supporting lay rep	1
Direct involvement	13
Both	1
Sector Coverage	
Private	6
Public	3
Mixed	6
Membership size	
1,000–10,000	5
10,001– 999,999	7
Over 1 million	3

