

Disciplinary and grievance procedures - the ACAS Code



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Introduction

The Acas Code of Practice on Disciplinary and Grievance Procedures is designed to provide clear, practical guidance on how to carry out disciplinary and grievances fairly. The latest version of the Code came into force in March 2015 and is available at www.acas.org.uk.

This Inbrief looks the requirements of the Acas Code, the potential consequences for failing to comply and what employers should do in practice.

Main points

- The Acas Code is not legally binding but its provisions are taken into account by employment tribunals where appropriate. A failure to comply with the Code does not *automatically* make a dismissal unfair (although it is likely to do so)
- In addition, where there has been an unreasonable failure to comply with the Code, a tribunal has power to adjust compensation by up to 25% - either upwards or downwards, depending on which party is at fault
- Employees do not need to lodge a written grievance with their employer before they can bring a tribunal claim. However, their failure to do so may mean that any compensation they are awarded is reduced
- The Code itself is very short, but Acas has published much more detailed, supplementary guidance on best practice in dealing with discipline and grievances at work (also available at www.acas.org.uk)
- The Code does not apply to redundancy dismissals and non-renewal of fixed-term contracts

General requirements

The Code sets out a framework for conducting grievance and disciplinary proceedings fairly and resolving workplace disputes. The main general points are:

- Employers and employees should raise and deal with issues promptly, without unreasonable delay
- Employers should carry out all necessary investigations to establish the facts
- Employers and employees should act consistently
- Employers should inform employees of the basis of any problem and allow them an opportunity to put their case before any decision is made
- Employees should be allowed to be accompanied to any formal disciplinary or grievance meeting
- Employees should be allowed to **appeal** against any formal decision

Disciplinary procedures

The Code is intended to help employers and employees deal effectively with issues of alleged misconduct and poor performance in the workplace. When deciding whether an employee has been unfairly dismissed, an employment tribunal will take into account relevant provisions of the Code in considering whether the employer followed a fair procedure. If the claim is upheld, failure to follow the Code by either the employer or employee may affect the compensation awarded.

Key elements of the Code with regard to disciplinary processes include:

- Different people should carry out the investigation and the disciplinary hearing
- An investigatory meeting should not by itself result in disciplinary action without a disciplinary hearing
- Suspensions with pay should be as brief as possible and kept under review. It should be made clear that the suspension is not a disciplinary action
- The employee should be notified of disciplinary proceedings in writing. Sufficient information about the alleged misconduct or poor performance and their possible consequences should be given, so the employee can prepare to answer the case
- Copies of written evidence should normally be provided with the notification, including any witness statements
- The notification should give details of the time and venue for the disciplinary meeting and advise of the right to be accompanied
- The meeting should be held without unreasonable delay, whilst allowing the employee to prepare their case. Employers and employees (and their companions) should make every effort to attend
- At the hearing, the employer should explain the complaint and go through the evidence gathered. The employee should be:
 - allowed to set out their case and answer allegations
 - given a reasonable opportunity to ask

questions, present evidence and call relevant witnesses

- given an opportunity to raise points about any information provided by witnesses

Employees and employers should give advance notice of an intention to call relevant witnesses.

Right to be accompanied

The employee has a legal right to be accompanied by a fellow worker or trade union representative where the employee makes a reasonable request to be accompanied to a disciplinary meeting which could result in:

- a formal warning being issued
- the taking of some other disciplinary action
- confirmation of a warning or other disciplinary action (i.e. at an appeal hearing)

Decision and right of appeal

Following the hearing, the employer should send its decision to the employee in writing. If misconduct or poor performance is established, dismissal should normally follow only where first and final written warnings have previously been issued. In cases of gross misconduct, dismissal for a first offence might be an appropriate response, but a fair disciplinary process should still be followed.

Written warnings should set out the nature of the misconduct or poor performance, the change required and the timescale. The employee should also be informed how long the warning will remain current and the consequences of further misconduct, or failure to improve, within a set period.

Where employees consider that disciplinary action is wrong or unjust, they should appeal in writing, specifying the grounds. The appeal should be heard without unreasonable delay and dealt with impartially by a manager who, if possible, has not previously dealt with the matter. The employee has the right to be accompanied at the appeal hearing.

Grievance procedures

The Code is intended to help employers and employees resolve grievances effectively in the workplace, thereby averting tribunal claims. The key points are:

- If an employee's grievance cannot be resolved informally, it should be raised in writing and without unreasonable delay with a manager. If the grievance concerns the employee's line manager, they should raise it with another manager
- Failure to raise the grievance in writing does not prevent the employee from bringing a tribunal claim about the matter. But the employee might be awarded reduced compensation if they have not done so
- The employer should arrange a formal meeting to allow the employee to explain the grievance and how they consider it should be resolved. Employers and employees (and their companions) should make every effort to attend
- Consideration should be given to adjourning the meeting for any investigation that may be necessary
- Where an employee raises a grievance during the disciplinary proceedings, the disciplinary process may be suspended temporarily. However, where the grievance and disciplinary issues are related, it may be appropriate to deal with both concurrently
- The Code does not apply to collective grievances — i.e. a grievance raised on behalf of two or more employees by a union or other workplace representative

Right to be accompanied

The employee has a statutory right to be accompanied by a fellow worker or union representative where the employee makes a reasonable request to be accompanied to a grievance meeting which deals with a complaint about a duty owed by the employer to the worker.

Decision and right of appeal

After the meeting, the employer should decide what, if any, action to take to resolve the grievance. This should be communicated to the employee, who should also be informed of their right to appeal.

If the employee is not satisfied with the outcome, they should appeal in writing, specifying the grounds of their appeal.

The appeal should be dealt with impartially at a

hearing, conducted if possible by a manager who has not previously been involved. The employee should be informed in advance of the time and place of the appeal hearing and may bring a companion. The employer should communicate the final decision in writing without unreasonable delay.

What happens if we do not comply?

The Code is not legally binding and failure to follow its provisions will not automatically result in a penalty.

However, a failure to comply with the provisions of the Code where it is applicable will be taken into account by tribunals when deciding cases. The provisions of the Code will be of most significance in deciding whether employers are liable for unfair dismissal.

In addition, where the tribunal finds that an employer has unreasonably failed to follow the guidance in the Code, the compensation awarded to the employee may be increased by up to 25%. Alternatively, compensation can be reduced by up to 25% in respect of an employee's breach of the Code.

These compensation adjustments can apply in various types of tribunal claims, including unfair dismissal, discrimination (on grounds of sex, race, disability, age etc), unlawful deduction from wages and breach of contract.

What to do in practice

Employers who do not currently have their own rules and procedure in place should consider producing a set which complies with the Code. There is no formal obligation to do so but it is implicit in the Code's recommendation that rules and procedures be "set down in writing, be specific and clear".

The Code also says that employees and, where appropriate, their representatives should be involved in the development of rules and procedures.

Training

It is also advisable that managers and employees receive training so that they understand what the rules and procedures are, where they can be found and how they are to be used. In addition, managers should be encouraged to resolve

issues proactively and informally before a formal grievance is raised.

Non-employees and ex-employees

Although the Code only applies to 'employees', it is not always clear what a person's employment status is. Where an employer is unsure about a worker's status, it is probably advisable to comply with the provisions of the code so as to avoid any possible uplift in compensation. One exception to this is the right to be accompanied to disciplinary or grievance hearings, which is a statutory entitlement for all workers, not just employees.

Similarly, although it might appear that the Code is not intended to apply to former employees, tribunals may well decide differently. Cautious employers should still observe the Code when dealing with grievances by ex-employees. This will avoid the risk of a 25% uplift and may even have the effect of preventing a tribunal claim altogether.

For further information on this subject please contact:

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