

Code of practice

**CODE OF PRACTICE ON  
DISCIPLINARY AND  
GRIEVANCE PROCEDURES**



**Labour Relations**  
**AGENCY**  
*Improving Employment Relations*

Readers please note:

A recent ruling from the Employment Appeal Tribunal (EAT) (Toal and another v GB Oils Ltd UKEAT/0569/12) has clarified the rules about who workers can choose to bring with them to grievance hearings.

In a case concerning a dispute between two workers and an employer over their choice of companion for a grievance hearing, the EAT found that the workers had the right to be accompanied at a disciplinary or grievance hearing from the approved category of a trade union official, certified union representative or fellow worker.

The dispute centred on whether the workers' choice had to be 'reasonable' or whether it was only the 'request to be accompanied' that had to be reasonable. The EAT ruled that there was no requirement for the choice of companion to be reasonable, as long as the choice came from an approved category.

In light of this decision the Agency is currently reviewing its Code of Practice on disciplinary and grievance procedures.

Should you require this Code of Practice in an alternative format or language, please contact the Agency.

# Disciplinary and Grievance Procedures

## Foreword

This Code of Practice provides practical guidance to employers, workers<sup>1</sup> and their representatives on:

- the statutory requirements relating to disciplinary and dismissal issues;
- good employment practice in dealing with grievance issues;
- what constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- drawing up and using disciplinary and grievance procedures; and
- a worker's statutory right to bring a companion to grievance and disciplinary hearings.

Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary or grievance issue. In some cases an external mediator might be appropriate.

## Anti-Discrimination Law

Employers must be careful not to discriminate on any of the proscribed discrimination grounds in dealing with disciplinary and grievance issues. Compliance with the core principles of this Code – fairness, consistency and transparency - will significantly assist compliance with anti- discrimination law. Employers should pay attention to the provisions of the Disability Discrimination Act 1995 and, in particular, to the statutory provisions regarding making reasonable adjustments under the Act when dealing with disciplinary and grievance issues.

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<sup>1</sup> Employees are individuals who have entered into or who work under a contract of employment which is a contract of service or apprenticeship. The term 'worker' includes employees but additionally includes individuals who have entered into or who work under any other contract whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or a customer of any profession or business undertaking carried on by the individual. Determination of whether or not a particular individual is an 'employee' can be complex and is ultimately a matter for courts and tribunals to decide. Please see also the second paragraph on page 3.

Employers should also monitor the operation of their disciplinary and grievance procedures as part of their wider equal opportunities monitoring policies<sup>2</sup>.

## **Evolving Developments**

Readers of this Code should be aware of the evolving legislative and case law framework surrounding dismissal, disciplinary and grievance issues. Developments such as the application of Article 6 of the Human Rights Act as set out in Schedule 1 of the Human Rights Act 1998 [right to a fair trial] raise such issues as the right to examine witnesses, the use of anonymous informants and the right to legal representation. Readers should be aware of such issues arising and manage them accordingly.

## **Operation of disciplinary and grievance procedures**

To accommodate the handling of disciplinary and grievance issues in the workplace employers should pay particular attention to those employees who have difficulty reading or whose first language is not English. To ensure that the disciplinary and grievance procedures are understood and operate effectively the use of translators or interpreters might be considered.

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<sup>2</sup>See Chapter 16 - 'A Unified Guide to Promoting Equal Opportunities in Employment' published by the Equality Commission for Northern Ireland

## Status of Code


This Code of Practice provides for the repeal of the existing statutory workplace grievance procedures under the Employment (Northern Ireland) Order 2003. The requirements of this Code in relation to workplace grievances are similar to the previous statutory obligations, whilst the statutory requirements regarding dismissal and discipline remain unchanged by this Code.

The statutory dismissal and disciplinary procedures, as set out in the Employment (Northern Ireland) Order 2003 Schedule 1, Part 1, apply only to employees and this term is used throughout Sections 1 and 2 of this Code. However, it is good practice to allow all workers access to disciplinary and grievance procedures. The statutory right to be accompanied at certain types of disciplinary and grievance hearings as set out in Article 12 of the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9)), as amended by Article 18 of the Employment Relations (Northern Ireland) Order 2004 (S.I. 2004/3078 (N.I. 19)), applies to all workers (which includes employees) and this term is used in Section 3 of this Code except where reference is made to the right of accompaniment under the statutory discipline and dismissal procedures.

A failure to follow any part of this Code does not, in itself, make a person or organisation liable to proceedings. However, industrial tribunals shall take this Code into account when considering relevant cases. Similarly, arbitrators appointed by the LRA to determine relevant cases under the LRA Arbitration Scheme shall take this Code into account.

Employers and employees should be aware that failure to follow any aspect of the **statutory** dismissal and disciplinary procedure will result in any industrial tribunal award being adjusted to reflect this failure.

With reference to grievances, an industrial tribunal can take into account any **unreasonable** failure to follow the grievance aspects of this Code and may financially penalise the employer or the employee.



This Code is issued under Articles 90(7) and (17) and 107(3) of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5)) and comes into effect by order of the Department for Employment and Learning on 3rd April 2011. It replaces an earlier Code on Disciplinary and Grievance Procedures issued by the LRA in April 2005.

<b>Contents</b>	<b>Page</b>
<b>Section 1: Disciplinary rules and procedures</b>	<b>7</b>
<b>At a glance</b>	<b>8</b>
<b>Guidance</b>	<b>9</b>
Why have disciplinary rules and procedures?	9
Dealing with disciplinary issues in the workplace	11
What if a grievance is raised during a disciplinary case?	19
Dealing with gross misconduct	20
Dealing with absence from work	20
Dealing with particular situations	21
Appeals	22
Keeping records	23
Drawing up disciplinary rules and procedures	24
Further action	27
<b>Section 2: Grievance procedures</b>	<b>28</b>
<b>At a glance</b>	<b>29</b>
<b>Guidance</b>	<b>29</b>
Why have grievance procedures?	29
Dealing with grievances in the workplace	30
Letting the employer know the nature of the grievance	31
Holding a meeting with the employee to discuss the grievance	31
Deciding on appropriate action	32
Appeals	32
Overlapping grievance and disciplinary issues	32
Collective grievances	32
Keeping records	33
Drawing up grievance procedures	33
<b>Section 3</b>	<b>35</b>
<b>At a glance</b>	<b>36</b>
<b>Guidance</b>	<b>37</b>
What is the right to be accompanied?	37
What is a disciplinary hearing?	37
What is a grievance hearing?	37
What is a reasonable request?	38
The companion	38
Applying the right	39

<b>Section 4</b>	<b>41</b>
<b>Annex A: Standard statutory dismissal and disciplinary procedure</b>	<b>42</b>
<b>Annex B: Modified statutory dismissal and disciplinary procedure</b>	<b>44</b>
<b>Annex C: Statutory dismissal and disciplinary procedure: general requirements</b>	<b>45</b>
<b>Annex D: Statutory dismissal and disciplinary procedure: exemptions and deemed compliance</b>	<b>46</b>





## Section 1

# **Disciplinary rules and procedures**

## At a glance

This summary applies to conduct and capability matters.

### Drawing-up disciplinary rules and procedures

- Involve management, employees and their representatives where appropriate (paragraph 56).
- Make rules clear and brief and explain their purpose (paragraph 57).
- Explain rules and procedures to employees and make sure they have a copy or ready access to a copy of them (paragraph 59).
- Make provision for informal resolution of matters of discipline where appropriate (paragraph 13).

### Operating disciplinary procedures

- Establish facts before taking action (paragraph 9).
- In the first instance consider dealing with cases of minor misconduct or unsatisfactory performance informally, ensuring supervisors and line managers are trained to handle such matters (paragraphs 13-14).
- For more serious cases follow formal procedures, including informing the employee in advance of a hearing of the alleged misconduct or unsatisfactory performance (paragraph 15).
- Invite the employee to a meeting and inform them of the right to be accompanied (paragraphs 16-19).
- Where performance is unsatisfactory explain to the employee the improvement required, the support that will be given and when and how performance will be reviewed (paragraphs 22-23).
- If giving a warning, tell the employee why and how they need to change, the consequences of failing to improve and that they have a right to appeal (paragraphs 24-27).
- If dismissing an employee, tell them why, when their contract will end and that they can appeal (paragraph 29).
- Before dismissing or taking disciplinary action other than issuing a warning, always follow the statutory dismissal and disciplinary procedure (paragraphs 30-36).
- When dealing with absences from work, find out the reasons for the absence before deciding on what action to take (paragraph 40).

### Holding appeals

- If the employee wishes to appeal invite them to a meeting and inform the employee of their right to be accompanied (paragraphs 47-52).
- Where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision (paragraph 50).

- Inform the employee about the appeal decision and the reasons for it (paragraph 52).

### Records

- Keep documented records for future reference (paragraph 53).

## Guidance

### Why have disciplinary rules and procedures?

1. Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals. Compliance with certain disciplinary procedures is also a legal requirement in certain circumstances (see paragraph 6).
2. *Disciplinary rules* inform employees of the 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 break, or allegedly break, disciplinary rules. Disciplinary procedures may also be used where employees do not meet their employer's expectations in the way they do their job. These cases, often known as *unsatisfactory performance* (or incapability), may require different treatment from misconduct and disciplinary procedures should allow for this. When addressing *unsatisfactory performance*, employers should consider whether this is due to lack of ability to perform a job to the standard required or to negligent behaviour by an otherwise able employee in order to determine whether they are dealing with a genuine capability problem or a conduct problem.
3. Guidance on how to draw up disciplinary rules and procedures is contained in paragraphs 56-66.
4. When dealing with disciplinary cases, employers need to be aware of both the law on unfair dismissal and the statutory minimum procedures contained in the Employment (Northern Ireland) Order 2003 (S.I. 2003/2902 (N.I. 15)) for dismissing or taking disciplinary action against an employee. Employers must also be careful not to discriminate on the grounds of sex, pregnancy and maternity leave, marital status, gender

reassignment, religious belief (or, similar philosophical belief), political opinion, age, race (including colour, nationality, ethnic or national origins), disability and sexual orientation. Where employers conclude that unsatisfactory performance is due to a lack of ability which in turn is due to a disability, they should take account of the provisions of the Disability Discrimination Act 1995 and, in particular, the statutory provisions regarding making reasonable adjustments under that Act.

## The law on unfair dismissal

5. The law on unfair dismissal requires employers to act *reasonably* when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for tribunals to decide. However, the core principles employers should work to are set out in the box below. Drawing-up and referring to a procedure can help employers deal with disciplinary issues in a fair and consistent manner.

### Core principles of reasonable behaviour

- Use procedures primarily to help and encourage employees to improve/modify behaviour rather than just as a way of imposing a punishment.
- Inform employees of the complaint against them in advance of a meeting, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss employees for a first disciplinary offence, unless it is a case of gross misconduct.
- Give employees a written explanation for any disciplinary action taken and make sure they know what improvement is expected and how it will be monitored.
- Give employees an opportunity to appeal if they are unhappy with the decision or outcome.
- Deal with issues reasonably and without unnecessary delay.
- Act consistently.

## **The statutory minimum procedure**

6. Employers are also required to follow a specific statutory minimum procedure if they are contemplating dismissing an employee or imposing some other disciplinary penalty other than suspension on full pay or a warning. Guidance on this statutory procedure is provided in paragraphs 30-36. This procedure applies to dismissals (except for constructive dismissals) including dismissals on the basis of conduct, capability, expiry of a fixed term contract and redundancy. If an employee is dismissed without the employer following this statutory procedure (where it applies), and makes a claim to a tribunal, providing he/she has the necessary qualifying service, the dismissal will be ruled automatically unfair.
7. The statutory procedure is a minimum requirement and even where the relevant statutory procedure is followed the dismissal may still be unfair if the employer has not acted reasonably in all the circumstances.

## **What about small businesses?**

8. In deciding cases of unfair dismissal tribunals will take account of an employer's size and administrative resources when deciding if he/she acted reasonably. In small organisations it is recognised that it may not be practicable to adopt all the detailed good practice guidance set out in this Code. However, all organisations, regardless of size, must follow the minimum statutory dismissal and disciplinary procedures where these are applicable.

## **Dealing with disciplinary issues in the workplace**

9. When a potential disciplinary matter arises, the employer should make necessary investigations to establish the facts promptly before memories of events fade. It is important to keep a written record for later reference. Having established the facts, the employer should decide whether to drop the matter, deal with it informally or arrange for it to be handled formally. Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary meeting.

10. The need to investigate is also applicable in incapability or suspected incapability situations where, for example, an employer may need to identify relevant facts or evidence concerning an employee's failings and possible reasons for these. An investigation can assist in identifying whether the issue is one of conduct or capability. If the issue is one of capability the employer can decide if there are any actions/measures that can be taken that will enable the employee to carry out his/her job satisfactorily without the need to deal with the issue either formally or informally. For example, this may be the case if the employer has identified that lack of capability is based on inadequate supervision.
11. In certain cases, for example in cases involving alleged gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration should be given to a brief period of suspension with full pay whilst an unhindered investigation is conducted. Such a suspension should be imposed only after careful consideration of the necessity for this. Employers should also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension. An alternative to suspension might be the agreeing of a temporary transfer to other duties or another work station without loss of pay. Any action taken, including suspension on full pay, should be reviewed frequently to ensure it is not unnecessarily protracted. It should be made clear that any action taken is neither considered as disciplinary action nor an indication of blame or guilt. (See also paragraph 38.)
12. When dealing with disciplinary issues in the workplace employers should bear in mind that they are required under the Disability Discrimination Act 1995 to make reasonable adjustments throughout the disciplinary process to assist employees who have a disability. For example this may require the provision of wheelchair access, if necessary, or the provision of documents in Braille.

### **Informal action**

13. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word of caution or advice and encouragement is often all that is required to improve an employee's conduct or performance. The informal approach may be particularly



helpful in dealing with problems quickly and confidentially. However, there will be situations where matters are more serious or where an informal approach has been tried but is not working.

14. An employer at the time of taking informal action may take the view that where there is a failure to improve formal action will be the next step. In such circumstances the employer, at the time of taking the informal action, should orally inform the employee of this view. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, employers should take formal action.

## **Formal action**

### ***Inform the employee of the problem***

15. The first step in any formal process is to let the employee know in writing the nature of what they are alleged to have done wrong. The letter or note setting out the allegation can also be used to explain the basis for making the allegation. It is important that an employee is given sufficient information to understand the basis of the case against them. If applicable, it would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification. There may be exceptional occasions where an employer may decide not to provide copies of witness statements, and possibly other documents and information, particularly if a witness has expressed genuine fears. While actual statements and the names of witnesses may sometimes be withheld, the employee should still know the substance of these statements, if not the author. If information on the basis of the allegation is not provided in writing, this should be conveyed orally to the employee before any meeting takes place. While this approach is not required by law under the standard statutory dismissal and disciplinary procedure where the disciplinary action is a warning, it is good practice to take the 3-step approach regardless of any possible outcome of a meeting - see Annex A.
16. The letter or note should invite the employee to a meeting and inform them of the possible consequences of the formal action and the right to be accompanied at the meeting (see Section 3 of this Code).

### ***Hold a meeting to discuss the problem***

17. Where possible, the timing and location of the meeting should be agreed with the employee. The length of time between the written notification and the meeting should be long enough to allow the employee to prepare but not so long that memories fade or that the delay becomes the basis for a grievance. The employer should hold the meeting in a private location, or off-site, and take reasonable steps to avoid interruptions.
18. At the meeting the employer should begin by restating the complaint against the employee and going through the evidence that has been gathered. The employee should be allowed to set out his/her case and answer any allegations that have been made. The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. However, this does not mean that witnesses will normally be subject to cross-examination in the disciplinary hearing.
19. An employee who cannot attend a meeting should inform the employer in advance whenever possible. If the employee fails to attend through circumstances outside his/her control and unforeseeable at the time the meeting was arranged, e.g. illness, the employer should arrange another meeting. Employees should be made aware that, where it is reasonable to do so, decisions may be taken in their absence if they fail to attend re-arranged meetings without good reason. If an employee's 'statutory companion' (see Section 3) cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer. This five day time limit may be extended by mutual agreement.

### ***Decide on outcome and action***

20. Following the meeting, and after a period of reflection, the employer must decide whether the allegations are upheld and if disciplinary action is justified or not. Where it is decided that no action is justified the employee should be informed. Where it is decided that disciplinary action is justified the employer will need to consider what form this should take. Before making any decision the employer should take



account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case within the organisation, the explanations given by the employee and – most important of all – whether the severity of any intended disciplinary action is proportionate and reasonable in all the circumstances. In considering the circumstances employers should take account of, in particular, the extent to which standards have been breached.

21. Examples of actions the employer might choose to take are set out in paragraphs 22-29. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or 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 appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss for a first offence of a particular kind. Further guidance on dealing with gross misconduct is set out at paragraphs 38-39.

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

22. Following the meeting, an employee who is found to be performing unsatisfactorily due to incapability should be given a written note setting out:
  - the performance problem/s identified;
  - the improvement (realistic and, where possible, measured) that is required;
  - a reasonable timescale for achieving this improvement;
  - a review date; and
  - any identified measures of support the employer will provide to assist the employee in meeting the required standard/s.
23. 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<sup>3</sup> and, ultimately, dismissal. A copy of the note

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<sup>3</sup> The term 'warning' is perhaps most appropriate in circumstances where it is within an employee's control or power to bring about improvements. Use of the term here is not intended to infer that all capability problems can be remedied by employees. Employers may choose not to use the term 'warning' in capability situations. However, regardless of whatever term is used, what is important in capability situations is that employees should be made aware, formally and in clear terms, of their failings and the consequences of failure to improve.

should be kept and used as the basis for monitoring and reviewing performance over the specified timescale. The employee should also be informed that he/she may appeal if they are unhappy with the decision/outcome.

### ***First formal action – misconduct***

24. Where, following a disciplinary meeting, an employee is found guilty of misconduct, a first step would be to give him/her a formal oral warning or a written warning depending on the seriousness of the misconduct. When such a warning is issued the employee should be informed, either orally where a formal oral warning has been given or in writing where a written warning has been given:
  - that the action is part of the formal disciplinary procedure;
  - of the nature of the misconduct;
  - of the level of the disciplinary action being taken;
  - of the change in behaviour required; and
  - of the consequences of failing to correct behaviour.
25. The employee should also be informed that he/she may appeal against the disciplinary action taken. Where a formal oral warning has been given a note of the warning should be kept but disregarded for disciplinary purposes after a specified period, for example, 6 months. Where a written warning has been issued a copy should be kept but disregarded for disciplinary purposes after a specified period, for example, 12 months.
26. Where the first warning is an oral warning and there is a failure to correct behaviour the consequence will normally be the issue of a written warning, a final written warning and ultimately dismissal. Where the first warning is a written warning and there is a failure to correct behaviour the consequence will normally be the issue of a final written warning and ultimately dismissal.
27. Guidance on dealing with cases of gross misconduct is provided in paragraphs 38-39.

### ***Final written warning***

28. Where there is a failure to improve or change behaviour in the timescale set, or where an offence is sufficiently serious, the employee should normally be issued with a final written warning – but only after he/she has been given a chance to present his/her case at a meeting. The final written warning should, as appropriate, give details of those points set out above in paragraph 24 including the grounds for the action being taken. It should warn the employee that failure to improve or modify behaviour may lead to dismissal or to some other penalty, and refer to the right of appeal. The final written warning should normally be disregarded for disciplinary purposes after a specified period, for example, 12 months in cases of misconduct. Where the problem concerns incapability a specified period might take the form of a further reasonable timescale for achieving the performance improvement required. An employer may commence the formal process at this stage if an incapability problem is sufficiently serious.

### ***Dismissal or other penalty***

29. If the employee's conduct or performance still fails to improve, the final stage in the disciplinary process might be dismissal or, if the employee's contract allows it, some other penalty such as disciplinary transfer, or loss of seniority/pay. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and his/her right of appeal.
30. It is important for employers to bear in mind that before they dismiss an employee or impose a sanction such as loss of seniority or loss of pay, they must, as a minimum, have followed the statutory dismissal and disciplinary procedures. The standard statutory procedure summarised in the box below requires the employer in almost all cases to:

**Step 1:** Write to the employee notifying him/her of the allegations against him/her, and invite him/her to a meeting to discuss the matter;

**Step 2:** Inform the employee of the basis of the allegation before holding the meeting to discuss this – at which the employee has the right to be accompanied – and notify the employee of the decision;

**Step 3:** If the employee wishes to appeal, hold an appeal meeting at which the employee has the right to be accompanied – and inform the employee of the final decision.

**A full summary of the statutory steps which should be taken can be found in Annex A.**

31. Details of the modified two step procedure for use in exceptional circumstances involving gross misconduct are set out at Annex B. Guidance on the modified procedure is contained in paragraph 39. A summary of the general requirements of the statutory dismissal and disciplinary procedure is to be found in Annex C. There are a number of situations in which it is not necessary for employers to use the statutory procedures or where they will have been deemed to be completed and these are described in Annex D.
32. If the employer fails to follow the statutory procedure, where it applies, and an employee, who is qualified to do so, makes a claim for unfair dismissal, the tribunal will find the dismissal automatically unfair. The tribunal will normally increase the compensation awarded by between 10 and 50 per cent where it feels it is just and equitable to do so. Equally, if the tribunal finds that an employee has been dismissed unfairly but has failed to follow the procedure, for example, he/she has failed to attend the disciplinary meeting without good cause, compensation will be reduced by between 10 and 50 per cent if the tribunal considers it just and equitable to do so.
33. If the tribunal considers that there are exceptional circumstances, compensation may be adjusted, up or down, by less than 10 per cent or not adjusted at all.
34. Employers and employees will normally be expected to go through the statutory dismissal and disciplinary procedure unless they have

reasonable grounds to believe that by doing so this would result in a significant threat or that this would result in further harassment. There will always be a certain amount of increased stress and anxiety for both parties when dealing with any disciplinary case, but this exemption will only apply where the employer or employee reasonably believes that they, or some other person, would come to some serious physical or mental harm; their property, or that of some other person, would be threatened or the other party has already harassed them and this may continue by continuing with the process.

35. Equally, the statutory procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad. Employers, wherever possible, should consider appointing an other manager to deal with the procedure if the size and structure of the organisation allow for it.
36. Where an employee fails to attend a meeting held as part of the statutory discipline procedure without good reason the statutory procedure comes to an end. In these circumstances the employee's compensation may be reduced if he/she brings a successful complaint before a tribunal. If either the employee or employer has a good reason for non-attendance at the meeting, the employer must re-arrange the meeting. If either the employee or employer do not attend the re-arranged meeting without good reason the employer need not arrange a third meeting and there will be no adjustment of compensation.

### **What if a grievance is raised during a disciplinary case?**

37. In the course of a disciplinary process, an employee might raise a grievance about an issue which is related to the case. If this happens, the employer may find it convenient to deal with both issues concurrently. There may be other situations where the employer may find it more appropriate to suspend the disciplinary procedure for a short period while the grievance is dealt with. For example depending on the nature of the grievance, the employer may need to consider bringing in another manager to deal with the disciplinary process. In small organisations this may not be possible and the existing manager should deal with the case as impartially as possible.

## Dealing with gross misconduct

38. If an employer considers an employee guilty of gross misconduct and potentially liable for summary dismissal<sup>4</sup>, it is still important to establish the facts before taking any action. A short period of suspension with full pay may be helpful or necessary, although the suspension should be imposed only 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. (See also paragraph 11).
39. It is a core principle of reasonable behaviour that employers should give employees the opportunity of putting their case at a disciplinary meeting before deciding whether to take action. This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct or unsatisfactory performance thus the 3-step procedure applies to gross misconduct cases. However there may be some limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting a tribunal will, very exceptionally, find the dismissal to be fair. To allow for these cases there is a statutory modified procedure under which the employer is required to write to the employee after the dismissal setting out various details relating to the dismissal and offering to hold an appeal meeting, if the employee wants one. The modified statutory procedure that must be followed by employers in such cases is set out in Annex B. If an employer fails to follow this procedure and the case goes to tribunal, the dismissal will be found to be automatically unfair.

## Dealing with absence from work

40. When dealing with absence from work it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.

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<sup>4</sup> Summary dismissal: is dismissal without notice - usually only justifiable for gross misconduct. Summary dismissal is not necessarily the same as instant and incidents of gross misconduct should be investigated as part of a formal procedure.



41. If the absence is due to genuine illness, the issue becomes one of capability and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:
  - how soon the employee's health and attendance will improve;
  - whether alternative work is available;
  - the effect of the absence on the organisation;
  - how similar situations in the organisation have been handled in the past;
  - whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply;
  - any suggestions for helping an employee get back to work made by the employee's general practitioner in a Statement of Fitness for Work.
42. The impact of absences will nearly always be greater on small organisations, and they may be entitled to act at an earlier stage than large organisations.
43. In cases of extended sick leave other issues may need to be considered such as whether the individual is disabled and if they have any rights to contractual payments during their absence. These can be complicated and specialist advice may be needed.

## **Dealing with particular situations**

### **Remote locations/atypical working hours**

44. Special arrangements might be required for handling disciplinary matters for employees in isolated locations or depots, nightshift employees, or employees whose working pattern may make it difficult to contact them. Nevertheless the appropriate statutory procedure must be followed where it applies.

### **Trade union representatives**

45. Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union's functions. Normal standards should apply to their conduct as employees but, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with an appropriate senior lay trade union representative in the company or an appropriate full-time union official.

## Criminal charges or convictions not related to employment

46. If an employee is charged with, or convicted of, a criminal offence outside his/her employment, this is not in itself reason for disciplinary action. The employer should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary/dismissal procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for his/her type of work. Similarly, an employee should not be dismissed solely because he/she is absent from work as a result of being remanded in custody.

## Appeals

47. Employees who have had action taken against them on conduct or capability grounds should be given the opportunity to appeal. It is useful to set a time limit for an employee to ask for an appeal – five working days is usually enough.
48. Employees may choose to appeal, for example, because:
- they were unhappy with the decision/outcome;
  - they think a finding or penalty is unfair;
  - new evidence comes to light; or
  - they think the disciplinary procedure was not used correctly.
49. It should be noted that the appeal stage is part of the statutory procedure and if the employee pursues a claim to a tribunal the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal. Similarly, if the employer fails to offer the employee a right of appeal or arrange an appeal meeting and the employee pursues a tribunal claim the tribunal may increase any award of compensation.
50. A more senior manager not previously involved with the case should hear the appeal. Where a person at the most senior management level has already been involved with the case and there is a manager of the same status who has not, the appeal should be heard by the latter. In the event that neither of these is possible and the same manager who took the disciplinary action, unavoidably, has to hear the appeal, that manager should act as impartially as possible.



Records and notes of the original disciplinary meeting should be made available to the person hearing the appeal where that person had no previous involvement.

51. The employer should contact the employee with the arrangements for the appeal meeting without unreasonable delay and inform him/her of his/her statutory right to be accompanied at the appeal meeting - see Section 3 of this Code
52. The employee should be informed about the outcome of the appeal without unreasonable delay. The decision should be given and confirmed in writing. If the decision is the final stage of the organisation's appeals procedure this should be made clear to the employee.

### **Keeping records**

53. It is important, and is in the interests of both employers and employees, to keep written records during the disciplinary process for future reference. Records should include:
  - the complaint against the employee;
  - the employee's defence;
  - findings made and actions taken;
  - the reason for actions taken;
  - whether an appeal was lodged;
  - the outcome of the appeal;
  - any grievances raised during the disciplinary procedure.
54. Records should be treated as confidential and be kept no longer than necessary and in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and have access to certain personal data.
55. Copies of records of meetings should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances, for example to protect a witness, the employer may withhold some information.

## Drawing up disciplinary rules and procedures

56. Employers are responsible for maintaining and setting standards of conduct and performance in an organisation and for ensuring that disciplinary rules and procedures are in place. Employers must follow the requirements of the statutory discipline and dismissal procedures, as a minimum, where these are applicable if they wish to avoid the possibility of certain sanctions at tribunals. They are also required by law to specify, through written statements of employment particulars, any disciplinary rules and any procedure applicable to the taking of disciplinary decisions or any decisions to dismiss. Additionally, they must specify a person to whom employees can apply if they are dissatisfied with any disciplinary decision or any decision to dismiss, how the employee should make such applications and any further steps in this process which are available to the employee. In the case of disciplinary rules, disciplinary and dismissal procedures and 'further steps' following disciplinary and dismissal appeal applications, written statements can refer employees to reasonably accessible documents which specify these. It is good practice to involve employees and, where appropriate, their union or other representatives when making or changing rules and procedures.

### Rules

57. When making rules, the aim should be to specify those that are necessary for ensuring a safe and efficient workplace and for maintaining good employment relations.
58. It is unlikely that any set of rules will cover all possible disciplinary issues, but rules normally cover:
- bad behaviour such as fighting or drunkenness;
  - negligence in the performance of duties;
  - harassment or victimisation;
  - misuse of company facilities, for example, e-mail and internet;
  - poor timekeeping;
  - unauthorised absences;
  - repeated or serious failure to follow instructions.
59. Rules should be specific, clear and recorded in writing. They also need to be readily available to employees, for instance on a noticeboard or, in larger organisations, in a staff handbook or on the intranet.

Management should take all reasonable steps to ensure that every employee knows and understands the rules, including those employees whose first language is not English or who have trouble reading. This is often best covered as part of an induction process indicating the status of such rules.

60. Employers should inform employees of the likely consequences of breaking disciplinary rules. In particular, they should list examples, but not exhaustive lists, of acts of gross misconduct that will warrant summary dismissal.
61. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and are best decided by organisations in the light of their own particular circumstances. Such acts, whilst they occur only once, might be said to strike at the very root or heart of a contract of employment such as to destroy the essential bond of trust and confidence between the parties to the contract. Examples of gross misconduct might include:
- theft or fraud;
  - physical violence or serious incidents of 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;
  - serious cases of unlawful discrimination or harassment;
  - bringing the organisation into serious disrepute;
  - causing loss, damage or injury through serious negligence;
  - serious breach of health and safety rules;
  - serious breach of confidence.

## **Procedures**

62. Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement or modifying the behaviour of employees whose conduct or performance is unsatisfactory. Some organisations may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying which incorporate the statutory requirements relating to discipline and dismissal.

63. When drawing up and applying procedures employers should always bear in mind the requirements of natural justice. This means that, where possible, employees should be given the opportunity of a meeting with someone who has not been previously involved in the process. They 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 of appeal.
64. Good disciplinary procedures should:
- be put in writing;
  - indicate to whom they apply;
  - be non-discriminatory;
  - allow for matters to be dealt without unreasonable delay;
  - 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 various forms of disciplinary action;
  - require employees to be informed of the complaints against them and supporting evidence, before a meeting;
  - give employees a chance to have their say before management reaches a decision;
  - provide employees with the right to be accompanied (See Section 3 of this Code);
  - provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
  - require management to conduct a reasonable investigation before any disciplinary action is taken;
  - ensure that employees are given an explanation for any sanction; and
  - allow employees to appeal against a decision.
65. It is important to ensure that everyone in an organisation understands the disciplinary procedures including the statutory requirements. In small firms this is best achieved by making sure all employees have reasonable access to a copy of the full procedures, for instance on a noticeboard and by taking time to run through the procedures with employees. In large organisations formal training for those who use and operate the procedures may be appropriate.



## Further action

66. Disciplinary rules and procedures should be kept under review to make sure they are always relevant and effective. New or amended rules should only be introduced after reasonable notice has been given to all employees and any employee representatives have been consulted.



## Section 2

# **Grievance procedures**

## At a glance

### Drawing up grievance procedures

- Involve management, employees and their representatives where appropriate (paragraph 93).
- Explain procedures to employees and make sure they have a copy or ready access to a copy of them (paragraph 96).

### Operating grievance procedures

- In the first instance and where appropriate aim to resolve grievances **informally** with line managers (paragraph 72).
- Employees should raise **formal** grievances with management (paragraph 73).
- Invite the employee to a meeting and inform him/her that he/she may be accompanied (paragraphs 78-79).
- Give the employee an opportunity to have their say at the meeting (paragraph 81).
- Respond in writing within a reasonable time and inform the employee of their right to appeal (paragraph 82).

### Appeals

- A more senior manager should, if possible, handle the appeal (paragraph 85).
- Tell the employee that he/she may be accompanied (paragraph 86).
- The senior manager should respond to the grievance in writing after the appeal and tell the employee if it is the final stage in the grievance procedure (paragraph 87).

### Records

- Written records should be kept for future reference (paragraph 90).

## Guidance

### Why have grievance procedures?

67. Grievances are concerns, problems or complaints that an employee has about some aspect of their work. For example, it could be about a work colleague or a manager, a decision, a policy, the application of a policy or a working relationship.

68. Issues that may cause grievances include:
  - terms and conditions of employment;
  - health and safety;
  - personal relationships at work;
  - bullying and harassment;
  - new working practices;
  - working environment;
  - organisational change;
  - equal opportunities.
69. Grievance procedures are used by employers to deal with employees' grievances.
70. Grievance procedures help employers to deal with grievances fairly, consistently and without unreasonable delay. Employers are required by law to specify, through written statements of employment particulars, any procedure applicable to handling employee grievances. They must specify a person to whom employees can apply for the purpose of seeking redress of any grievance relating to their employment; and cover any further steps which follow from the making of such an application.
71. Guidance on drawing up grievance procedures is set out in paragraphs 93-96.

### **Dealing with grievances in the workplace**

72. Employees should aim to resolve most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly. However, it is not always possible to resolve grievances informally and circumstances, such as the serious nature of the grievance, may dictate that the formal grievance procedure is the way to proceed.
73. If a grievance cannot be settled informally, the employee should raise it formally with management, using the formal grievance procedure.
74. A failure to follow the grievance procedure in those cases which a tribunal can hear may mean that the tribunal adjusts any award by a percentage of up to, or down by, 50 per cent to reflect that the



provisions of this Code have not been reasonably followed. Examples of this may be where the employer does not offer a meeting to discuss the grievance or the employee does not invoke an appeal.

75. Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments throughout the grievance process. This may include assisting employees to formulate a written grievance if they are unable to do so because of a disability.

### **Letting the employer know the nature of the grievance**

76. If it is not possible to resolve a grievance informally employees should raise the matter formally, and without unreasonable delay, with his/her manager. If the complaint is against his/her manager the employee should be allowed to approach that person's manager or, if that is not reasonably practicable, another manager in the organisation. Where this is not possible, the manager should hear the grievance and deal with it as impartially as possible.
77. The employee should raise the grievance in writing setting out the nature of the grievance and how it might be resolved. Setting out a grievance in writing might not be easy especially for those employees whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee should be encouraged to seek help for example from a work colleague, a trade union or other employee representative.

### **Holding a meeting with the employee to discuss the grievance**

78. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.
79. Workers have a statutory right to be accompanied at any such meeting.
80. Employers, employees and their companions should take reasonable steps to attend the meeting.
81. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any further investigation that may be necessary.

## Deciding on appropriate action

82. Following the meeting, the employer should decide on what action, if any, to take. The decision, and a full explanation of how the decision was reached, should be communicated to the employee, in writing, without unreasonable delay. Where appropriate, the decision should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they feel that their grievance has not been satisfactorily resolved.

## Appeals

83. If the employee feels that their grievance has not been satisfactorily resolved then they should have the opportunity to appeal. An appeal should be made without unreasonable delay, advising the employer in writing of their grounds of appeal.
84. An employer should hear the appeal without unreasonable delay and at a time and place which should be notified to the employee in advance.
85. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case.
86. Workers have a statutory right to be accompanied at any such appeal hearing.
87. The outcome of the appeal should be communicated to the employee in writing without unreasonable delay.

## Overlapping grievance and disciplinary issues

88. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. There may be situations where the employer may find it more convenient to deal with both issues concurrently.

## Collective grievances

89. The provisions of this Code do not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union or other appropriate workplace representative. These


grievances should be handled in accordance with any collective grievance process an organisation may have.

## Keeping records

90. It is important, and in the interests of both employer and employee, to keep written records during the grievance process for future reference. Records should include:
- a copy of the written grievance;
  - the employer's response;
  - action(s) taken;
  - the reasons for action(s) taken;
  - whether an appeal was lodged; and
  - the outcome of any appeal.
91. 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.
92. Relevant records should be given to the employee including any formal minutes that may have been taken. In certain circumstances, for example to protect a witness, the employer might withhold some information.

## Drawing up grievance procedures

93. When employers draw up grievance procedures, it is helpful to involve everybody they will affect, including managers and employees and, where appropriate, their representatives.
94. Grievance procedures should allow employees to raise issues with management and should:
- be simple and put in writing;
  - enable an employee's line manager to deal informally with a grievance, if possible;
  - keep proceedings confidential; and
  - allow the employee to have a companion at meetings.

- 
95. Where separate procedures exist for dealing with grievances on particular issues, for example, harassment and bullying, these should be used instead of the normal grievance procedure. All such procedures should comply with the requirements of this Code.
  96. Employers should take reasonable steps to ensure that everyone in the organisation understands the grievance procedures and that supervisors, managers and employee representatives are trained in their use. Employees should be given a copy of the full procedures or have ready access to them, for instance on a noticeboard or as part of an induction process.



## Section 3

### **A worker's statutory right to be accompanied**

## At a glance

### The right to be accompanied

- All workers<sup>1</sup> have the right to be accompanied at a disciplinary or grievance hearing (paragraph 97).
- Workers must make a reasonable request to the employer if they want to be accompanied (paragraph 97).
- Disciplinary hearings, for these purposes, include meetings where formal warnings or the confirmation of a warning or some other actions might be taken against the worker. Appeal hearings are also covered (paragraphs 98-100).
- Grievance hearings for the purpose of the right of accompaniment are defined as meetings where an employer deals with a worker's complaint about a duty owed to them by the employer (paragraphs 101-102).

### The companion

- The companion can be a union official or a fellow worker (paragraph 104).
- Nobody has to accept an invitation to act as a companion (paragraph 107).
- Fellow workers who are acting as companions can take paid time off to prepare for and to attend a hearing (paragraph 109).

### Applying the right

- Agree a suitable date for a meeting with the worker and the companion (paragraph 110).
- The worker should tell the employer who the chosen companion is (paragraph 112).
- The companion can have a say at the hearing but cannot answer questions for the worker (paragraphs 113-114).
- Workers should not be disadvantaged for exercising their right or acting as a companion (paragraph 116).

## Guidance

### What is the right to be accompanied?

97. 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. Further guidance on what a reasonable request is and who can accompany a worker appears at paragraphs 103-109.

### What is a disciplinary hearing?

98. For the purposes of this right, disciplinary hearings are defined as meetings that could result in:
- a formal warning being issued to a worker, such as a warning that will be placed on the worker's record;
  - the taking of some other action, such as suspension without pay, demotion or dismissal; or
  - the confirmation of a warning issued or some other action taken, such as an appeal hearing.
99. The statutory right of employees to be accompanied also applies to any disciplinary meetings held as part of the statutory dismissal and disciplinary procedures. This includes any meetings held after an employee has left employment.
100. Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other disciplinary actions. Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the worker will have the right to be accompanied.

### What is a grievance hearing?

101. Employees have the right to be accompanied to a grievance hearing. For the purposes of this right, a grievance hearing is a meeting at which an employer deals with a complaint about a legal duty owed by him/her

to a worker, whether the duty arises from statute or common law, for example, contractual commitments.

102. For instance, a 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 a statutory 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 was disabled and, because of his/her disability, needed parking facilities in order to attend work, he/she probably would be entitled to a companion at a grievance hearing. An issue might arise as to whether the employer was meeting his/her obligations under the Disability Discrimination Act 1995.

### **What is a reasonable request?**

103. 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. It would not 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**

104. The companion may be:
- a trade union official who is employed by a trade union; or
  - a lay trade union official, as long as he/she has been reasonably certified in writing by his/her 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;
  - a fellow worker (i.e. another of the employer's workers).



105. 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. Some workers may experience personal difficulties in raising and pursuing certain grievances because of, for example, their sexual orientation and may request to be accompanied by a companion from an organisation which has a special interest in assisting and supporting such workers. Employers should be sensitive to such workers' needs in all of these circumstances.
106. Workers may choose an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether the union is recognised or not. However, where a union is recognised in a workplace, it is good practice for workers to ask an official from that union to accompany them.
107. Trade union officials or fellow workers do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
108. 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.
109. A worker who has agreed to accompany a colleague employed by the same employer to a hearing is entitled to take a reasonable amount of paid time off to fulfil that responsibility. It is also good practice for employers to agree reasonable time off to allow for the companion to familiarise him/herself 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 employer, both time off and payment for this are matters for agreement between that lay official and his/her employer.

### **Applying the right**

110. 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.

111. In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also provide for a companion's disability, for example, providing for wheelchair access if necessary.
112. Before the hearing takes place, the worker should tell the employer whom 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.
113. 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.
114. 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 being given the opportunity to raise points about any information provided by witnesses. The companion has no right to answer questions on the worker's behalf or to address the hearing if the worker does not wish it. Additionally, a companion must not act in a manner which would prevent either an employer from explaining his/her case or any other person at the hearing from making his/her contribution to it.
115. Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to a 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.
116. 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 a tribunal.



## Section 4

### **Annexes**

## Annex A

### Standard statutory dismissal and disciplinary procedure

**(This is a summary of the statutory procedure which is set out in full in Schedule 1 to the Employment (Northern Ireland) Order 2003)**

This procedure applies to disciplinary action short of dismissal (excluding oral and written warnings and suspension on full pay) based on either conduct or capability. It also applies to dismissals (except for constructive dismissals) including dismissals on the basis of conduct, capability, expiry of a fixed term contract and redundancy. However, it does not apply in certain kinds of excepted cases that are described in Annex D.

#### Step 1

##### Statement of grounds for action and invitation to meeting

- The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead him/her to contemplate dismissing or taking disciplinary action against the employee.
- The employer must send the statement or a copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

#### Step 2

##### The meeting

- The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.
- The meeting must not take place unless:
  - i the employer has informed the employee what the basis was for including in the statement under Step 1 the ground or grounds given in it; and
  - ii the employee has had a reasonable opportunity to consider their response to that information.
- The employee must take all reasonable steps to attend the meeting.

After the meeting, the employer must inform the employee of his/her decision and notify him/her of the right to appeal against the decision if he/she is not satisfied with it.

### **Step 3**

#### **Appeal**

- If the employee wishes to appeal, he/she must inform the employer.
- If the employee informs the employer of his/her wish to appeal, the employer must invite him/her to attend a further meeting.
- The employee must take all reasonable steps to attend the meeting.
- The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- After the appeal meeting, the employer must inform the employee of his/her final decision.

See also Annexes C and D.

## Annex B

### Modified statutory dismissal and disciplinary procedure

**(This is a summary of the statutory procedure which is set out in full in Schedule 1 to the Employment (Northern Ireland) Order 2003)**

This procedure applies in relation to a dismissal where an employer dismisses an employee by reason of his/her conduct without notice; the dismissal occurs at the time the employer became aware of the conduct or immediately thereafter; the employer was entitled in the circumstances to dismiss the employee by reason of his/her conduct without notice or any payment in lieu of notice; and it was reasonable for the employer in the circumstances to dismiss the employee before enquiring into the circumstances in which the conduct took place.

#### Step 1

##### Statement of grounds for action

- The employer must set out in writing:
  - i. the employee's alleged misconduct which has led to the dismissal;
  - ii. the basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct; and
  - iii. the employee's right of appeal against dismissal.
- The employer must send the statement or a copy of it to the employee.

#### Step 2

##### Appeal

- If the employee wishes to appeal, he/she must inform the employer.
- If the employee informs the employer of his/her wish to appeal, the employer must invite him/her to attend a meeting.
- The employee must take all reasonable steps to attend the meeting.
- After the appeal meeting, the employer must inform the employee of his/her final decision.

See also Annexes C and D.

## Annex C

### **Statutory dismissal and disciplinary procedure: general requirements**

**(This is a summary of the general requirements as set out in Schedule 1 to the Employment (Northern Ireland) Order 2003)**

The following requirements apply to each of the statutory procedures so far as is applicable:

- Each step and action under a procedure must be taken without unreasonable delay;
- Timing and location of meetings must be reasonable;
- Meetings must be conducted in a manner that enables both employer and employee to explain their cases;
- In the case of appeal meetings which are not the first meeting, the employer should, as far as is reasonably practicable, be represented by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).

## Annex D

### **Statutory dismissal and disciplinary procedure: exemptions and deemed compliance**

The Employment (Northern Ireland) Order 2003 and the Employment (Northern Ireland) Order 2003 (Dispute Resolution) Regulations (Northern Ireland) 2004 contain detailed provisions about the application of the statutory dispute resolution procedures. This Annex summarises the particular provisions of the 2003 Order and the 2004 Regulations which describe:

- a. certain situations in which the statutory procedures will not apply at all; and
- b. other situations in which a party who has not completed the applicable procedure will nevertheless be treated as though they had done so.

#### **(a) Situations in which the statutory procedures do not apply at all**

The disciplinary and dismissal procedures do not apply where:

- the employee is dismissed in circumstances covered by the modified dismissal procedure and presents a tribunal complaint before the employer has taken Step 1; or
- all of the employees of the same description or category are dismissed and offered re-engagement either before or upon termination of their contracts; or
- the dismissal is one of a group of redundancies covered by the employer's duty of collective consultation with appropriate representatives under Article 216 of the Employment Rights (Northern Ireland) Order 1996; or
- the employee is dismissed while taking part in (i) unofficial industrial action or (ii) industrial action [which is neither unofficial nor protected], unless the circumstances of the dismissal are such that a tribunal is entitled to determine whether the dismissal was fair or unfair by virtue of Article 144(3) of the 1996 Order; or
- the reason for the dismissal is that the employee took 'protected industrial action' and the dismissal would be regarded, by virtue of Article 144A(2) of the 1996 Order, as unfair for the purposes of Part XI of that Order; or
- the employer's business suddenly ceases to function because of an unforeseen event with the result that it becomes impractical to employ any employees; or



- the employee cannot continue to work in his/her particular position without contravening a statutory requirement; or  
the employee is one to whom a dismissal procedure agreement designated under Article 142 of the 1996 Order applies.

**(b) Situations in which the statutory procedures have not been completed but are treated as having been complied with**

The disciplinary and dismissal procedures are treated as having been complied with where all stages of the procedure have been completed, other than the right of appeal, and:

- the employee then applies to a tribunal for interim relief; or
- a collective agreement provides for a right of appeal to a source other than the employee's employer which the employee exercises. The collective agreement must be between one or more independent trade unions and two or more employers or an employers' association.

**(c) Other special circumstances in which the statutory procedures need not be begun or completed**

In addition, neither the employer nor employee need begin a procedure (which will then be treated as not applying), or comply with a particular requirement of it (but will still be deemed to have complied) if the reason for not beginning or not complying is:

- the reasonable belief that doing so would result in a significant threat to themselves, any other person, or their or any other person's property;
- because they have been subjected to harassment [as defined by the Regulations] and reasonably believe that doing so would result in further harassment; or
- because it is not practicable to do so within a reasonable period.





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