

## Discipline and Grievance - a New Beginning

### Introduction

No-one will mourn the departure of the statutory dismissal, disciplinary and grievance procedures, with the possible exception of lawyers who have been busy picking up the pieces in Tribunals and in the Appeal Courts. These procedures were only introduced in October 2004 and will be repealed from April 2009. Whilst the motives were sound, the execution in terms of drafting was flawed. Litigation has been constant ever since the procedures were introduced and they have added unnecessary layers of complexity to the areas of dismissal, discipline and grievances.

The statutory dismissal, disciplinary and grievance procedures had to be replaced and the good news is that the rather heavy hand of the procedures is being replaced by a lighter touch in the form of an ACAS Code of Practice.

ACAS have recently published a revised Code of Practice for dealing with discipline and grievance procedures. The Code has been approved by the Secretary of State for Business Enterprise and Regulatory Reform and will now be placed before Parliament for approval, although this is normally only a formality. The ACAS Code of Practice will come into effect on 6 April 2009, when the statutory dismissal, disciplinary and grievance procedures will be repealed.

The ACAS Code is formed of 45 paragraphs providing broad brush guidance on how to deal with discipline and grievance issues in the workplace. The Code will be taken into account by Employment Tribunals, but unlike the statutory procedures a failure to follow it will not make a dismissal automatically unfair. The Code will be accompanied by an ACAS guidance booklet (yet to be named) that will contain more detailed guidance on dealing with discipline and grievance.

### ACAS Code of Practice

The Code can be found at the ACAS website ([www.acas.org.uk](http://www.acas.org.uk)). As previously mentioned, a failure to follow the Code will not make a dismissal automatically unfair but the Employment Tribunal will have the power to adjust any award by up to 25%, due to an employer or employee's unreasonable failure to comply with the Code. Consequently, it is important to understand the Code and its impact on an employer's internal procedures.

The Code will not apply in redundancy situations or in respect to the non-renewal of fixed term contracts on their expiry. For redundancies, ACAS recommends that employers follow the advisory booklet on handling redundancy which is available on their website. The Code encourages employers and employees to seek to resolve issues within the workplace and internal voluntary mediation is actively encouraged.

The Code sets out some overarching key elements, namely that:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out necessary **investigations**, to establish the facts of the case.

- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

The Code establishes 'Keys to handling disciplinary issues in the workplace', which are a guide to the steps in a disciplinary process. These are set out in summary below but further detail in relation to these 'Keys' can be found in the Code:

- Establish the facts of the case.
- Inform the employee of the problem.
- Hold a meeting with the employee to discuss the problem.
- Allow the employee to be accompanied at the meeting.
- Decide on appropriate action.
- Provide the employee with an opportunity to appeal.

The Code also gives 'Keys to handling grievances in the workplace'. These are a similar step by step guide to the grievance process. Once again these are set out in summary below, but detailed guidance under each heading can be found in the Code:

- Let the employer know the nature of the grievance.
- Hold a meeting with the employee to discuss the grievance.
- Allow the employee to be accompanied at the meeting.
- Decide on appropriate action.
- Allow the employee to take the grievance further if not resolved.

The Code also refers to the often tricky area of dealing with overlapping grievance and disciplinary cases as well as collective grievances. The Code suggests that collective grievances should be "handled in accordance with the organisation's collective grievance process". This is yet another process employers will have to consider having, although collective grievances are relatively rare.

## Moving forward

The repeal of the statutory dismissal, discipline and grievance procedures, and implementation of the new ACAS Code of Practice, means that internal policies will need to be reviewed and amended to comply with the Code. If an employer's internal policies are not in harmony with the ACAS Code, there is a greater risk of claims against the employer being successful, as well as the additional threat of a 25% uplift on any compensation awarded by the Tribunal. If you would like assistance from Paris Smith, in drafting, reviewing or harmonising your internal discipline and grievance procedures, please do not hesitate to contact a member of the Employment Team on the contact details below.

Likewise, ACAS encourages employers to have a similar policy for dealing with issues involving bullying, harassment or whistle blowing. The Code also makes no provision for dealing with collective grievances (save for having a process for dealing with such grievances) and does not apply to redundancies or the non-renewal of fixed term contracts. It would therefore be advisable to consider whether your business needs a formal process or processes to deal with these issues. Once again, if you require assistance from Paris Smith in dealing with these issues or in drafting an internal policy, please do not hesitate to contact a member of the team.

# e-Newsbrief



## NEED SOME GUIDANCE? PLEASE CONTACT US ...

Clive Dobbin	023 8048 2370
David Roath	023 8048 2238
Stephanie Merritt	023 8048 2364
Susy Perry	023 8048 2331
Andrew Browning	023 8048 2121
Kathryn Casey-Evans	023 8048 2361

 Paris Smith

Paris Smith LLP • Number 1 London Road • Southampton • SO15 2AE  
e: [info@parissmith.co.uk](mailto:info@parissmith.co.uk) • t: 023 8048 2482 • f: 023 8063 1835