



## Discipline and grievance at work

### Introduction

#### **Discipline and grievance procedures**

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

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

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

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

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

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

#### *Examples of discipline and grievances in practice*

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

#### **The statutory procedures and the Code of Practice**

This handbook contains examples of disciplinary procedures to help employers in all types and size of organisation. Although organisations can be flexible about how formal or extensive their procedures need to be, there is a statutory procedure they must follow as a minimum if they are contemplating dismissing an employee – or imposing certain kinds of penalty short of dismissal such as

suspension without pay or demotion. Unless employers follow the statutory procedure, employment tribunals will find dismissals automatically unfair.

The statutory procedure involves the following three steps:

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

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

Disciplinary procedures are an aid to the effective management of people, and should not be viewed primarily as a means of imposing sanctions or as leading to dismissal. Where dismissal does occur, employees may make a complaint to an employment tribunal if they believe they have been unfairly dismissed, although ordinarily the employee must have one year's service<sup>1</sup>. It is for the employer to show the reason for the dismissal and that it was a fair reason.

The tribunal will determine whether the dismissal was fair or unfair and will take into account the size and administrative resources of the employer in deciding whether they acted reasonably or unreasonably. The tribunal will take account of the guidance given in the Acas Code of Practice on  [Code of Practice - Disciplinary and grievance procedures \[327kb\]](#) (see Annexes A and C of the Code) and consider how far the statutory three-step procedures have been followed.

### **What does it mean?**

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

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

### **Acas handbook**

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

### *Discipline*

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

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

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

### *Grievances*

[Part 2 - Grievance procedures](#) considers why organisations need procedures and gives advice on how to handle a grievance hearing.

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

The statutory minimum grievance procedures are also summarised in [Part 2 - Grievance procedures](#).

### *The right to be accompanied*

[Part 3- The right to be accompanied. Checklist for the right of accompaniment](#) has information on the right to be accompanied at disciplinary and grievance meetings.

### **Prevention is better than cure**

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

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

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

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

The use of the formal disciplinary and grievance procedures should be considered a 'last resort' rather than the first option. Many problems can be sorted out

through informal dialogue between managers and staff –a 'quiet word' is often all that's needed.

## **Part 1 – Discipline at work**

### **The need for rules and disciplinary procedures**

#### Key Points

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

\*The statutory dismissal, disciplinary and grievance procedures apply only to employees and this term is used throughout Parts 1 and 2 of this handbook. However, it is good practice to allow all workers access to disciplinary and grievance procedures. The right to be accompanied applies to all workers and this term is used in [Part 3- The right to be accompanied. Checklist for the right of accompaniment](#) of this handbook and Section 3 of the  [Code of Practice - Disciplinary and grievance procedures \[327kb\]](#).

#### **Why have rules?**

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

#### **How should rules be drawn up and communicated?**

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

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

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

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

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

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

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

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

### **What should rules cover?**

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

#### ***Timekeeping***

- 'clock-in' times
- lateness.

#### ***Absence***

- authorising absence
- approval of holidays
- notification of absence
  1. who the employee tells
  2. when they tell them
  3. the reasons for absence

#### 4. likely time of arrival/return

- rules on self-certification and doctor's certificates.

#### ***Health and safety***

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

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

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

#### ***Use of organisation facilities***

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

#### ***Discrimination, bullying and harassment***

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

#### ***Gross misconduct***

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

#### **Why have a disciplinary procedure?**

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

procedure should be fair, effective, and consistently applied.

### **What should disciplinary procedures contain?**

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

Good disciplinary procedures should:

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

The procedures should also:

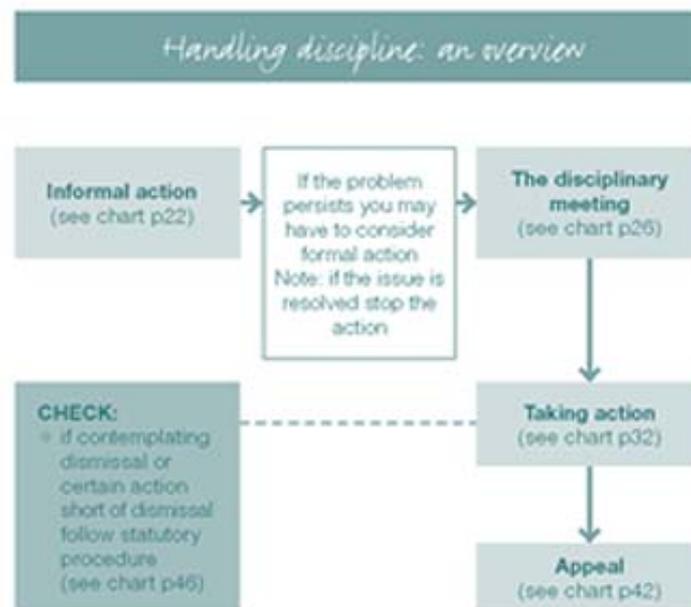
- apply to all employees, irrespective of their length of service, status or number of hours worked
- ensure that any investigatory period of suspension is with pay, and specify how pay is to be calculated during such period. If, exceptionally, suspension is to be without pay, this must be provided for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

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

### Training

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

### Handling discipline: an overview



### Encourage improvement

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

### Act promptly

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

of the disciplinary process (see chapter on '[Informal action](#)').

### **Gather the facts**

By acting promptly the relevant supervisor or manager can clarify what the problem is and gather information before memories fade, including anything the employee has to say. Where necessary, statements should be obtained from witnesses at the earliest opportunity. Keep records of what is said – copies may need to be given to the individual if the matter progresses any further. Relevant personal details such as previous performance, length of service and any current warnings will need to be obtained before the meeting, as well as any appropriate records and documents.

### **Be firm and fair**

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

### **Suspension with pay**

Where there appears to be serious misconduct, or risk to property or other people, a period of suspension with pay should be considered while the case is being investigated. This allows tempers to cool and hasty action to be avoided. Any suspension must be with pay unless the contract of employment allows suspension without pay, and any period of suspension should be as short as possible. Tell the employee exactly why they are being suspended, and that they will be called in for a disciplinary meeting as soon as possible. Do not use suspension as a sanction before the disciplinary meeting and decision and treat employees fairly and consistently.

### **Stay calm**

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

### **Be consistent**

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

### **Consider each case on its merits**

While consistency is important, it is also essential to take account of the circumstances and people involved. Personal details such as length of service, past disciplinary history and any current warnings will be relevant to such considerations. Any provocation or other mitigation also needs to be taken into account. Any decision to discipline an employee must be reasonable in all the circumstances and must not discriminate on grounds of age, race, sex, disability, sexual orientation or religion or belief.

### **Follow the disciplinary procedure**

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

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

### **Is disciplinary action necessary?**

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

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

- drop the matter – there may be no case to answer or the matter may be regarded as trivial
- arrange counselling/take informal action – this is an attempt to correct a situation and prevent it from getting worse without using the disciplinary procedure (see the next chapter on [Informal action](#))
- consider using an independent mediator. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this. For more information about mediation see the Acas leaflet "Mediation explained" available on the Acas website or from our publications orderline on 08702 42 90 90.
- arrange a disciplinary meeting – this will be necessary when the matter is considered serious enough to require disciplinary action.

*Employment Tribunals expect employers to behave fairly and reasonably. The following core principles of reasonable behaviour are taken from the  [Code of Practice - Disciplinary and grievance procedures \[327kb\]](#).*

#### **Core principles of reasonable behaviour**

- Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- Inform the employee of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.

- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
- Act consistently.

### **Key stages in handling disciplinary procedures**

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

Chart 1: [Informal action](#)

Chart 2: [The disciplinary meeting](#)

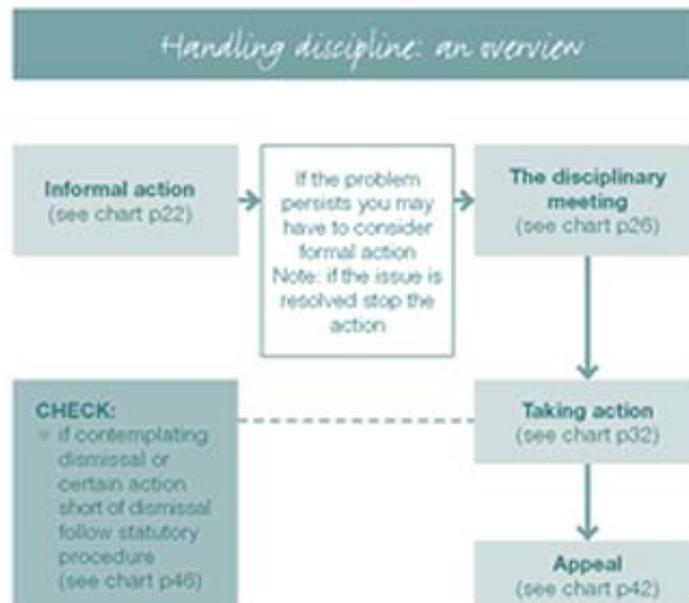
Chart 3: [Taking action](#)

Chart 4: [Appeals](#)

Chart 5: [The Statutory Procedure](#)

(For a chart explaining how to deal with grievances, go to [Part 2 - Grievance procedures](#)).

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### **Gather the facts**

By acting promptly the relevant supervisor or manager can clarify what the problem is and gather information before memories fade, including anything the employee has to say. Where necessary, statements should be obtained from witnesses at the earliest opportunity. Keep records of what is said – copies may need to be given to the individual if the matter progresses any further. Relevant personal details such as previous performance, length of service and any current warnings will need to be obtained before the meeting, as well as any appropriate records and documents.

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### **Consider each case on its merits**

While consistency is important, it is also essential to take account of the circumstances and people involved. Personal details such as length of service, past disciplinary history and any current warnings will be relevant to such considerations. Any provocation or other mitigation also needs to be taken into account. Any decision to discipline an employee must be reasonable in all the circumstances and must not discriminate on grounds of race, sex, disability, sexual orientation or religion or belief.

### **Follow the disciplinary procedure**

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

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- consider using an independent mediator. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this. For more information about mediation see the Acas leaflet "Mediation explained" available on the Acas website or from our publications orderline on 08702 42 90 90.
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- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
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### **Key stages in handling disciplinary procedures**

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

Chart 1: [Informal action](#)

Chart 2: [The disciplinary meeting](#)

Chart 3: [Taking action](#)

Chart 4: [Appeals](#)

Chart 5: [The Statutory Procedure](#)

(For a chart explaining how to deal with grievances, go to [Part 2 - Grievance procedures](#)).

## Informal action



Key Points

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

### **What is informal action?**

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

### **Discipline in practice example 1**

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

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

### **How should it be done?**

- talk to the employee in private. This should be a two way discussion, aimed at pointing out the shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained
- listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee
- where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. The employee should be told that if there is no improvement then the next stage will be the formal disciplinary procedure. It may be useful to confirm the agreed action in writing
- be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied (see Part 3 of this handbook and Section 3

of the Code). If during the discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure

- keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.

## Mediation

In some cases, where the employer considers that formal disciplinary action is not appropriate, an independent mediator may help solve disagreements over disciplinary issues. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this. For more information about mediation see the Acas leaflet "Mediation explained" available on the Acas website or from our publications orderline on 08702 42 90 90.

## The disciplinary meeting



## Key Points

- Before any meeting carry out sufficient investigation to enable a clear view of the facts to emerge
- Prepare for the meeting carefully, and ensure all the relevant facts are available

- Tell the employee in writing what is being alleged, and advise him or her of rights under the disciplinary procedure, including the right to be accompanied at any disciplinary meeting
- Give the employee time to prepare, and proper opportunity to state his or her case
- Listen carefully to all that is said
- Consider adjourning the meeting, where necessary, before deciding on any disciplinary penalty to allow full consideration of all the matters raised

### **Investigating cases**

When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. Where it is necessary to hold an investigatory meeting give the employee advance warning of the meeting and time to prepare. Exceptionally, where you have reasonable grounds for concern that evidence may be tampered with or destroyed before the meeting, consider suspending the employee with pay for a brief period whilst the investigation is carried out.

Any investigatory meeting should be conducted by a management representative and should be confined to establishing the facts of the case. If at any stage it becomes apparent that formal disciplinary action may be needed then the interview should be terminated and a formal hearing convened at which the employee will have the right to be accompanied.

### **Preparing for the meeting**

- ensure that all the relevant facts are available, such as disciplinary records and any other relevant documents (for instance absence or sickness records) and, where appropriate, written statements from witnesses
- tell the employee of the complaint, the procedure to be followed, and that he or she is required to attend a disciplinary meeting
- tell the employee that he or she is entitled to be accompanied at the meeting (see [Part 3- The right to be accompanied. Checklist for the right of accompaniment](#))
- arrange for a second member of management to be present wherever possible
- check if there are any special circumstances to be taken into account. For example, are there personal or other outside issues affecting performance or conduct?
- be careful when dealing with evidence from an informant who wishes to remain anonymous. Take written statements, seek corroborative evidence and check that the informant's motives are genuine(8)
- are the standards of other employees acceptable, or is this employee being unfairly singled out?

- consider what explanations may be offered by the employee, and if possible check them out beforehand
- allow the employee time to prepare his or her case. It may be useful and save time at the meeting if copies of any relevant papers and witness statements are made available to the employee in advance
- if the employee concerned is a trade union official discuss the case with a trade union representative or full-time official after obtaining the employee's agreement. This is because the action may be seen as an attack on the union
- arrange a time for the meeting, which should be held as privately as possible, in a suitable room, and where there will be no interruptions. The employee may offer a reasonable alternative date if their chosen companion cannot attend
- if an employee fails to attend a meeting through circumstances outside their control, such as illness, the employer must arrange another meeting
- establish what disciplinary action was taken in similar circumstances in the past
- where possible arrange for a second member of management to take notes of the proceedings and act as a witness
- if a witness is someone from outside the organisation who is not prepared or is unable to attend the meeting try and get a written statement from him or her
- allow the employee to call witnesses or submit witness statements
- if there may be understanding or language difficulties consider the provision of an interpreter or facilitator (perhaps a friend of the employee, or a co-employee)
- think about the structure of the meeting and make a list of points you will wish to cover.

### **How should the disciplinary meeting be conducted?**

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

- introduce those present to the employee and explain why they are there
- introduce and explain the role of the accompanying person if present
- explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the organisation's disciplinary procedure
- explain how the meeting will be conducted.

### **Statement of the complaint**

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

### **Employee's reply**

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

### **General questioning and discussion use this stage to establish all the facts**

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

or misconstrued as judgemental.

### **Summing up**

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

### **Adjournment**

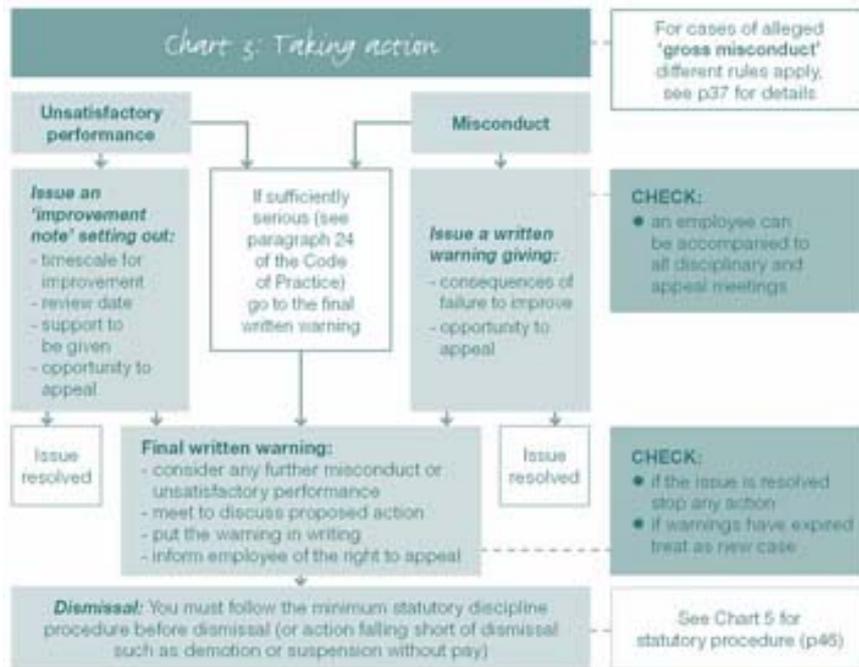
It is generally good practice to adjourn before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised, particularly if there is any dispute over facts. If new facts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

### **What problems may arise and how should they be handled?**

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

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

### **Taking action**



### Key Points

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

### What should be considered before deciding any disciplinary penalty?

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

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

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

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

### **Discipline in practice – example 2**

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

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

### **Imposing the disciplinary penalty**

#### ***First formal action – unsatisfactory performance***

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

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

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

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

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

#### *First formal action – misconduct*

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

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

#### **Discipline in practice – example 3**

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

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

#### *Example outcome of meeting*

At the meeting the employee does not give a satisfactory explanation for the mistakes and admits that her training covered the importance of agreeing realistic delivery dates with her manager. During your investigation, her team leader and section manager told you they had stressed to the employee the

importance of agreeing delivery dates with them before informing the customer. In view of the seriousness of the mistakes and the possible impact on the business, you issue the employee with a final written warning. You inform the employee that failure to improve will lead to dismissal and of her right to appeal.

#### *Example outcome of meeting in different circumstances*

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

#### *Final written warning*

If the employee has a current warning about conduct or performance then further misconduct or unsatisfactory performance (whichever is relevant) may warrant a final written warning. This may also be the case where 'first offence' misconduct is sufficiently serious, but would not justify dismissal. Such a warning should normally remain current for a specified period, for example, 12 months, and contain a statement that further misconduct or unsatisfactory performance may lead to dismissal.

#### **Discipline in practice – example 4**

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

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

#### **Dismissal or other sanction**

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

### *Note*

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

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

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

### **Dismissal with notice**

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

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

### **Dismissal without notice**

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

No dismissal should be instant. A dismissal for gross misconduct should only take place after the normal investigation and disciplinary meeting to establish all the facts. The employee should be told of the complaint and be given the opportunity to state his or her case as in any other disciplinary meeting. The employee has the right to be accompanied at any such meeting (see Section 3 of the Code).

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

Practice).

### **How should the employee be informed of the disciplinary decision?**

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

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

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

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

### **Written reasons for dismissal**

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

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

### **What records should be kept?**

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

In each particular case copies of the relevant records should be given to the employee concerned without him or her needing to request them, although in certain circumstances some information may be withheld, for example to protect a witness.

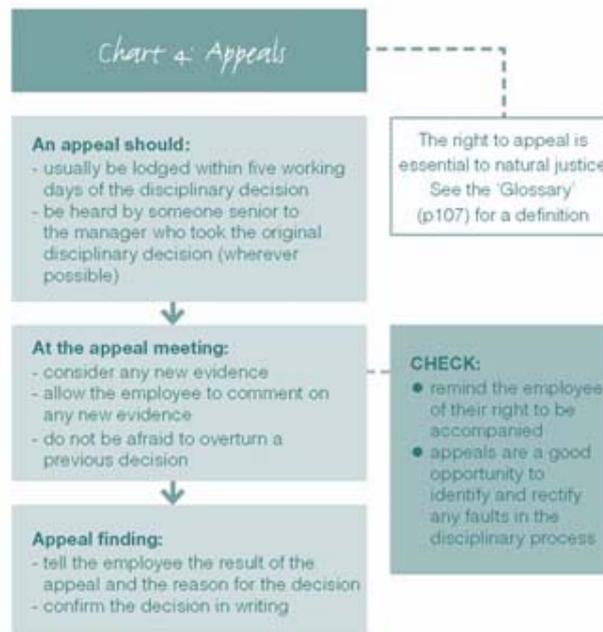
### **Time limits for warnings**

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

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

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

## Appeals



### Key points

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

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

### What should an appeals procedure contain?

**It should:**

It should:

- specify a time-limit within which the appeal should be lodged (the Code recommends five working days as usually appropriate)
- provide for appeals to be dealt with speedily, particularly those involving suspension or dismissal
- wherever possible provide for the appeal to be heard by someone senior in authority to the person who took the disciplinary decision and, if possible, who was not involved in the original meeting or decision
- spell out what action may be taken by those hearing the appeal
- set out the right to be accompanied at any appeal meeting (see Section 3 of the [Code of Practice - Disciplinary and grievance procedures](#), and [Part 3- The right to be accompanied. Checklist for the right of accompaniment](#) of this handbook)
- provide that the employee, or a companion if the employee so wishes, has an opportunity to comment on any new evidence arising during the appeal before any decision is taken.

### **Small firms**

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

### **How should an appeal hearing be conducted?**

Before the appeal ensure that the individual knows when and where it is to be held, and of their statutory right to be accompanied (see Section 3 of the [Code of Practice - Disciplinary and grievance procedures](#) and [Part 3- The right to be accompanied. Checklist for the right of accompaniment](#)). Make sure the relevant records and notes of the original meeting are available for all concerned.

### **At the meeting**

- introduce those present to each other, explaining their presence as necessary
- explain the purpose of the meeting, how it will be conducted, and the powers the person/people hearing the appeal have
- ask the employee why he or she is appealing against the discipline
- pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it
- once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision
- do not be afraid to overturn a previous decision if it becomes apparent that it was not soundly based – such action does not undermine authority

but rather makes clear the independent nature of the appeal. If the decision is overturned does this mean training for managers needs to be improved, do rules need clarification, or are there other implications to be considered?

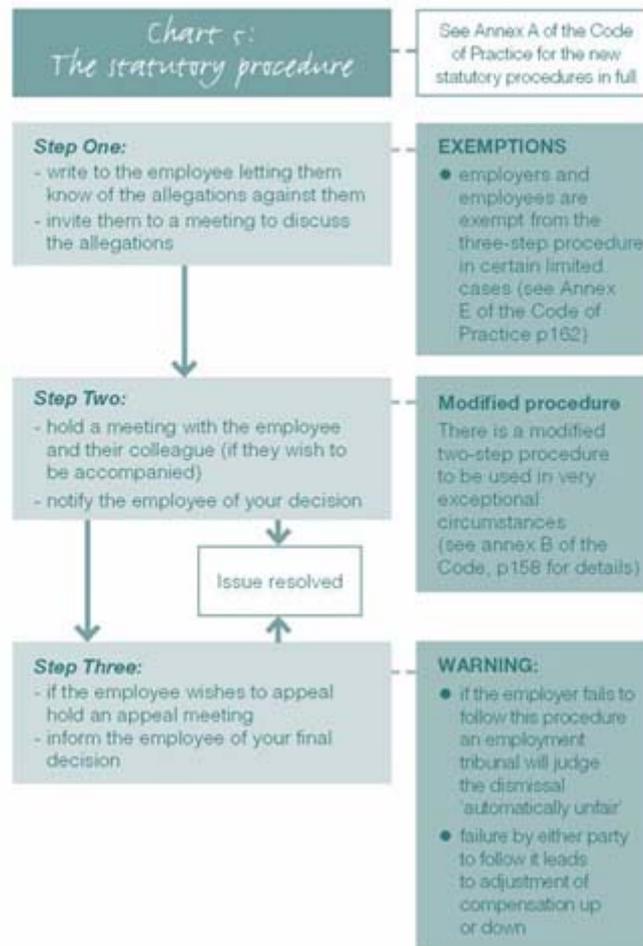
- inform the employee of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear, if this is the case, that this decision is final.

### **Employment tribunal time limits**

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

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

### **The statutory procedure**



### Key points

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

### What is the three-step procedure?

If an employer is thinking of dismissing an employee – or imposing a penalty

short of dismissal such as suspension without pay, demotion, loss of seniority or loss of pay – they must follow the statutory procedure, which is set out in full in Schedule 2 of the Employment Act 2002. The main steps may be summarised as follows:

### **Step 1**

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

### **Step 2**

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

### **Step 3**

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

### **The minimum requirements**

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

### **Failure to comply with the procedure**

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

### **Discipline in practice – example 5**

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

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

### **Exemptions to the procedure**

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

### **The modified procedure**

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

### **Holding a meeting**

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

### **Failure to attend meeting**

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

### **Appeals**

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

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

## **Dealing with absence**

### **Key Points**

- Before any action is taken to discipline or dismiss an employee who is absent from work always:

- carry out a full investigation into the reasons for the absence
- give the employee the opportunity to state his or her case, and to be accompanied at any disciplinary meeting
- issue warnings and give time for improvement where appropriate
- consider whether suitable alternative employment is available
- act reasonably in all the circumstances

This section considers how to handle problems of absence and gives guidance about unauthorised short-term and long-term absences, and the failure to return from extended leave. A distinction should be made between absence on grounds of illness or injury and absence for reasons which may call for disciplinary action. Where disciplinary action is called for, the normal disciplinary procedure should be used. Where the employee is absent because of illness or injury, the guidance in this section of the booklet should be followed. The organisation should be aware of the requirements of the Disability Discrimination Act 1995 when making any decisions that affect someone who may be disabled as defined by the Act.

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

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

- unexpected absences should be investigated promptly and the employee asked for an explanation at a return-to-work interview
- if there are no acceptable reasons then the matter should be treated as a conduct issue and dealt with under the disciplinary procedure
- where there is no medical certificate to support frequent short-term, self-certified, absences then the employee should be asked to see a doctor to establish whether treatment is necessary and whether the underlying reason for the absence is work-related. If no medical support is forthcoming the employer should consider whether to take action under the disciplinary procedure
- if the absence could be disability related the employer should consider what reasonable adjustments could be made in the workplace to help the employee (this might be something as simple as an adequate, ergonomic chair, or a power-assisted piece of equipment). Reasonable adjustment also means redeployment to a different type of work if necessary
- if the absence is because of temporary problems relating to dependants, the employee may be entitled to have time off under the provisions of the Employment Rights Act 1996 relating to time off for dependants. Also, the Employment Act 2002 gives working fathers the right to two weeks paid paternity leave and working adoptive parents the right to 26 weeks paid

leave and a further 26 weeks unpaid leave. Working mothers now have the right to 26 weeks paid and a further 26 weeks unpaid maternity leave

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

In order to show both the employee concerned, and other employees, that absence is regarded as a serious matter and may result in dismissal, it is very important that persistent absence is dealt with promptly, firmly and consistently.

An examination of records will identify those employees who are frequently absent and may show an absence pattern.

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

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

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

- employee and employer should keep in regular contact with each other
- the employee must be kept fully informed if there is any risk to employment
- if the employer wishes to contact the employee's doctor or other specialist treating them for a medical report, he or she must notify the employee in writing that they intend to make such an application and they must secure the employee's consent in writing(16)
- in addition, the employer must inform the individual that he or she has:
  - the right to withhold consent to the application being made
  - the right to state that he or she wishes to have access to the report. (The Access to Medical Reports Act 1988 also gives the individual the right to have access to the medical practitioner's report for up to six months after it was supplied)

- rights concerning access to the report before (and/or after) it is supplied
  - the right to withhold consent to the report being supplied to the employer
  - the right to request amendments to the report
- where the employee states that he or she wishes to have access to the report, the employer must let the GP know this when making the application and at the same time let the employee know that the report has been requested
- the letter of enquiry reproduced in [Appendix 3 – Sample letters](#), and approved by the British Medical Association, may be used, and the employee's permission to the enquiry should be attached to the letter(17)
- the employee must contact the GP within 21 days of the date of application to make arrangement to see the report. Otherwise the rights under the 1988 Act will be lost
- if the employee considers the report to be incorrect or misleading, the employee may make a written request to the GP to make appropriate amendments
- if the GP refuses, the employee has the right to ask the GP to attach a statement to the report reflecting the employee's view on any matters of disagreement
- the employee may withhold consent to the report being supplied to the employer
- on the basis of the GP's report the employer should consider whether alternative work is available
- the employer is not expected to create a special job for the employee concerned, nor to be a medical expert, but to take action on the basis of the medical evidence
- where there is a reasonable doubt about the nature of the illness or injury, the employee should be asked if he or she would agree to be examined by a doctor to be appointed by the organisation
- where an employee refuses to cooperate in providing medical evidence, or to undergo an independent medical examination, the employee should be told in writing that a decision will be taken on the basis of the information available and that it could result in dismissal
- where the employee is allergic to a product used in the workplace the employer should consider remedial action or a transfer to alternative work
- where the employee's job can no longer be held open, and no suitable alternative work is available, the employee should be informed of the likelihood of dismissal
- where dismissal action is taken the employee should be given the period of notice to which he or she is entitled by statute or contract and informed

of any right of appeal.

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

### **Note**

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

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

### **Specific health problems**

Consideration should be given to introducing measures to help employees, regardless of status or seniority, who are suffering from alcohol or drug abuse, or from stress. The aim should be to identify employees affected and encourage them to seek help and treatment. Employers should consider whether it is appropriate to treat the problem as a medical rather than a disciplinary matter. Stress in particular may be directly related to working conditions and addressing the cause may well relieve the symptoms.

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

### **Failure to return from extended leave on the agreed date**

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

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

- the policy should apply to all employees, irrespective of their sex, marital status, racial group, disability, sexual orientation or religion or belief

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

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

## Unsatisfactory performance

### Key points

- Careful recruitment, selection and training will minimise the risk of unsatisfactory performance
- When an employee starts, the standards of work required, the conditions of any probationary period, and the consequences of failure to meet the necessary standards should be explained

- Issue an improvement note to encourage the employee to reach a satisfactory standard
- Explain to the employee the improvement required, the support that will be given and when and how performance will be reviewed
- Consider finding the employee alternative work, where appropriate

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

### **Setting standards of performance**

Employees have a contractual responsibility to achieve a satisfactory level of performance and should be given help and encouragement to reach it. Employers are responsible for setting realistic and achievable standards and making sure employees understand what is required. Standards should be capable of being measured in terms of quality, quantity, time and cost. Any shortfall in performance should be pointed out to the employee concerned, and consideration given as to whether this is due to inadequate instruction, training, supervision or some other failing. Care in recruitment, selection and training will minimise the risk of unsatisfactory performance.

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

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

### **What is the role of training and supervision?**

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

### **Appraisal systems**

An appraisal system is a systematic method of obtaining and analysing

information to evaluate an employee's performance in a job, and assess his or her training and development needs and potential for future promotion. It is essential that appraisal is carried out in a fair and objective manner. Assessment criteria must be non-discriminatory and should be applied irrespective of racial group, age, sex, marital status, disability, sexual orientation or religion or belief. They should be relevant to the requirements of the job. Those responsible for carrying out appraisals should be made aware of the dangers of stereotyping and making assumptions based on inadequate knowledge. For further information see the Acas [Advisory booklet - Employee appraisal](#).

### **Negligence or lack of ability?**

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

### **How should unsatisfactory performance be dealt with?**

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

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

### **Action in serious cases**

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

## **Dismissal**

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

## **Note**

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

## **Dealing with particular cases**

### Key points

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

## **What type of cases need particular attention?**

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

### **Employees to whom the full procedure is not immediately available**

It may be sensible to arrange time off with pay so that employees who are in isolated locations or on shifts can attend a disciplinary meeting on the main site in normal working hours. Alternatively, if a number of witnesses need to attend it may be better to hold the disciplinary meeting on the nightshift or at the particular location.

### **Trade union officials**

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

### **Use of external consultants**

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

confined to establishing the facts of the case.

### **Criminal charges or convictions**

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

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

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

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

Where an employee, charged with or convicted of a criminal offence, refuses to cooperate with the employer's disciplinary investigations and proceedings, this should not deter an employer from taking action. The employee should be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available and could result in dismissal.

### **Note**

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

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

An employee who has been charged with, or convicted of, a criminal offence may become unacceptable to colleagues, resulting in workforce pressure to dismiss and threats of industrial action. Employers should bear in mind that they may have to justify the reasonableness of any decision to dismiss and that an employment tribunal will ignore threats of, and actual industrial action when determining the fairness of a decision (Section 107, Employment Rights Act 1996). They should consider all relevant factors, not just disruption to production, before reaching a reasonable decision.

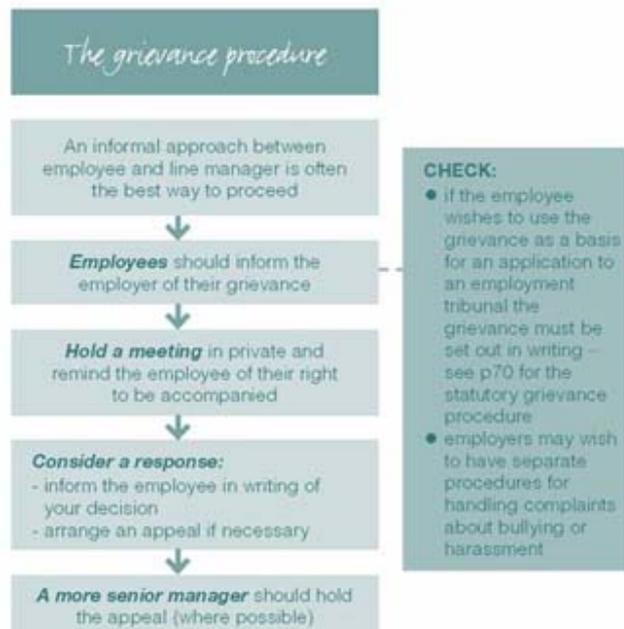
### **Cases involving Statutory Registration Authorities**

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

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

In cases where the outcome of the internal disciplinary procedure results in action short of dismissal, and the Registration Authority subsequently determines that the individual's registration is suspended or removed, employers should consider whether suitable alternative work is available before dismissing because of conduct or capability, or regarding the contract as frustrated. Legal advice should be sought.

## **Part 2 – Grievance procedures**



### What is a grievance and why have a procedure?

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

#### Key points

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

### What is a grievance?

Anybody working in an organisation may, at some time, have problems or

concerns about their work, working conditions or relationships with colleagues that they wish to talk about with management. They want the grievance to be addressed, and if possible, resolved. It is also clearly in management's interests to resolve problems before they can develop into major difficulties for all concerned.

Issues that may cause grievances include:

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

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

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

In some cases it may be helpful to use a neutral mediator to help sort out a grievance and maintain working relationships. Mediation is often most effective if used early on but may not be suitable if you want to enforce a legal right or want someone to decide the rights and wrongs of an issue for you. For more information about mediation see the Acas leaflet "Mediation explained" available on the Acas website or from our publications orderline on 08702 42 90 90.

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

### **Why have a procedure?**

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

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

### **Step 1**

The employee informs the employer of their grievance in writing.

### **Step 2**

The employer invites the employee to a meeting to discuss the grievance where the right to be accompanied will apply. The employer notifies the employee in

writing of the decision and notifies of the right to appeal.

### **Step 3**

The employee informs the employer if they wish to appeal. The employer must invite them to a meeting and following the meeting inform the employee of the final decision. (Employees must take all reasonable steps to attend meetings.)

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

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

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

### **How should a grievance hearing be conducted?**

Key points

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

### **What is a grievance hearing?**

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

### **Preparing for the hearing**

- any hearing should be held in private and without interruption from outside
- management may find it useful to have someone to take notes and act as a witness to the proceedings
- management will normally already have a written statement of the grievance, and should find out before the hearing whether similar grievances have been raised before, how they have been resolved, and any follow-up action that has been necessary. This allows consistency of treatment.

### **Conduct of the hearing**

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

If the employee's employment ends before the grievance procedure has been followed, a modified statutory grievance procedure may be applied if both parties agree. See also Annexes D and E in the  [Code of Practice - Disciplinary and grievance procedures](#) for the modified grievance procedure and for possible exemptions to the procedure.

### ***Be calm, fair and follow the procedure***

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

This can be made easier by following the grievance procedure, and failure to allow an individual access to the procedure, or failing to take any grievance seriously, may have a bearing on any subsequent employment tribunal or breach of contract claim (see ['Appeals'](#)).

### **Grievances in practice: example**

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

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

### **Grievances about fellow employees**

This can be made easier by following the grievance procedure, and failure to allow an individual access to the procedure, or failing to take any grievance seriously, may have a bearing on any subsequent employment tribunal or breach of contract claim (see 'How should an appeal hearing be conducted?'). There are occasions when an employee may be the cause of grievances among his or her co-employees – perhaps on grounds of personal hygiene, attitude, or capability for the job. Employers must deal with these cases carefully and should generally start by talking privately to the individual about the concerns of fellow employees. This counselling may resolve the grievance to the satisfaction of the co-employees, who need to be told that some action has been taken. Alternatively, if those involved are willing, an independent mediator may be able to help. If there is evidence which suggests that it does then the normal disciplinary procedures might need to be invoked. Care needs to be taken that any discussion with someone being complained about does not turn into a meeting at which they would be entitled to be accompanied (see Section 3 of the  [Code of Practice - Disciplinary and grievance procedures](#) and Part 3 of this handbook).

### **Special cases**

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

## **Discrimination**

Employees have the legal right to protection against discrimination on the grounds of age, sex, race, disability, sexual orientation and religion or belief. Employers need to take any grievances made to them seriously – failure to do so may amount to discrimination. Action taken by the organisation or any of its employees against someone because they have brought a complaint under a grievance procedure may be unlawful victimisation. The Equal Opportunities Commission ([www.eoc.gov.uk](http://www.eoc.gov.uk)), the Commission for Racial Equality ([www.cre.gov.uk](http://www.cre.gov.uk)), and the Disability Rights Commission ([www.drc.gov.uk](http://www.drc.gov.uk)) have all produced Codes of Practice that can help employers produce appropriate grievance procedures.

## **Training and records**

### **Training**

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

### **Records**

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

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

## **Part 3 – The right to be accompanied**

### **Checklist for the right of accompaniment**

- This right applies to all workers, not just employees
- The right applies to certain disciplinary and grievance meetings which may result in some disciplinary action or where the grievance is about the employer's duty to the worker. This includes any meetings held as part of the statutory dismissal and grievance procedures
- Workers should be informed that they have a statutory right to be accompanied by a fellow worker or trade union official if they make a reasonable request to be so accompanied. Workers should also be reminded of any rights of accompaniment they have over and above statutory rights, for instance through contractual or collective agreements

- The choice of the accompanying person is for the worker, not the employer, and can be either a co-worker or a trade union official (full-time or lay). The trade union official does not have to be from within the organisation, although if an organisation recognises trade union(s) then the official would normally come from the appropriate union. Trade union officials need to be trained or certified by their union to act as a worker's companion (see paragraph 108 of the Code). There is no obligation on a trade union to provide a companion
- The accompanying person can address the meeting, but not answer questions on behalf of the worker unless this is agreed by management
- Refusing to allow a worker to be accompanied could lead to a finding of 'automatically unfair' dismissal if the worker is dismissed as a result of the disciplinary hearing and makes an unfair dismissal claim to an employment tribunal

### **What is the right to be accompanied?**

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

It has always been good employment relations practice to allow a worker to be accompanied or represented, and many organisations include such rights in contracts as a matter of course, sometimes extending the right to include representation or accompaniment by spouses, partners, carers, or friends. Recognition agreements with trade unions will normally include rights for members to be represented by either a lay or full-time official at disciplinary hearings.

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

### **What if the worker is dismissed?**

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

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

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

## **The appendices**

## Appendix 1 – Rules for small organisations

As a minimum, rules should:

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

## Appendix 2 – Sample disciplinary procedures

### Sample 1 (any organisation)

#### 1. Purpose and scope

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

#### 2. Principles

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

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

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

At all stages of the procedure the employee will have the right to be accompanied by a trade union representative, or work colleague.

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

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

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

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

### **3. The Procedure**

#### *Stage 1 – improvement note: unsatisfactory performance*

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

#### *Stage 1 – first warning: misconduct*

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

#### *Stage 2: final written warning*

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

#### *Stage 3 – dismissal or other sanction*

If there is still a failure to improve the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or disciplinary suspension or transfer (as allowed in the contract of employment). Dismissal decisions can only be taken by the appropriate senior manager, and the employee

will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which the employment will terminate, and the right of appeal. The decision to dismiss will be confirmed in writing.

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

#### Statutory discipline and dismissal procedure

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

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

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

#### **Gross misconduct**

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

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

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

#### **Appeals**

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

#### **Sample 2 (small organisation)**

## **1. Purpose and scope**

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

## **2. Principles**

a) The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been fully investigated.

b) At every stage employees will have the opportunity to state their case and be represented or accompanied, if they wish, at the hearings by a trade union representative or a work colleague.

c) An employee has the right to appeal against any disciplinary penalty.

## **3. The Procedure**

### *Stage 1 – first warning*

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

### *Stage 2 – final written warning*

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

### *Stage 3 – dismissal or action short of dismissal*

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

## **Statutory discipline and dismissal procedure**

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

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

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

## **Gross misconduct**

If, after investigation, it is confirmed that an employee has committed an offence of the following nature (the list is not exhaustive), the normal consequence will

be dismissal without notice or payment in lieu of notice:

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

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

### **Appeals**

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

### **Appendix 3 – Sample letters**

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

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#### **(1) Notice of disciplinary meeting**

Dear Date

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

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

Yours sincerely

Signed Manager

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**(2) Notice of written warning or final written warning**

Dear Date

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

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

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

Final written warning/dismissal

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

Yours sincerely

Signed Manager

Note:

\* The wording should be amended as appropriate

\*\* Delete if inappropriate

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**(3) Notice of appeal meeting against warning**

Dear Date

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

Your appeal will be heard by ..... in ..... on ..... at .....

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

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

Yours sincerely

Signed Manager

Note:

\* The wording should be amended as appropriate

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**(4) Notice of result of appeal against warning**

Dear Date

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

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

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

Yours sincerely

Signed Manager

Note:

\* The wording should be amended as appropriate

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

Dear Date

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

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

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

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

Yours sincerely

Signed Manager

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

Dear Date

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

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

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

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

No further action would be taken against you.

The reasons for your dismissal are:

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

The reasons for your dismissal are:

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

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

Yours sincerely

Signed Manager

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

Dear Date

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

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

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

Yours sincerely

Signed Manager

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

Dear Date

You appealed against the decision of the disciplinary hearing that you be dismissed/subject to disciplinary action [delete as appropriate].

The appeal meeting was held on .....

I am now writing to confirm the decision taken by .....

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

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

Yours sincerely

Signed Manager

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

Doctor's name Date

Address

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

Re:

Name

Address

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

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

Management responsibility for

Seated/standing/mobile

Light/medium/heavy effort required

Day/shift/night work

Clerical/secretarial duties

Group I (private)/Group II (professional) driver

Other

The absence record for the past year is summarised as:

Total days lost

This month

Previous months

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

What is the likely date of return to work?

Will there be any disability at that time?

How long is it likely to last?

Are there any reasonable adjustments we could make to accommodate the

disability?

Is there any underlying medical reason for this attendance record?

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

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

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

Yours sincerely

Signed Name (BLOCK LETTERS)

Role in the company

Note: Please amend/delete where necessary

#### **Appendix 4 – Basic principles of Human Rights Act 1998, Data Protection Act 1998, and Disability Discrimination Act 1995**

##### **Human Rights Act 1998**

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

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

- Article 4, prohibition of forced labour and slavery
- Article 6(1), the right to a free trial (both civil and criminal law)
- Article 8, the right to privacy and respect for family life (including correspondence)
- Article 9, freedom of thought, conscience and religion
- Article 10, freedom of expression
- Article 11, freedom of assembly and association
- Article 14, prohibition of discrimination (such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status).

Many of these are subject to exceptions and derogations, and some do not 'stand alone' as independent rights, but are limited or qualified in that interference with the right may be lawful for, for example, the protection of the rights and

freedoms of others. Employers would need to be able to argue in defence of any allegation of breach of the Act that such actions were necessary for business reasons.

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

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

### **Data Protection Act 1998**

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

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

There are eight principles governing the processing of personal data:

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

The 1998 Act introduces new restrictions on the holding and processing of what is termed 'sensitive personal data', such as racial or ethnic origin, political opinions,

religious or other beliefs, whether a member of a trade union, physical or mental health, sexual life, and any court record, or allegations of such. In addition to being subject to the eight principles above at least one of the following conditions must be complied with – there are others, but most relevant in the context of employment are:

- the worker has given his or her explicit consent to the processing
- the processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the employer in connection with employment
- the processing is necessary in connection with any legal proceedings or for the purpose of obtaining legal advice
- the processing is necessary for the administration of justice, for the exercise of functions conferred by statute, or for the exercise of any function of the Crown
- that if the processing relates to sensitive data as to racial or ethnic origin it is necessary for the purpose of monitoring equality of opportunity or treatment between persons of different racial or ethnic origins with a view to enabling such equality to be promoted or maintained; and is carried out with appropriate safeguards for the rights and freedoms of data subjects.

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

Employers should think carefully about what kind of information they ask of their workers. What is the purpose of such information? Who is to have access to it and under what conditions? Unauthorised access to workers' records should be a disciplinary matter, and may be a criminal offence under Section 55 of the Act. Remember that the worker can access their personal records and demand rectification of errors, and can claim compensation for damage caused by any breach of the Act, and also for distress in certain circumstances. Someone in the organisation must take responsibility for compliance with the Act.

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

Enforcement is the responsibility of the Information Commissioner. Full details are available from the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, Information line 01625 545700. The Commissioner published a Code of Practice on the Use of Personal Data in Employer/Employee Relationships in early 2001. This Code gives detailed advice for employers and further recommendations for good practice. The website, [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) gives details of the publication of the Code and subsequent Codes of Practice on recruitment and selection, employment records, monitoring at work and medical information.

## **Disability Discrimination Act 1995 (DDA)**

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

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

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

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

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

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

## **Glossary**

- **capability**: an employee's ability or qualification to do their job. Most often referred to in discipline cases where there is a lack of capability
  
- **conduct**: an employee's behaviour in the workplace
  
- **disciplinary action**: formal action against an employee: for example issuing a first written warning for misconduct or dismissing someone for gross misconduct
  
- **disciplinary procedure**: is a procedure for organisations to follow to deal with cases of misconduct or unsatisfactory performance. It helps employers deal with

discipline cases fairly and consistently

- **employees:** are people who work for an employer under a contract of employment. The term is used throughout Sections 1 & 2 of the handbook and the Code of Practice. The statutory discipline, dismissal and grievance procedures apply only to employees although it is good practice to give all workers access to disciplinary and grievance procedures

- **grievance:** is a problem or concern that an employee has about their work, working conditions or relationships with colleagues

- **grievance procedure:** is a procedure for organisations to use to consider employees' grievances. It helps employers deal with grievances fairly and consistently

- **gross misconduct:** are acts which are so serious as to justify possible dismissal, such as theft or fraud; physical violence or bullying; deliberately accessing internet sites containing pornographic, offensive or obscene material; serious insubordination; serious incapability at work brought on by alcohol or illegal drugs; a serious breach of health and safety rules; or a serious breach of confidence

- **improvement note:** in cases of unsatisfactory performance an employee should be given an 'improvement note' setting out the performance problem, the improvement that is required, the timescale for achieving this improvement, a review date and any support the employer will provide to assist the employee

- **natural justice:** refers to the basic fundamental principles of fair treatment. These principles include the duty to give someone a fair hearing; the duty to ensure that the matter is decided by someone who is impartial; and the duty to allow an appeal against a decision

- **reasonable adjustments:** a way of preventing discrimination against disabled employees by making changes to ensure that they are not at a disadvantage. For example, a specialist keyboard would count as a reasonable adjustment for a disabled employee unable to use a conventional keyboard

- **sanction:** is a punishment imposed on an employee as a result of unsatisfactory performance or misconduct. Sanctions may include dismissal or actions short of dismissal such as loss of pay or demotion

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

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

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

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

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

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

See [Part 3- The right to be accompanied. Checklist for the right of accompaniment](#) and Section 3 of the  [Code of Practice - Disciplinary and grievance procedures](#) – applies to all workers.

## Notes

There are no service requirements if the dismissal is connected with discrimination, pregnancy, trade union activities, seeking to assert a statutory right, and a number of other reasons which make the dismissal 'automatically unfair'. The full list is in the DTI leaflet [Individual Rights of Employees](#).

2. Further advice and Codes of Practice can be obtained from the Equal Opportunities Commission (tel 0845 601 5901), the Disability Rights Commission (tel 08457 622 633) and the Commission for Racial Equality (tel 020 7939 0000). Acas' Equality Direct Helpline can also give help and advice to employers (tel 08456 00 33 44).

3. The Employment Equality (Age) Regulation 2006 came into force on 1 October 2006. For more details see the Acas guide *Putting the Employment Equality (Age) Regulations 2006 into practice* at [www.acas.org.uk](http://www.acas.org.uk).

4. As required by Section 4 of the Employment Rights Act 1996.
5. The Health and Safety Executive has published a booklet Passive smoking at work (call HSE books on 01787 881 165).
6. Article 8 of the European Convention on Human Rights provides for a 'Right to respect for private and family life', and has been held to cover any worker surveillance done without the knowledge of the individual. It may be argued that employers who routinely tape record telephone calls should provide workers with the facility to make private unrecorded calls. This Article also applies to email monitoring and other forms of surveillance such as CCTV. The Information Commissioner has published a draft Code of Practice on Monitoring at Work and a CCTV Code of Practice – contact details are at the back of this handbook. Following the Regulation of Investigatory Powers Act 2000, the Home Office has produced Codes of Practice which also affect scrutiny of workers' emails, telephone calls etc (contact Home Office at [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). tel 0870 000 1585).
7. See Acas [Advice leaflet - Bullying and harassment at work: a guide for managers and employers](#) for further advice on policies and procedures.
8. Guidance given by the Employment Appeal Tribunal in *Linfood Cash and Carry v Thomson* [1989] IRLR 235, sets out the approach that should be taken with anonymous informants. In particular statements should be in writing, available to the accused employee and give details of time/place/dates as appropriate. The employer should enquire as to the character of the informant and assess the credibility and weight to be attached to the evidence.
9. Special consideration should be given before imposing disciplinary suspension without pay. It must be allowed for in the worker's contract of employment, and no suspension should exceed the maximum period set out in the contract. It must not be unreasonably prolonged, since it would then be open to the worker to take action for breach of contract or resign and claim constructive dismissal.
10. Further guidance on employees' rights to notice is provided in the Department of Trade and Industry booklet [Rights to notice and reasons for dismissal](#).
11. Section 92 of the Employment Rights Act 1996 refers. More details of employees' rights to written reasons for dismissal are given in the DTI booklet [Rights to notice and reasons for dismissal](#).
12. The recommendations for good practice can be obtained from the Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
Tel 01625 545700 [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk).
13. The DDA defines a disability as 'a physical or mental impairment which has a substantial and long-term effect on a person's ability to carry out normal day-to-day activities'. Free leaflets about the Act are available through the Disability

Rights Commission website at [www.disability.gov.uk](http://www.disability.gov.uk).

14. See Acas [Advisory booklet - Absence and labour turnover](#) and [Advisory booklet - Personnel data and record keeping](#) for further information.

15. Disability Service Teams, contactable through the local Jobcentre, may be able to help with advice and possibly equipment.

16. Access to Medical Reports Act 1988.

17. The GP should return the report via the company doctor. If there is not one, the employer should make it clear to the employee, when seeking permission to approach the GP, that the report will be sent direct to the employer. Employers who wish to seek advice on securing the services of a company doctor should contact the Faculty of Occupational Medicine at 6 St Andrews Place, Regents Park, London NW1 4LB, tel 020 7317 5890 [www.facocmed.ac.uk](http://www.facocmed.ac.uk).

18. See DTI leaflet [Rights to notice and reasons for dismissal](#).

19. Acas [Advisory booklet - Health and employment](#) gives more detailed guidance on issues such as smoking, alcohol and drug abuse, HIV/AIDS and stress.

20. Disability Service Teams in the Jobcentres may be able to help with advice and possibly equipment. Enquiries should be made of the local JobCentre.

21. Redundancy has a legal meaning as defined in the Employment Rights Act 1996 Section 139. More information is given in the DTI leaflets [Redundancy payments](#) and [Redundancy consultation and notification](#).

22. In law, frustration occurs when, without the fault of either party, some event, which was not reasonably foreseeable at the time of the contract, renders future performance either impossible or something radically different from what was contemplated originally. Legal advice should be sought if it is thought frustration of the employment contract has occurred.

23. See [Advice leaflet - Bullying and harassment at work: a guide for managers and employers](#).

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