



Acas consultation: draft Code of Practice on disciplinary and grievance procedures

Submission to Acas

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General Comments

We welcome the publication of a revised draft Code of Practice on Discipline and Grievance and for the opportunity to comment. In preparing our response, we held a focus group of 15 senior HR leaders, and three additional 1-2-1 conversations with leaders and an employment solicitor.

In addition to responding to the specific questions, we have some general comments which do not neatly fit into the Questions asked.

We don't disagree that employer concerns about an employee (or worker)'s performance or minor conduct issues should be raised with the individual as early as possible in an informal manner. However, the best vehicle for this approach should be through an effective performance/behaviour management system outside of the Code. These should be positive and not punitive, with a strong informal approach to giving constructive feedback and additional support based on two-way interaction between a worker and manager from the very beginning of the employment relationship - not just when a 'problem' (or perceived problem) arises.

We are also concerned that the early paragraphs in the Draft Code imply that employer and employee 'concerns at work' are the same. We believe that conflating employer and worker concerns is an error. It fails to give sufficient recognition to the right of the employer to take a decision to proceed with a situation formally without engaging in informal attempts to resolve a concern first. This should not be an excuse for an employer ignoring better performance management and workplace relationships, but employers must be allowed the ability to make these decisions bearing in mind the specific circumstances and how it impacts on the specific workplace.

The feedback we received from members suggests that there should be an earlier stage where employers (through managers or HR as appropriate) should make a focused decision as to whether a 'concern' they have is best dealt with formally or informally. If the best approach is an informal approach, they should then benefit from expanded, practical, and crucially, 'non-statutory' guidance. If an employer reasonably believes a matter should be dealt with immediately through the formal route, in compliance with the formal elements of the Code, they should be free to make that decision. The revised Code does refer to this as a possibility, but we agree with our members that it would make sense to be specific and up front about this. This would give employers an intentional focus to decide whether to address something formally or informally, rather than defaulting to a formal approach.

Member feedback through a focus group of senior HR leaders representing a variety of organisations in the UK, including SMEs made the following comments which do not fit neatly into the questions asked in the consultation but which we feel are valuable to be communicated:

- The Code does not apply to redundancy dismissals or the non-renewal of fixed-term contracts when they expire - however, it fails to recognise that there are five 'potentially



fair' reasons for dismissal including legal restrictions and some other substantial reason, alongside conduct and capability. Conduct and capability are, themselves, very different reasons to give employers 'concerns' and those different contexts require very different conversations. Capability could also include ill health dismissals which often need a differentiated approach to the situation when someone cannot perform for a reason not related to health. Dismissals for these reasons also need to be handled fairly, and the current Code recognises this (at least in respect of capability dismissals). It would be sensible for the Code to specifically address other reasons for dismissal. However, to do this, it might be necessary to expand the Code to cover 'what' must be done in different circumstances more clearly, while moving 'how' it must be done into easily accessible, meaningful guidance. At present, conduct and performance are not distinguished sufficiently, while other potentially fair reasons are not mentioned at all.

- Many employers only ever read the Code (rather than the Guidance). SMEs with no in house HR capability use the current Code because it sets out clear steps which are easy to follow. Including elements of 'good practice' within the Code dilutes the effectiveness of the Code by blurring the headline steps employers must and should take. We consider that SME employers would benefit from much greater support and guidance from Acas particularly with developing informal processes which support early resolution of concerns, but this should not be in the Code (with the attendant uplift risks). We wonder whether it is possible to use technology to create a more dynamic document which incorporates the 'headline' elements of the Code alongside support and aspects of the non-statutory guidance (which falls outside the Code and attendant responsibilities) so that it is easier to link statutory Code provisions and non-statutory in the same document rather than separately. Alternatively, the code could have a number of short supporting information boxes within key sections with bullet points on good practice/suggested steps employers may consider. These would be highlighted clearly as best practice suggestions and developed further in the Guidance.
- Ensuring the statutory elements of the code are properly separated from information which sets out good practice and should be included in the Guidance would help reduce the length of the new code. The draft code is nearly 5,000 words long compared to the existing code, which is just over 3,000 words. If the aim is to make the code accessible and user-friendly for employers and particularly for SMEs, the ambition should be to keep it as concise as possible, ideally within the word length for the current code.

More generally, a number of our members have made the point that while the Code is ready for review, it is not fundamentally broken. We endorse their suggestion that, given the huge amount of change employers are currently grappling with as a result of the ambitious Plan to Make Work Pay and associated changes through the Employment Rights Act 2025, perhaps the review of the Code could be carried out in longer time when employers have more capacity to reflect and comment on further iterations.

- **Question 1 of 25**

To what extent do you agree or disagree that the Code should encourage the informal resolution of employer concerns about worker misconduct or unsatisfactory performance?

- Strongly agree that the Code should encourage this

Please explain the reasoning for your answer, including what you see as the benefits and risks.

We strongly agree that the Code should encourage the informal resolution of employer concerns about minor worker misconduct or unsatisfactory performance. However, while we agree that the Code should encourage informal resolution, this should be at a high level only.

Employers should have to consider whether an informal route is appropriate - including this in the Code should encourage employers to consider their processes more widely, with a focus on building



open and supportive relationships across organisations where open and constructive conversations can take place on a daily basis and ‘concerns’ - whether around performance, minor conduct issues, capability - and even when statutory or other (substantial) reasons arise which mean that the employment relationship is somehow put at risk. However, introducing too many parts - or suggested parts of an informal process into the Code, even using terms such as ‘good practice’ - will risk formalisation, and defeat the object of this exercise - see our answer below. -

If you answered ‘Strongly agree’ or ‘Agree’ to Question 1, do paragraphs 16 to 23 of the draft Code take the right approach to providing guidance on addressing employers’ concerns informally?

- Strongly disagree that the draft Code takes the right approach

Please explain the reasoning for your answer.

We do not agree that including such extensive provisions around early and informal resolution for employer concerns in the Code itself is appropriate. We consider that it would be more helpful if this additional content was expanded to be of more practical assistance, especially for SME organisations, providing examples, flowcharts and other tools and included in the accompanying non-statutory guidance that will also be reviewed and updated by Acas.

Including details in the Code itself effectively makes failing to follow ‘steps’ of an informal process subject to the 25% uplift provisions and risks formalising how an employer should handle informal concerns (para 17). Specifically, the informal steps mentioned

- Introduce an expectation that employers may engage with TU or other worker representatives during an ‘informal’ process (para 18), even though there is no statutory right to be accompanied during an informal conversation;
- Set out a number of ‘examples’ of ‘informal outcomes’ (para 19 and para 20) which could easily become ‘expected steps’, but at the same time,
- the Draft states (para 21) that an informal conversation should never by itself result in a disciplinary warning or other formal disciplinary action, but that confirming the action in writing might be useful.

Rather than being encouraged to develop an informal process that works for their particular workplace, with meaningful practical support included in non-statutory guidance, employers will feel compelled to demonstrate extensive informal engagement before taking any formal step, adding weeks or months to what may be straightforward management action. The steps outlined place employers in a documentation trap where they need to record informal discussions (for evidential purposes) but must ensure nothing they write could be characterised as a formal warning; it also creates uncertainty about when “enough” informal engagement has taken place to justify moving to formal process, which is inherently subjective and will only be determined after the event by a tribunal with the benefit of hindsight. Finally, it gives claimants and their representatives an easy procedural argument in virtually every case (“the employer did not do enough informally before escalating”), potentially leading to more Tribunal claims, rather than resolving issues at an earlier stage.

The nature of ‘informal resolution’ should be such that the employer can develop an approach that works for its own workers and workplace - or workplaces. Individual employers are best placed to understand this, and should be encouraged to develop the same, engaging with employees where appropriate. However, placing employers at the risk of a 25% uplift in compensation, while at the same time including specific provisions around what an informal process can look like, simply encourages formalisation and prevents employers developing informal processes that genuinely suit their organisations.

This is even more relevant when viewed within the wider changes to the landscape - specifically the removal of the cap on unfair dismissal compensation. Introducing more areas in which an



employer can be seen to have ‘unreasonably failed to follow the code’ is a disproportionate burden.

Question 2 of 25

To what extent do you agree or disagree that the Code should encourage the informal resolution of concerns that workers raise with their employers?

- Strongly agree that the Code should encourage this

Please explain the reasoning for your answer, including what you see as the benefits and risks.

In the same way that the Code should encourage informal resolution by employers of their concerns, the Code should encourage employees to seek informal resolution of their concerns - with the attendant proviso that employers should engage seriously with employees seeking to resolve their concerns seriously. We have received significant feedback from our members that employees are increasingly unwilling to discuss concerns directly with managers, preferring to submit lengthy and complex formal written grievances and then refuse to engage on a face-to-face level to discuss their concerns. We discuss the possible reasons for this later in the document.

If you answered ‘Strongly agree’ or ‘Agree’ to Question 2, do paragraphs 53 to 61 of the draft Code take the right approach to providing guidance on raising and handling workers’ concerns informally?

- Neither agree nor disagree

Please explain the reasoning for your answer.

There are elements of paragraphs 53 - 61 of the revised Code which we consider take a sensible, balanced approach, however, as with our concerns around the inclusion of too many ‘informal steps’ in the Code with a view to resolving employer concerns informally, we have similar concerns around employee concerns. However, we do consider that employees need clearer, accessible and practical guidance to support them to seek to resolve concerns informally. Equally, many employers, particularly SMEs with limited resource, need practical guidance to adopt best practice without the threat of the uplift if they get it wrong.

We also have concerns that employees may write down the issue(s) they want to resolve, automatically triggering a more formal approach when an informal approach would be more appropriate. The increasing use of AI tools by employees to attempt to understand their rights and how to access them contributes to this - we deal with AI in more detail in our response to question 24.

We received important feedback from one senior HR Leader in an organisation where a significant element of the workforce is made up of those carrying out manual ‘blue collar’ workers with lower levels of literacy or language competence (because the work carried out does not require this). His concern was that these people, arguably those who need more protection than those in more highly skilled roles and with greater levels of literacy, will see a move by the employer to encourage informal resolution as an attempt to take away or reduce their right to be heard. They will not understand the nuances or see the wider organisational benefit of using informal resolution when they have a ‘right to raise a grievance’.

Question 3 of 25

Does the language used in the draft Code strike the right tone to encourage the early resolution of employer and worker concerns?

- No

Please explain the reasoning for your answer.



Feedback we have received from members suggests that the tone is perhaps too relaxed - this is, after all, a Statutory Code with real 'teeth' (the risk of a 25% uplift/reduction in compensation if it is not reasonably followed). We feel that the tone of the Code should retain a degree of formality, with perhaps a more relaxed tone used in comprehensive non-statutory guidance which provides examples, suggestions and tips to help employers comply, particularly in developing informal processes.

Question 4 of 25

Should the current title of the Code be retained?

- No - the title of the Code should be changed

Please explain the reasoning for your answer.

If you answered 'No' to Question 4, what should be the title of the Code?

We do not have a specific suggestion for a title, but think that it would be appropriate to include terms such as 'resolution'

Question 5 of 25

Do the principles in paragraphs 7 to 9 of the draft Code set out reasonable expectations for all users of the Code?

- Yes

Please explain the reasoning for your answer, including whether any principles should be added, removed or changed.

We consider that as high level principles, these are sensible, except for the inclusion of Paragraph 10 - right to be accompanied. Paragraph 10 is a specific element of the formal disciplinary or grievance process and inclusion here is not appropriate.

We welcome the focus on discussion and on the need for employers and workers to speak with each other, and the prompting to both employers and workers to deal with concerns expeditiously. It could be useful to add an additional bullet to paragraph 9 suggesting that workers **should be** prepared to engage constructively with their employer in the discussion and resolution of their concern.

Question 6 of 25

Does paragraph 3 of the draft Code get the balance right in recognising that employment tribunals will take the size and resources of an employer into account and that it may sometimes not be practicable for all employers to take all of the steps set out in the Code?

- No

Please explain the reasoning for your answer

The majority of employers affected by the Code are SMEs, with fewer resources available to them. We consider that this should be reworded to give more comfort to smaller employers - we suggest replacing "it may sometimes not be practicable ..." with "... it will not always be practicable for smaller employers ..."

Question 7 of 25

Does paragraph 4 of the draft Code get the balance right in stating that where other legal requirements need to be applied alongside the Code, the Code should always be followed to the extent that is reasonably possible?

- Yes

Question 8 of 25

Is the Code clear about the need to avoid unlawful discrimination when resolving concerns at work?

- Yes

Please explain the reasoning for your answer.

We broadly welcome the inclusion of paragraphs 14 and 15 in the draft Code. We did receive some feedback that the inclusion of these paragraphs to the extent that they have been, is patronising. Those members suggested a better approach would be to include a principle of non-discrimination in the overarching principles section at the start of the document, with more comprehensive examples and information in the accompanying guidance.

Do the examples in paragraph 14 of the draft Code provide clear guidance about the kinds of actions employers may need to take to avoid unlawful discrimination when resolving concerns at work?

- Yes

Please explain the reasoning for your answer, including whether any examples should be added, removed or changed.

We think these are good examples, however, they do focus on 'disability' and we wonder, whether for clarity, an example could be included to cover language barriers which might lead to unlawful race discrimination? As an example the current second example could be amended as follows:

- providing relevant documents in a format that is accessible to the worker, *or by providing a translation that ensures the employee has a clear understanding of the situation.*

Should the Code (paragraph 15) encourage workers to discuss with their employer as early as possible any adjustments to processes they wish to request?

- Yes

Please explain the reasoning for your answer.

As above, we broadly welcome the inclusion of paragraphs 14 and 15 in the draft Code.

Question 9 of 25

Should the Code state that it is good practice to provide training and support to help managers, workers and representatives build skills and confidence to resolve concerns early and effectively?

- No

Please explain the reasoning for your answer.

Paragraph 13 introduces a "good practice" expectation to "provide training and support to help managers, workers and representatives build the skills and confidence needed to resolve concerns early and effectively."

While training is self-evidently desirable, its inclusion in the Draft transforms it from a matter of good management and organisational practice into something tribunals can consider when assessing reasonableness, despite being stated as 'good practice'.

An employer whose manager handles a disciplinary meeting competently, but who has not received formal training may find the process criticised on that basis alone. For smaller employers, the cost of training all managers (and keeping that training current as the Code evolves) is significant and there is no proportionality mechanism. This also



opens a line of cross-examination in tribunal proceedings ("has this manager received training on the Code?") that adds nothing to the substantive fairness of the decision but creates an additional vulnerability. It is yet another example of process being elevated above substance.

We would also add here a point in respect of **paragraph 12 of the Draft** as there does not appear to be a specific question about this: The current Code states that "employees and, where appropriate, their representatives should be involved in the development of rules and procedures". The Draft strengthens this, stating employers "should develop policies and procedures with workers and, where appropriate, their representatives."

The shift from "involved in" to "**should** develop with" implies a co-determination model that undermines an employer's ability to set and enforce its own standards of conduct and performance. In non-unionised workplaces, there is no obvious mechanism for identifying which workers should be consulted, how their views should be gathered, or what weight they should be given. In unionised workplaces, it risks conflating management prerogative with collective bargaining, giving unions a seat at the table on matters that are properly for the employer to determine. It also creates a retrospective challenge because if an employer's policy was not developed "with" workers, does that render it non-compliant with the Code and provide a basis for challenging any action taken under it? This uncertainty benefits no one and will generate disputes about process rather than substance.

Question 10 of 25

Is the draft Code's guidance (paragraphs 24 to 26) on fact-finding helpful to avoid unnecessary escalation of concerns into formal disciplinary procedures?

- Yes

Please explain the reasoning for your answer.

We agree that fact finding is an important part of resolving concerns (both employer and employee concerns): protracted, poorly handled workplace investigations leave employee and employer in limbo with significant attendant harms.

We do note that even the informal resolution of concerns may require some fact finding, and there may be a balance to be struck to ensure the right level of fact finding is carried out in these circumstances.

Question 11 of 25

Should the Code (paragraph 28) include guidance on the limited circumstances in which it may be appropriate to suspend a worker?

- Yes

Please explain the reasoning for your answer.

The current Code addresses suspension in a single sentence, stating it should be "as brief as possible, should be kept under review" and made clear it is not disciplinary action. The Draft expands this into three paragraphs with specific criteria that must be satisfied before suspension can be considered, including that the employer must "reasonably believe" it would protect the investigation, the organisation, other staff, or the person under investigation.

We have considered whether it may be appropriate to include 'guidance' around suspension in non-statutory guidance, but we are aware that potential consequences of poorly handled suspension can be significant, and devastating, and not all employers will consider 'guidance'. Unless there is a better way of linking elements of the Statutory Code with associated elements of the non-statutory guidance and given the duty of care that sits with employers to protect the health and safety of



their employees, even those suspected of serious gross misconduct, we agree that the Code should address suspension in more detail.

In saying this, we do recognise the risk, expressed by some of our members, that codifying specific grounds that must be satisfied (and which tribunals will scrutinise after the event) places an additional burden on employers which could make them hesitant to suspend even in circumstances where it is genuinely necessary. Expanding the wording on suspension in the Draft could invite satellite litigation where the substantive merits of the disciplinary case are overshadowed by arguments about whether the suspension itself was justified under each of these criteria. It also creates an asymmetry where a suspended employee suffers no real detriment (they are paid) but the employer bears the cost of delays while trying to investigate without the individual on site. The practical effect is that employers may tolerate the continued presence of individuals who ought to be removed from the workplace, creating risk to other staff and to the integrity of investigations.

If you answered ‘Yes’ to Question 11, is the guidance at paragraph 28 clear?

- Yes

However, we suggest that the wording refers to the need for suspension to be proportionate and only deployed in circumstances where it is unavoidable. Providing some clear examples would go some way to mitigating the risk identified in our response above. It might also be helpful to include examples of alternatives to suspension, if not in the Code, then in Guidance - such as moving the employee under investigation into a different part of the business or onto a different shift pattern.

Question 12 of 25

Should the Code (paragraph 30) include good practice guidance on communicating a decision to suspend a worker?

- Yes

Please explain the reasoning for your answer.

As above

If you answered ‘Yes’ to Question 12, is the guidance at paragraph 30 clear?

- Yes

Please explain the reasoning for your answer.

- We would also suggest making a clear reference to the duty of care employers have to their employees.

Question 13 of 25

Should the Code prompt employers to consider a range of appropriate next steps after establishing the facts (paragraph 31)?

- Yes

Please explain the reasoning for your answer.

Underperformance/misconduct or other workplace issues that could be a cause for employer concern can take place across a very wide spectrum and we advocate for employers looking holistically at situations and potential solutions, aiming for informal resolution where appropriate. However, as currently drafted, the revised paragraph 31 gives no sense of what kinds of issues could be handled through a less formal process and what kind of factors should be taken into account when deciding next steps, in comparison to para 42, where more detail is provided - some of which would appear to be appropriate as part of an informal resolution. It might be that the accompanying guidance would be a more appropriate place to provide these examples, but again, there needs to be better accessibility of the guidance to support employers.

Question 14 of 25



Should the Code prompt employers to consider other next steps after a formal disciplinary meeting in addition to considering formal disciplinary action (paragraph 42)?

- Yes

Please explain the reasoning for your answer.

See above.

Question 15 of 25

Should the Code expect employers to state what steps have been taken to resolve the issue informally when notifying a worker of a formal disciplinary meeting (paragraph 32)?

- Yes

Please explain the reasoning for your answer.

We agree that encouraging employers to state what steps have been taken to resolve the issue informally is positive. However, we consider that this will only be effective where employers have full reign to consider, as an initial step, whether a matter should be dealt with formally or informally. If the formal route is chosen, the employer should not then be tied to consider specific informal steps (with a risk of a compensation uplift - see our response to Q1 above. Equally, if the employer goes down the informal route first, they should be free to use whichever informal processes have been developed within their organisation, without risk of a tribunal uplift being applied.

There is a tension between para 32 and preceding statements in paras 16 and 23. On the one hand, para 23 recognises that there will be situations when it will not be appropriate to attempt to deal with a matter informally (giving gross misconduct as the example). However, para 16 suggests that ‘usually’ employer concerns are best resolved informally, and para 32 focusses on the employer stating “...*what steps have already been taken to attempt to resolve the concern informally or the reason why none have been taken.*” The emphasis is clearly on ‘steps being taken’ with little attention being given to an employer’s decision that informal resolution is not appropriate.

Without the ability of an employer to decide that the formal route is appropriate at the outset, there is a risk that this creates an additional technical ground on which to challenge the validity of a disciplinary process. An employer who moves straight to formal action for serious misconduct (which paragraph 23 itself acknowledges is appropriate) must nonetheless explain in writing why no informal steps were taken. If the explanation is considered insufficient by a tribunal, the entire process is potentially tainted. This encourages satellite litigation about the adequacy of notifications rather than the substance of the misconduct. It also creates a drafting burden at the very point where employers need to act decisively, requiring them to justify their choice of process in addition to setting out the factual case. For employers without dedicated HR support, getting this right under time pressure will be genuinely difficult.

Question 16 of 25

Should the Code state that, if possible, workers should set out in their grievance how they would like their concern to be resolved (paragraph 63)?

- Don’t know

Please explain the reasoning for your answer.

While we welcome as much encouragement as possible for employees to pursue informal resolution of concerns to avoid unnecessary escalation, we are concerned that employees will not necessarily understand what their options are, particularly if the informal stage has not been satisfactory in resolving the concern. There needs to be some clarity - examples and details, perhaps in guidance -



so that employees have a much clearer idea of how their concerns might be resolved - without resorting to AI solutions.

The draft Code also introduces a new expectation for workers when raising a written grievance to state what prior steps have been taken to resolve the matter informally, or where no steps were taken the reason for that (paragraph 63). (This mirrors an equivalent new expectation for employers, see Q15.)

Question 17 of 25

Should the Code expect workers when raising a formal grievance to state what steps have been taken to resolve the issue informally (paragraph 63)?

- Yes

Please explain the reasoning for your answer.

There is a significant and increasing trend we have observed of employees moving straight to the submission of lengthy and complex formal grievances without seeking to resolve concerns informally first, or only engaging superficially with an informal process, refusing to discuss concerns face to face and preferring to engage through email. We consider that the Code should provide as much emphasis on informal resolution as possible. By making it clear that employees should have at least considered informal resolution seriously, and where they have engaged with it, have done so with a genuine view to resolving the issue, it provides some balance in a process where much of the obligation is placed on the employer.

However, we do need to be mindful that many employees will not understand that there is a distinction between resolving matters informally or formally (as mentioned above in response to question two. There is a risk that employees will see an attempt by an employer to resolve something 'informally' as an attempt to take away the employee's right to be heard, which could lead to more complications and entrenchment of positions.

Ideally, we would hope that if employers are encouraged to develop broader performance management systems encouraging openness and two way conversation, employees who have 'informal concerns' will see these being resolved before they even recognise them as 'concerns'. However, the corollary to that is that they will need to see their 'grievances' being recognised and dealt with as such.

Question 18 of 25

Should the Code state that a short, clear written explanation of a concern will often be enough information to provide when initially raising a formal grievance (paragraph 64)?

- Yes

Please explain the reasoning for your answer.

We welcome the inclusion of this as a starting point but feel that paragraph 64 should go further. We would suggest that employees 'should' include a short, clear written explanation of their concern(s). This matches the obligation on employers who 'should' take the concern(s) seriously. We expand on this further in our response to Question 24 below regarding AI.

Question 19 of 25

Is the draft Code's guidance on the statutory right of accompaniment sufficiently clear?

- No

Please explain the reasoning for your answer.

The wording of para 77 of the Draft refers to the right to be accompanied but does not properly reflect that it is a right to be accompanied if the worker 'reasonably requests' to be accompanied.



Paragraph 81 then introduces a new "good practice" expectation that employers should consider requests to be accompanied even where the statutory right does not apply. The current Code contains no such provision. Framing this as 'good practice' goes beyond the remit of the code and removes the opportunity for an employer to make its own judgment call. We suggest that to maintain a clear distinction between good practice what is legally required, this should be covered in accompanying guidance rather than in the Code itself.

The current Code reflects the role of the companion as set out in the underpinning statute - to "put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing". The Draft at paragraph 87 replicates this language but subtly reframes it by presenting these as positive entitlements rather than describing them in the context of limitations. Read alongside the new "good practice" encouragements, the direction of travel is clearly towards companions playing an increasingly active and quasi-representative role, which would have the unintended consequence of introducing more rather than less formality, and earlier entrenching of positions - which is what we need to get away from.

Disciplinary and grievance meetings are supposed to be conversations between an employer and the individual concerned. The more active the companion's role becomes, the more these meetings resemble adversarial hearings, which are slower, more confrontational, and less likely to achieve genuine resolution. Managers conducting meetings feel intimidated by assertive companions (particularly experienced union representatives), and the dynamic shifts from problem-solving to position-taking. This directly undermines the Code's stated aim of resolving concerns "early and effectively." It also increases the pressure on employers to have legally trained or HR-specialist chairs at every meeting to match the sophistication of the companion, adding cost and reducing operational flexibility.

Question 20 of 25

Should the Code (paragraph 86) include guidance on when it may be reasonable to postpone a formal disciplinary meeting for more than 5 working days where a companion is unavailable?

- No

Please explain the reasoning for your answer.

We understand that the expanded wording reflects the case law, but in doing so, we are concerned that the Draft now signals that tribunals **may expect** employers to allow longer postponements, particularly in potential dismissal cases. This hands employees and their companions a mechanism to string out proceedings indefinitely. A companion who is "unavailable" for extended periods effectively stalls the entire process, and the employer who refuses to wait risks a finding of unreasonable failure to follow the Code. In practice, this means serious misconduct cases (which are exactly the cases most likely to result in dismissal) become the hardest to progress to a conclusion. Witnesses' memories fade, evidence becomes stale, team morale suffers, and the employer bears the cost of managing around the situation while the process drags on. It also encourages the selection of companions who are known to be frequently unavailable, as a deliberate litigation tactic.

We also note here, because there does not seem to be a question around this, or any mention in the Draft, of the wording in paragraph 36. Given the detail included around the availability or not of a chosen companion, the Draft seems short on the question of when an employer might sensibly proceed with a formal disciplinary, faced with the persistent absence of a worker with no good reason provided. The Draft mirrors paragraph 25 in the current Code, with only a couple of small changes to simplify language. However, whether to hold a disciplinary meeting in the absence of an employee (under the current Code) is a recurring concern for HR professionals trying to ensure fairness for employees. It is also being reported to us anecdotally that individuals are more and more reluctant to attend face to face meetings when we know that face to face meetings are often the best way to resolve things, particularly at an early and informal level. We would invite Acas to



provide more guidance around when an organisation might move forward confidently in the face of an employee/worker who does not attend. In particular the use of the word 'persistent'.

Question 21 of 25

Should the Code (paragraphs 10 and 81) state that it is good practice for employers to consider allowing accompaniment if this is requested where the statutory right does not apply?

- No

Please explain the reasoning for your answer.

As mentioned above, framing this as 'good practice' goes beyond the remit of the code and removes the opportunity for an employer to make its own judgment call. If the intention here is to encourage good practice, then this should be included in the accompanying guidance rather than in the Code itself. We recognise where there are situations where it will be of benefit to the wellbeing and understanding of the employee to have a companion even in situations where the legal right does not arise, but this should not be part of the Code itself. Placing employers in a situation where they feel pressure to start allowing companions that could be TU reps in wider scenarios that currently provided for, as a matter of course again risks making these processes more adversarial and formal, and inhibit informal resolution.

A further key point that was raised by mediators who were involved in our focus group is that mediation specifically encourage employees to attend unaccompanied - if they are accompanied, it changes the complexion of the discussion and is against mediation principles.

Question 22 of 25

Should the Code include guidance on mediation and facilitated conversations (paragraphs 90 to 95)?

- No

Please explain the reasoning for your answer.

This is an entirely new section with no equivalent in the current Code. While mediation can be a valuable tool, its inclusion in the statutory Code creates an implicit expectation that employers should offer it before or alongside formal processes.

Mediation requires properly trained mediators (whether internal or external), dedicated time away from productive work, and the willing participation of all parties. For SMEs with limited budgets and no access to trained mediators, this is an unfunded expectation that they cannot realistically meet. Even for larger organisations, mediation takes time to arrange and conduct, adding further delay to processes that the Code elsewhere says should proceed "without unreasonable delay." The draft itself acknowledges at paragraph 95 that "these processes may not be available in every organisation," yet the very fact of their inclusion in the Code means tribunals may treat a failure to offer mediation as unreasonable conduct warranting an uplift. This places employers, particularly smaller employers, in a position where they are expected to offer something they may not have the infrastructure to deliver and penalised for not doing so. Alternatively, it risks employers attempting to develop an internal 'mediation' process, in an attempt to comply with the perceived requirements of the Code, which does not follow proper mediation principles and can cause more harm than good.

It also gives employees a further tactical tool by agreeing to mediation as a means of delaying formal proceedings, then withdrawing from the mediation, with the employer having lost weeks in the process.



While mediation/facilitated conversations can be very positive, and we believe encouraged in an appropriate way, mediators who have fed back to us raise tensions between mediation principles and other areas of the code in so far as:

- Mediation principles encourage the parties to be unaccompanied during mediations, while the Code seems to be advocating for wider use of companions, even when this is not a direct (or indirect) legal requirement
- Mediation principles discourage the recording in writing of the outcome of informal meetings, while paragraph 59 of the Code suggests that an employer 'may wish' to record what has been discussed and any agreed actions.

The reference to the suitability of mediation/facilitated conversations when there is an issue of capacity (in para 94) potentially requires employers to make a judgment call that they are not qualified to make.

Question 23 of 25

Should the Code use the term 'worker' unless the status of 'employee' is specifically intended?

- No - the Code should continue to use the term 'employee' throughout other than when referring to the statutory right of accompaniment.

Please explain the reasoning for your answer.

The current 'live' Code uses "employee" throughout. The draft consistently uses "worker," which is a broader category encompassing agency workers, some contractors, and others who do not have employee status.

We have significant concerns about this change in emphasis which is shared by our members.

Fundamentally, it fails to recognise the specific legal status given to 'worker' and 'employee'. By placing an expectation on employers that it is 'good practice' for them offer workers the same processes as employees it may lead to the unintended consequence of contributing to a decision that a 'worker' is in fact an 'employee' - and thereby acquire the right to claim unfair dismissal. This is of particular concern given the imminent reduction of the qualifying period from two years to six months.

The worker category includes individuals over whom the employer has less direct control, who may work intermittently or for multiple organisations, and with whom the employment relationship is fundamentally different. Requiring full Code-compliant disciplinary and grievance processes for agency workers or casual staff who may work a handful of shifts creates a wholly disproportionate administrative burden. It also raises practical difficulties about who conducts the process (the agency or the end user?), where meetings are held, and how continuity is maintained when the individual may have moved on to other engagements. This expansion receives no analysis or justification in the consultation materials and no transitional guidance is offered for businesses that currently manage these relationships differently.

Further, the real 'teeth' of the Code sits in the power of an Employment Tribunal to apply the uplift in compensation in an unfair dismissal claim - which a 'worker' is unable to bring. Using 'worker' throughout the draft Code adds to the confusion that already exists around employment status.

Taken in conjunction with the potential unintended consequences for employment status that we have raised in connection with the proposals in relation to guaranteed hours offers, we are concerned that, whether intentionally or not, there is a move to erode 'worker' status by the back door, when in fact, the question of employment status is fundamentally and should be the subject of its own consultation.

We strongly encourage Acas to refrain from using the term 'worker' unless it is in the context of the right to be accompanied, to which 'workers' are entitled



Artificial Intelligence (AI)

Stakeholders have raised questions about the increasing use of artificial intelligence (AI) in disciplinary and grievance processes. We welcome views on any benefits, risks or practical issues that the Acas Code or associated non-statutory guidance may need to address on this.

Question 24 of 25

Are there issues arising from the use of AI in disciplinary and grievance processes that Acas should address in the Code or associated non-statutory guidance?

Feedback we have received from members both specifically through the focus group we have held in connection with this consultation and more generally through our community forums has indicated that the use of AI, particularly by employees in grievance processes, is in urgent need of being addressed.

Human resource professionals have reported a significant increase in lengthy, complex written grievances being submitted prepared using generative AI. This has given rise to a number of problems

- Lack of clarity around what the issues actually are
- Inclusion of erroneous references and verbose language which adds complication
- Inflated expectation of what legal resolution might be available (particularly in terms of compensation levels)
- Entrenchment of position
- Reluctance to discuss face to face
- Huge drain on time and resources for HR professionals dealing with worker concerns

While we recognise that AI can be a useful tool to support those who might find it difficult to articulate their concerns, the widespread use of AI without guidance and expectation management is contributing exponentially to workplace conflict with all the negative consequences this brings to the employee concerned, and for organisations.

Paragraph 64 of the revised Code alludes to the need for workers to express their concerns clearly and concisely. We consider that the Code should specifically address the use of AI in the grievance process and set out some parameters and expectations on workers that can lead to an associated 25% reduction in compensation if they are not followed. The obligation to provide a clear concise summary is an obligation which a worker/employee 'should' be required to include - if necessary, employees can use AI to generate this. This would match the employer's obligation - that they 'should' take the concern seriously.