

**Discipline and grievances at work:
Draft Acas guide**

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Introduction

1 This guide sets out good practice for dealing with discipline and grievances in the workplace. It complements the Acas Code of Practice: *Discipline and grievances at work*. Extracts from the Code of Practice are reproduced in shaded boxes followed by further practical advice and guidance.

2 The Acas Code of Practice has special status. A failure to follow any part of the

Extract from Code of Practice

This code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Similarly, arbitrators appointed by Acas to determine relevant cases under the Acas Arbitration Scheme will take the Code into account. Employment tribunals may adjust

awards if they feel the Code has not been followed without good reason. Where the employer has failed to comply with the Code the tribunal may increase any award to an employee by up to 25%. Where the employee has failed to comply the award may be reduced by up to 25%.

3 Guidance that is not part of the Code of Practice is purely advisory and has no status at an Employment Tribunal. The guidance is based on Acas' extensive experience of how discipline and grievances in the workplace should be handled.

4 If discipline and grievance issues are settled at an early stage they are normally less time consuming and less likely to damage working relationships.

5 In some cases early use of an internal or external mediator may be a helpful alternative to the use of procedures, particularly when dealing with grievances. Mediation involves using a neutral third party to help two or more people talk through and resolve a difference or dispute. It is an entirely voluntary process but where the parties agree to take part it can often lead to acceptable solutions. Just as the mediator cannot compel anyone to take part neither do they have the power to impose solutions and will not make recommendations unless that is the wish of the parties involved. For more information about mediation see the Acas website at www.acas.org.uk

Extract from Code of Practice

Employers and employees should do all that they can to resolve disciplinary and grievance issues in the workplace. Recourse to an employment tribunal should only be a last resort.

6 Good employment relations practices - including for recruitment, induction training, communications and consultation - can prevent many discipline and

grievance problems arising. Acas provides comprehensive guidance on employment issues in its publications or on its website. We can also arrange training and on site advice. For further details see the Acas website www.acas.org.uk or call the Acas Helpline **08457 47 47 47**

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DISCIPLINE

Keys to handling disciplinary problems in the workplace

Resolve discipline issues informally

Extract from Code of Practice

Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve a problem. However, where informality does not work the matter may be pursued formally

How can discipline be dealt with informally?

7 In most 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 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 a temporary adjustment to his start and finish times and he undertakes to make arrangements for 'school run' cover which solves the problem.

You decide that disciplinary action is not appropriate.

How should it be done?

8 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

9 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.

10 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. It may be useful to confirm the agreed action in writing.

11 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 Page 22 - The right to be accompanied). 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

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

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Develop rules and procedures

Extract from Code of Practice

Fairness and transparency are promoted by developing rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear and be agreed wherever possible with trade unions or employee representatives. It is also important to ensure that employees and managers understand how they are to be used.

Why have rules?

13 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.

What should rules cover?

14 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
 - starting times
 - lateness.
- Absence¹
 - authorising absence
 - approval of holidays
 - notification of absence
 - who the employee tells
 - when they tell them
 - the reasons for absence
 - 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 against either sex 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 calls²
 - computers, email and the internet
 - company premises outside working hours
 - equipment.
- Discrimination, bullying and harassment
 - equal opportunities policy
 - policy on harassment relating to age, race, sex, disability, sexual orientation, religion or belief

- bullying and harassment policy³
- 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).

How should rules be drawn up and communicated?

15 To be fully effective rules 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.

16 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.

17 In a small organisation, it may be sufficient for rules to be displayed in a prominent place. See [Appendix 1](#) for a checklist 'Disciplinary rules for small organisations'. 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.

18 Special attention should be paid to ensure that rules are understood by any employees without recent 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.

19 Rules are more readily accepted and followed 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.

20 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.

21 The rules should not discriminate on the grounds of sex, marital or civil partnership status, racial group, sexual orientation, religion or belief, disability⁴ or age⁵

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 they should be issued with a revised written statement within one month of the change⁶.

Why have a disciplinary procedure?

22 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.

23 Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals. They should be used primarily to help and encourage employees to improve rather than just as a way of imposing a punishment. Disciplinary rules tell employees what behaviour employers expect from them. If an employee breaks specific rules about behaviour, this is often called misconduct. Employers use disciplinary procedures and actions to deal with situations where employees allegedly break disciplinary rules.

Disciplinary procedures may also be used where employees don't meet their employer's expectations in the way they do their job. These cases, often known as unsatisfactory performance (or capability), may require different treatment from misconduct, and disciplinary procedures should allow for this.

What should disciplinary procedures contain?

24 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 this 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. Keep the employee informed of progress.
- 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.

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

26 Samples of disciplinary procedures are at [Appendix 2 – Sample disciplinary and grievance procedures](#), and may be adapted according to the requirements of the organisation.

Training

27 Good training helps managers achieve positive outcomes, reducing the need for any further disciplinary action. Those responsible for using and operating the disciplinary rules and procedures, including managers at all levels, 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 employment tribunal claim. 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. For information about Acas training courses see the Acas website www.acas.org.uk

Obtaining outside help

Mediation

28 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 agreement where the employer and employee are unable to resolve a disagreement alone. The mediator may also recommend a way forward if both parties agree that this is what they want.

29 There may also be occasions when mediation is useful as part of or alongside the disciplinary process. This may be the case where there has been a breakdown in interpersonal relations between two or more employees or between an employee and their manager. Mediation may have a more positive long term effect in modifying future behaviour than the standard disciplinary process.

30 For more information about mediation see the Acas website at www.acas.org.uk

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Keeping written records

Extract from Code of Practice

It is good practice to keep written records during disciplinary and grievance cases. A written record should be kept of the outcome.

What records should be kept?

31 Consistent handling of disciplinary matters will be difficult unless simple records are kept of decisions and how they were made. 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 health⁷.

32 Copies of relevant records should be given to employees concerned. In certain circumstances some information may be withheld, for example to protect a witness.

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Dealing fairly with formal disciplinary action

Extract from Code of Practice

Whenever a formal process is being followed it is important to deal with issues fairly. There are a number of elements to this.

Issues should be dealt with **promptly**. Meetings and decisions should not be unduly delayed.

Employers should act **consistently** and ensure that like cases are treated alike.

Appropriate **investigations** should be made, to establish the facts of the case.

Any grievance or disciplinary meeting should, so far as possible, be conducted by a manager who was **not involved** in the matter giving rise to the dispute.

An employee should be enabled to understand the basis of the problem and **put their case** before any decisions are made.

Where the employer is raising a **performance** problem the immediate manager would be involved.

An employee has the right to be **accompanied** at any disciplinary or grievance meeting.

An employee should be allowed to **appeal** against any formal decision made.

Extract from Code of Practice

Where some form of formal action is needed, what action is reasonable or justified will depend on all the circumstances of the particular case. The size and resources of the employer should always be taken into account. In small organisations it may sometimes not be practicable to take all of the steps set out in this Code. However, the key elements of good practice that employers and employees should work to are set out in the paragraphs that follow.

33 The following pages give detailed guidance on handling formal disciplinary issues. Always bear in mind the need for fairness when following procedures taking account of the elements from the Acas Code of Practice reproduced above.

34 Dealing with absence can raise particular issues and these are dealt with in Appendix 4 – Dealing with absence

Establishing the facts

Extract from Code of Practice

Establish the facts of each case

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

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

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

Investigating cases

35 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.

36 Any investigatory meeting should be conducted by a management representative and should be confined to establishing the facts of the case. It is important that disciplinary action is not considered at an investigatory meeting. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal hearing at which the employee will have the statutory right to be accompanied. See also 'Use of external consultants' on p35.

Suspension

37 Exceptionally, where you have reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the meeting, consider suspending the employee with pay for a brief period whilst the investigation is carried out. There may be other instances where suspension is necessary – for example where relationships have broken down or there are risks to an employee's property or responsibilities to other parties.

38 Suspension with pay should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary sanction.

Informing the employee

Extract from Code of Practice

Inform the employee of the problem

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

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

39 An sample letter inviting an employee to a meeting is at [Appendix 3](#).

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Holding a disciplinary meeting

Extract from Code of Practice

Hold a meeting with the employee to discuss the problem

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

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

Preparing for the meeting

40 You should:

- 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 page 22)
- where possible arrange for a second member of management to be present to take notes and act as a witness
- 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 genuine⁸
- check that the standards of other employees are acceptable, and that this employee is not 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. Copies of any relevant papers and witness statements should be made available to the employee in advance
- if the employee concerned is a trade union representative discuss the case with a trade union 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

- arrange another meeting if an employee fails to attend through circumstances outside their control, such as illness.
- inform the employee that a decision will be made on the evidence available if exceptionally it is not possible to arrange a meeting within a reasonable period of time
- establish what disciplinary action was taken in similar circumstances in the past
- 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). In some circumstance this person may be in addition to the chosen companion.
- 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?

41 Meetings rarely proceed in neat, orderly stages but it is good practice to:

- 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

42 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 and question any witnesses who give evidence in person.

43 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 or is not performing to the required standard. Then agree the steps which should be taken to remedy the situation.

Employee's reply

44 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.

45 If it is not practical for witnesses to attend, consider proceeding if it is clear that their verbal evidence will not affect the substance of the complaint. Alternatively, consider an adjournment to allow questions to be put to a witness who cannot attend in person but who has submitted a witness statement.

46 If a grievance is raised during the meeting that relates to the case it may be appropriate to stop the meeting and suspend the disciplinary procedure for a short period until the grievance can be considered.

General questioning and discussion

47 You should:

- 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 companion
- ask the employee if she or he has any explanation for the misconduct or unsatisfactory performance, 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

48 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

49 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?

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

51 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.

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Allowing the employee to be accompanied

Extract from Code of Practice

Allow the employee to be accompanied at the meeting

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

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

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

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

What is the right to be accompanied?

52 Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings. They must make a reasonable request to their employer to be accompanied.

What is a disciplinary hearing?

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

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

54 Informal discussions or counselling sessions do not attract the right to be accompanied. Meetings to investigate an issue are not disciplinary hearings. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal hearing at which the employee will have the statutory right to be accompanied.

What is a reasonable request?

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

The companion

56 The companion may be:

- a fellow worker (ie another of the employer's workers);
- an official employed by a trade union, or a lay trade union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

57 Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative). If workers are disabled, employers should consider whether it might be reasonable to allow them to be accompanied because of their disability.

58 Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether or not the union is recognised. However, where a union is recognised in a workplace, consideration should be given to asking an official from that union to accompany them.

59 Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.

60 Trade unions should ensure that their officials are trained in the role of acting as a worker's companion. Even when a trade union official has experience of acting in the role, there may still be a need for periodic refresher training.

61 A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing. A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

Applying the right

62 Where possible, the employer should allow a companion to have a say about the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

63 In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also cater for a companion's disability, for example providing for wheelchair access if necessary.

64 Before the hearing takes place, the worker should tell the employer who they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.

65 The companion should be allowed to address the hearing in order to:

- put the worker's case
- sum up the worker's case
- respond on the worker's behalf to any view expressed at the hearing.

66 The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The employer is, however, not legally required to permit the companion to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

67 Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to an employment tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay. This could be increased if, in addition, the tribunal finds that the worker has been unfairly dismissed.

68 It is unlawful to disadvantage workers for using their right to be accompanied or for being companions and could lead to a claim to an employment tribunal.

Taking action after the disciplinary hearing

Extract from Code of Practice

Decide on appropriate action

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

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

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

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

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

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

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

What should be considered before deciding any disciplinary penalty?

69 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 (but not expired warnings), 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.

70 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.

71 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 – 2

A member of staff in accounts 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

72 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.

73 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).

74 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

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

76 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 –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

77 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 – 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 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

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

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

80 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

81 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.

82 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 accrued 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 minimum then the longer period of notice applies¹⁰.

Dismissal without notice

83 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.

Follow the Code of practice

84 It is important for both employers and employees to follow the Acas Code of Practice. Employment tribunals may adjust awards if they feel the Code has not been followed without good reason. Where the employer has failed to comply with the Code the tribunal may increase any award to an employee by up to 25%. Where the employee has failed to comply with the Code the award may be reduced by up to 25%.

What is gross misconduct?

85 Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee thus justifying summary dismissal. Acts which constitute gross misconduct must be very serious and are

best determined by organisations in the light of their own particular circumstances. However, examples of gross misconduct might include:

- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of an organisation's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- unlawful discrimination or harassment
- bringing the organisation into serious disrepute
- serious incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of confidence

86 If an employer considers an employee guilty of gross misconduct and thus liable for summary dismissal it is still important to establish the facts of the case before taking any action and to hold a meeting with the employee. A short period of suspension with full pay to help establish the facts or to allow tempers to cool may be helpful. However, such a period of suspension should only be imposed after careful consideration and should be kept under review. It should be made clear to the employee that the suspension is not a disciplinary action and does not involve any prejudgement.

87 Before any decision is taken to dismiss an employee for gross misconduct they should have an opportunity to put their case at a disciplinary hearing and, if they are dismissed, they should be allowed to appeal against the decision.

How should the employee be informed of the disciplinary decision?

88 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.

89 Details of any disciplinary action should be given in writing to the employee as soon as the decision is made. See example letters at [appendix 3](#). 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.

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

Written reasons for dismissal

91 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. It is good practice to give written reasons for all dismissals.

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

Time limits for warnings

93 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.

94 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.

95 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

Extract from Code of Practice

Provide employees with an opportunity to appeal

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

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

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

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

96 The opportunity to appeal against a disciplinary decision is essential to natural justice, and appeals may be raised by employees on a number of 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?

97 It should:

- specify a time-limit within which the appeal should be lodged (five working days is commonly felt appropriate although this may be extended in particular circumstances)
- 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, someone 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
- 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

98 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?

99 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 page 22). Make sure the relevant records and notes of the original meeting are available for all concerned. See sample letters at [Appendix 3](#).

At the meeting

100 You should:

- introduce those present to each other, explaining their presence if 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 disciplinary penalty
- 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
- change 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 consider whether training for managers needs to be improved, if 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. See sample letters at [Appendix 3](#).

Employment tribunal time limits

101 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).

102 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. In certain circumstances, Employment Tribunals have the discretion to extend the time limits, but employees should not assume that an extension will be granted just because internal procedures are incomplete. If it becomes apparent that the statutory time limit for lodging a tribunal claim might be reached before internal procedures have been concluded, employees should take advice - from their trade union, a legal adviser, or another qualified source - before the time limit expires.

Dealing with special cases

Extract from Code of Practice

Special cases

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

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

Employees to whom the full procedure is not immediately available

103 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

104 Although normal disciplinary standards apply to their conduct as employees, disciplinary action against a trade union representative 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

105 In some 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

106 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.

107 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.

108 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.

109 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.

110 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'¹². However, the doctrine is normally accepted by the courts only where the frustrating event renders all performance of the employment contract clearly impossible.

111 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

112 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.

113 This duty should be exercised quite separately from any disciplinary action. 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.

114 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

DRAFT

GRIEVANCES

Keys to handling grievances in the workplace

Resolve grievances informally

Extract from Code of Practice

Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve a problem. However, where informality does not work the matter may be pursued formally

How can grievances be settled informally?

115 Employees should aim to settle most grievances informally with their line manager.

116 Many problems can be raised and settled during the course of everyday working relationships. This also allows for problems to be settled quickly.

117 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 or you want someone to decide the rights and wrongs of an issue for you. For more information about mediation see the Acas website at www.acas.org.uk

118 Where a grievance is serious or an employee has attempted to raise a problem informally without success, the employee should raise it formally with management preferably in writing.

Develop rules and procedures

Extract from Code of Practice

Fairness and transparency are promoted by developing rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear and be agreed wherever possible with trade unions or employee representatives. It is also important to ensure that employees and managers understand how they are to be used.

What is a grievance and why have a procedure?

119 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.

120 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
- discrimination.

121 Grievances may occur at all levels, and the Acas Code of practice, and this guidance, applies equally to management and employees.

122 Occasionally a collective grievance may arise where a number of people have the same grievance at the same time. If there is a grievance which applies to more than one person consider whether it should be resolved with any recognised trade union(s).

123 A written procedure can help clarify the process and help to ensure that employees are aware of their rights such as to be accompanied at grievance meetings (see page 47 on the right to be accompanied). Some organisations use, or may wish to use, external mediators to help resolve grievances. Where this is the case the procedure should explain how and when mediators may be used.

124 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 grievances 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.

Training for dealing with grievances

125 Management and employee 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. Consideration might be given to training managers and employee representatives jointly. For details of Acas training courses see the Acas website at www.acas.org.uk

DRAFT

Keeping written records

Extract from Code of Practice

It is good practice to keep written records during disciplinary and grievance cases. A written record should be kept of the outcome.

Keeping records

126 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.

127 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.ico.gov.uk).

DRAFT

Dealing fairly with formal grievances

Extract from Code of Practice

Whenever a formal process is being followed it is important to deal with issues fairly. There are a number of elements to this.

Issues should be dealt with **promptly**. Meetings and decisions should not be unduly delayed.

Employers should act **consistently** and ensure that like cases are treated alike.

Appropriate **investigations** should be made, to establish the facts of the case.

Any grievance or disciplinary meeting should, so far as possible, be conducted by a manager who was **not involved** in the matter giving rise to the dispute.

An employee has the right to be **accompanied** at any disciplinary or grievance meeting.

An employee should be allowed to **appeal** against any formal decision made.

128 The following pages give detailed guidance on handling formal grievances. Always bear in mind the need for fairness when following procedures taking account of the elements from the Acas Code of Practice reproduced above.

Letting the employer know the nature of the grievance

Extract from Code of Practice

Let the employer know the nature of the grievance

This is best done in writing and to the employee's line manager.

Where the grievance is against the line manager the employee should approach another manager in the organisation if possible.

129 Where it is not possible to settle a grievance informally the employee should set out the grievance in writing to his or her line manager. Thinking through a grievance and putting it into writing can often help an employee clarify the issues.

130 Where employees have difficulty expressing themselves because of language or other difficulties they may like to seek help from trade union or other employee representatives or from colleagues. In some circumstance this person may be in addition to the chosen companion.

131 When stating their grievance employees should stick to the facts and avoid language which may be considered insulting or abusive.

132 Where the grievance is against the line manager the employee may approach another manager or raise the issue with their HR department if there is one.

133 In small firms run by an owner/manager there will be no alternative manager to raise a grievance with. It is in the interests of such employers to make it clear that they will treat all grievances fairly and objectively even if the grievance is about something they have said or done.

Holding a grievance meeting

Extract from Code of Practice

Hold a meeting with the employee to discuss the grievance

Arrange for a formal meeting to be held promptly after a grievance is received.

Allow the employee to explain their grievance and how they think it should be resolved.

What is a grievance hearing?

134 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 page 47).

Preparing for the hearing

135 Managers should:

- hold the meeting in private without interruption from outside
- find it useful to have someone to take notes and act as a witness to the proceedings
- 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

136 Managers should:

- 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
- put care and thought 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, 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. In some cases it may be helpful to use a neutral mediator to help sort out a grievance and maintain working relationships. For more information about

mediation see the Acas website at www.acas.org.uk

- 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
- arrange an appeal if the employee is unhappy with the decision

Be calm, fair and follow the procedure

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

138 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' on page 51).

Follow the Code of practice

139 It is important for both employers and employees to follow the Acas Code of Practice. Employment tribunals may adjust awards if they feel the Code has not been followed without good reason. Where the employer has failed to comply with the Code the tribunal may increase any award to an employee by up to 25%. Where the employee has failed to comply with the Code the award may be reduced by up to 25%.

Grievances in practice - 1

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

140 These 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. 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 page 47).

Extract from Code of Practice

Allow the employee to be accompanied at the meeting

Workers have a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the worker.

The chosen companion may be a fellow worker a lay trade union official or an official employed by a trade union. A lay official must have been certified by their union as being able to accompany a worker. So this would apply where the complaint is, for example, that the employer is not honouring the worker's contract, or is in breach of legislation.

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

What is a grievance hearing?

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

142 It is generally good practice to allow workers to be accompanied at a formal grievance meeting even when the statutory right does not apply.

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

What is a reasonable request?

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

suitably qualified was available on site. The request to be accompanied does not have to be in writing.

The companion

145 The companion may be:

- a fellow worker (ie another of the employer's workers);
- an official employed by a trade union, or a lay trade union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

146 Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative). If workers are disabled, employers should consider whether it might be reasonable to allow them to be accompanied because of their disability.

147 Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether the union is recognised or not. Where a union is recognised in a workplace consideration should be given to asking an official from that union to accompany them.

148 Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.

149 Trade unions should ensure that their officials are trained in the role of acting as a worker's companion. Even when a trade union official has experience of acting in the role, there may still be a need for periodic refresher training.

150 A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing. A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

Applying the right

151 Where possible, the employer should allow a companion to have a say in the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

152 In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also cater for a companion's disability, for example providing for wheelchair access if necessary.

153 Before the hearing takes place, the worker should tell the employer who they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.

154 The companion should be allowed to address the hearing in order to:

- put the worker's case
- sum up the worker's case
- respond on the worker's behalf to any view expressed at the hearing.

155 The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The employer is, however, not legally required to permit the companion to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

156 Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to an employment tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay. This could be increased if, in addition, the tribunal finds that the worker has been unfairly dismissed.

157 Employers should be careful not to disadvantage workers for using their right to be accompanied or for being companions, as this is against the law and could lead to a claim to an employment tribunal.

Decide on appropriate action

Extract from Code of Practice

Decide on appropriate action

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

158 It is generally good practice to adjourn a meeting before a decision is taken about how to deal with an employee's grievance. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised.

159 Set out clearly in writing any action that is to be taken. Where an employee's grievance is not upheld make sure the reasons are carefully explained.

160 Try to balance fairness to the employee without compromising the business or other employees. Bear in mind that actions taken to resolve a grievance may have an impact on other individuals, who may also feel aggrieved.

161 If the grievance highlights any issues concerning policies, procedures or conduct (even if not sufficiently serious to merit separate disciplinary procedures) ensure these are addressed.

162 Ensure any action taken is monitored and reviewed, as appropriate, so that it does deal effectively with the issues.

Appeals

Extract from Code of Practice

Allow the employee to take the grievance further if not resolved

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

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

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

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

Arranging an appeal

163 If an employee informs the employer that they are unhappy with the decision after a grievance meeting, the employer should arrange an appeal. As far as reasonably practicable the appeal should be with a more senior manager than the one who dealt with the original grievance.

164 In small organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If this is not possible consider whether the owner or, in the case of a charity, the board of trustees, should hear the appeal. Whoever hears the appeal should consider it as impartially as possible.

165 At the same time as inviting the employee to attend the appeal, the employer should remind them of their right to be accompanied at the appeal meeting.

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

167 In large organisations it is good practice to allow a further appeal to a higher level of management, such as a director. However, in smaller firms the first appeal will usually mark the end of the grievance procedure. Sample grievance procedure (small organisation) is at Appendix 2.

Dealing with special cases

Extract from Code of Practice

Special cases

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

Some organisations may wish to have separate procedures to deal with areas of particular sensitivity, such as complaints about bullying or harassment¹³, 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. Mediation may be particularly useful in these types of cases. For more information about mediation see the Acas website at www.acas.org.uk

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Appendix 1 – Disciplinary rules for small organisations

Checklist

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 – for instance 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

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Appendix 2 – Sample disciplinary and grievance procedures

Sample disciplinary procedure (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 disciplinary action.

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

3. The Procedure

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 achieving and sustaining satisfactory performance.

First warning: misconduct

If 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).

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 achieving and sustaining 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.

Gross misconduct

The following list provides some 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 disciplinary procedure (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.

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.

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Sample grievance procedure (small organisation)

Dealing with grievances informally

If you have a grievance or complaint to do with your work or the people you work with you should, wherever possible, start by talking it over with your manager. You may be able to agree a solution informally between you.

Formal grievance

If the matter is serious and/or you wish to raise the matter formally you should set out the grievance in writing to your manager. You should stick to the facts and avoid language that is insulting or abusive.

Where your grievance is against your manager and you feel unable to approach him or her you should talk to another manager or the owner.

Grievance hearing

Your manager will call you to a meeting, normally within 5 days, to discuss your grievance. You have the right to be accompanied by a colleague or trade union representative at this meeting if you make a reasonable request.

After the meeting the manager will give you a decision, normally within 24 hours.

Appeal

If you are unhappy with your manager's decision and you wish to appeal you should let your manager know.

You will be invited to an appeal meeting, normally within 5 days, and your appeal will be heard by a more senior manager (or the company owner). You have the right to be accompanied by a colleague or trade union representative at this meeting if you make a reasonable request.

After the meeting the manager (or owner) will give you a decision, normally within 24 hours. The manager's (or owner's) decision is final.

Appendix 3 – Sample letters

Contents

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
 6. Letter to be sent by the employer after the disciplinary meeting arranged in Letter 5
 7. Notice of appeal meeting against dismissal
 8. Notice of result of appeal against dismissal
 9. Model letter of enquiry regarding likely cause of absence addressed to a worker's general practitioner
-

(1) Notice of disciplinary meeting

Date

Dear

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:

The possible consequences arising from this meeting might be:

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

Yours sincerely

Signed Manager

(2) Notice of written warning or final written warning

Dear

Date

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

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

a) The nature of the unsatisfactory conduct or performance was:

b) The conduct or performance improvement expected is:

c) The timescale within which the improvement is required is:

d) The likely consequence of further misconduct or insufficient improvement is:
Final written warning/dismissal

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

Yours sincerely

Signed Manager

Note:

* The wording should be amended as appropriate

** Delete if inappropriate

(3) Notice of appeal meeting against warning

Date

Dear

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

Your appeal will be heard by in on at

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

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

Yours sincerely

Signed Manager

Note:

* The wording should be amended as appropriate

(4) Notice of result of appeal against warning

Date

Dear

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

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

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

Yours sincerely

Signed Manager

Note:

* The wording should be amended as appropriate

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

Date

Dear

I am writing to tell you that [insert organisation name] is considering dismissing OR taking disciplinary action [insert proposed action] against you. This action is being considered with regard to the following circumstances:

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

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

Yours sincerely

Signed Manager

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

Date

Dear

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

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

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

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

No further action would be taken against you.

The reasons for your dismissal are:

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

The reasons for your dismissal are:

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

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

Yours sincerely
Signed Manager

(7) Notice of appeal meeting against dismissal

Date

Dear

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

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

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

Yours sincerely

Signed Manager

(8) Notice of result of appeal against dismissal

Date

Dear

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

Appendix 4 – Dealing with absence

This appendix 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 Act¹⁴. 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 Commissioner¹⁵ 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 equipment¹⁶. 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 writing¹⁷
- 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 letter¹⁸
- 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.

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 sum¹⁹.

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 person²⁰.

Failure to return from extended leave on the agreed date

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

- the policy should apply to all employees, irrespective of their age, sex, marital status, racial group, disability, sexual orientation or religion or belief
- any conditions attaching to the granting of extended leave should be carefully explained to the employee, using interpreters if necessary, and the employee's signature should be obtained as an acknowledgement that he or she understands and accepts them. Employers should be aware that agreed extended leave can preserve continuity of employment, even when such leave is unpaid and other terms and conditions of employment are suspended for the duration of the leave
- if an employee fails to return on the agreed date, this should be approached in the same way as any other failure to abide by the rules and the circumstances should be investigated in the normal way, with disciplinary procedures being followed if appropriate
- care should be taken to ensure that foreign medical certificates are not treated in a discriminatory way: employees can fall ill while abroad just as they can fall ill in this country
- before deciding to dismiss an employee who overstays leave, the employee's experience, length of service, reliability record and any explanation given should all be taken into account.
- 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.

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Appendix 5 – 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 Information Commissioner's Office, 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.ico.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 Equality and Human Rights Commission 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. Tel: England 0845 604 6610, Scotland 0845 604 5510 and for Wales 0845 604 8810.

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.
- **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
- **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.


Notes

¹ For detailed advice on absence see the Acas Advisory Booklet *Managing attendance and employee turnover*

² Article 8 of the European Convention on Human Rights provides for a 'Right to respect for private and family life', and has been held to cover any worker surveillance done without the knowledge of the individual. It may be argued that employers who routinely tape record telephone calls should provide workers with the facility to make private unrecorded calls. This Article also applies to email monitoring and other forms of surveillance such as CCTV. The Information Commissioner has published a draft Code of Practice on Monitoring at Work and a CCTV Code of Practice – contact details are at the back of this handbook. Following the Regulation of Investigatory Powers Act 2000, the Home Office has produced Codes of Practice which also affect scrutiny of workers' emails, telephone calls etc (contact Home Office at www.homeoffice.gov.uk. tel 020 7035 4848).

³ See Acas [Advice leaflet - Bullying and harassment at work: a guide for managers and employers](#) for further advice on policies and procedures.

⁴ Further advice and Codes of Practice may be obtained from the Equality and human rights commission at www.equalityhumanrights.com Acas' Equality Direct Helpline can also give help and advice to employers (tel 08456 00 33 44).

⁵ The Employment Equality (Age) Regulations 2006 came into force on 1 October 2006. See the Acas  [Guidance on Age and the workplace: a guide for employers \[854kb\]](#): Putting the Employment Equality (Age) Regulations 2006 into practice.

⁶ As required by Section 4 of the Employment Rights Act 1996

⁷ The recommendations for good practice can be obtained from the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF Tel 01625 545700 www.ico.gov.uk.

⁸ Guidance given by the Employment Appeal Tribunal in *Linford 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 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.

¹³ See [Advice leaflet - Bullying and harassment at work: a guide for managers and employers](#).

¹⁴ For further information see the Equality and human rights commission website at www.equalityhumanrights.com

¹⁵ See the Information Commissioner's website at <http://www.ico.gov.uk/>

¹⁶ For further information see the Equality and human rights commission website at www.equalityhumanrights.com

¹⁷ Access to Medical Reports Act 1988

¹⁸ 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

¹⁹ See Rights to Notice and Reasons for Dismissal on the Department for Business and Regulatory Reform website at www.berr.gov.uk/employment

²⁰ For further information see the Equality and human rights commission website at www.equalityhumanrights.com

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