

Labour Relations Agency

Improving employment relations

**Advice on
handling discipline and grievances at work**

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This guide provides practical advice and guidance in disciplinary and grievance matters based on our Code of Practice: disciplinary and grievance procedures.

This guide also includes sample disciplinary and grievance procedures and letters to use in handling discipline and grievance matters. These sample procedures and letters should be tailored to suit the needs of each organisation. If you need more help, you can contact us (our contact details are at the back of this booklet).

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Introduction

Discipline and grievance procedures

Organisations should set standards of performance and conduct that are reinforced by company rules. Problems when standards are not met or where grievances (complaints) are made by employees may often be dealt with informally, but if a formal approach is needed then procedures help employers to follow the law and be fair and consistent.

Disciplinary procedures may be used for problems with employees' conduct or performance, although some organisations have a separate procedure for dealing with performance problems. The main role should be about changing people's behaviour.

Grievance procedures are used for considering problems or concerns that employees want to raise with their employers.

This guide tells you how to handle matters of discipline and grievances at work. The detailed advice given is based on the three following principles.

- Rules and procedures provide a framework for behaviour and performance.
- Discipline and grievances are about people not processes.
- In most cases, employers should aim to improve employees' performance, not punish them.

In a well-managed organisation, disciplinary and grievance procedures may not be needed very often, but if problems do arise then these procedures are vital. Good procedures can help organisations to sort out problems internally and avoid industrial tribunal claims.

The statutory procedures and the Code of Practice

This guide contains examples of disciplinary procedures to help employers in all types and size of organisation. Although organisations can be flexible about how formal or extensive their procedures need to be, there are procedures they must follow by law. These are known as statutory procedures. Unless employers follow these procedures, industrial tribunals will find dismissals automatically unfair and adjust awards accordingly. We refer to the relevant statutory procedures throughout this guide.

Although this guide is purely advisory, it supports our Code of Practice: disciplinary and grievance procedures (referred to as the 'Code') by giving more practical advice.

Discipline

Part 1 on discipline at work starts by explaining why organisations need rules and disciplinary procedures, and gives a summary of how to handle discipline. It then looks in depth at:

- informal action;
- the disciplinary hearing;
- taking action: unsatisfactory performance and misconduct;
- appeals; and
- dismissals.

Grievances

Part 2 on grievances considers why organisations need procedures and gives advice on how to handle a grievance hearing.

We also give guidance on special cases – such as those to do with bullying or harassment, discrimination and when a worker raises a concern about danger or illegality that affects others (Whistleblowing). Some organisations may want to develop separate procedures, in line with the statutory procedures, for these sensitive areas

We also summarise the minimum grievance procedures that employers must follow by law (the statutory grievance procedures).

The right to be accompanied

Part 3 has information on the right for employees to have someone with them at disciplinary and grievance meetings.

Part 1 – Handling discipline at work

The statutory procedures and the Code

This guide contains examples of disciplinary procedures to help employers, regardless of the type and size of the organisation. Although organisations can be flexible about how formal their procedures need to be, there is a **statutory procedure they must follow as a minimum if they are considering dismissing an employee or setting certain kinds of penalty other than dismissal, such as suspension without pay or demotion.** Unless employers follow the statutory procedure, industrial tribunals will find dismissals automatically unfair.

The statutory procedure involves the following three steps

- A statement in writing of what the employee is meant to have done
- A meeting to discuss the situation and a decision
- The right of appeal

The statutory procedure is the minimum standard. Industrial tribunals expect employers to make decisions on discipline and dismissal which are fair and reasonable. We strongly advise employers and employees to start talking to each other, with a view to trying to sort out the matter, long before the dismissal stage – for example, through counselling or working out an ‘improvement plan’ for an employee’s performance.

Disciplinary procedures help employers to manage people effectively, and should not be viewed just as a way of setting penalties or dismissing people. If an employee is dismissed, they may make a complaint to an industrial tribunal if they believe they have been unfairly dismissed, although normally the employee must have one year’s continuous service (see note 1). The employer must show the reason for the dismissal and that it was a fair reason.

The tribunal will decide whether the dismissal was fair or unfair, and will take into account the size and administrative resources of the employer when deciding whether they acted reasonably or unreasonably. The tribunal will take account of the guidance given in the Code (see annexes A and B of the Code) and consider how far the statutory three-step procedures have been followed.

The need for rules and disciplinary procedures

- Rules are necessary because they set standards of conduct and performance at work.
- Rules will normally cover issues such as absence, timekeeping and holiday arrangements, health and safety, using the organisation’s

equipment and facilities, misconduct, below-standard performance, and discrimination, bullying and harassment. (This list is not a complete list.)

- A disciplinary procedure sets out how rules should be followed and standards should be maintained. It provides a method of dealing with any problems in conduct or performance and can help an employee to improve his or her behaviour or performance. The procedure should be fair, effective and consistently applied. *[The statutory dismissal and disciplinary procedures apply only to employees and we use this term throughout this guide. However, it is good practice to allow all workers access to disciplinary procedures. The right to be accompanied applies to all workers, and this term is used in section 3 of the Code].*
- Rules and procedures should be clear, and should preferably be put in writing. All employees should know and understand them.
- All employees should have access to a copy of the rules and disciplinary procedures.
- Management should involve employees and any recognised trade union or other employee representatives when developing, introducing or revising rules and disciplinary procedures.
- Rules should be reviewed from time to time, and revised when appropriate.
- Management should make sure that the people responsible for the disciplinary rules understand them, receive appropriate training, and apply them fairly and consistently

How should rules be drawn up and communicated?

To be fully effective, rules and procedures should be accepted as reasonable by the people they apply to. It is good practice to develop rules with employees (through their representatives and union where appropriate) and the people who will have responsibility for applying them.

Writing down the rules helps both managers and employees know what is expected of them. The rules and their effect should be explained to employees, and ideally they should be given their own copy.

In a small organisation, it may be enough to display the rules where everyone can see them. In large organisations, it is good practice to include a section on rules in the organisation's rule book, and to discuss them during the induction programme.

Employers need to make sure that rules are understood by any employees with little experience of working life (for example, young people or people returning to work after a long break), and by employees whose English is

limited or is a second language, or who have some other form of reading difficulty.

Rules are more readily accepted and followed if people understand the reasons for them. For example, if an employee has to wear protective clothing, it is sensible to explain if this is for a particular reason, for example, because of corrosive liquids or staining materials. A uniform may be more acceptable if you explain that it presents a corporate image, saves employees' personal clothes from wear and tear, and so customers or the public can identify employees.

Unless there are valid reasons why different sets of rules apply to different groups of employees – perhaps for health and safety reasons – rules should apply to all employees at all levels in the organisation.

The rules should not discriminate against anyone because of their sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, disability (see note 2) or age (see note 3).

Where a rule is no longer used or has not been applied consistently, employees should always be told before there is any change in practice. Employees should be told about any changes in the rules and given a revised Written Statement of the Main Terms and Conditions of Employment within one month of the change (see note 4).

What should rules cover?

Here are some examples of the types of issues that rules might cover. It is not a complete list as different organisations will have different needs.

- ***Timekeeping***
 - 'Clock-in' times and guidelines on swipe cards
 - Lateness
- ***Absence***
 - Authorising absence
 - Approving holidays
 - Notification of absence (short-term and long-term)
 - Rules on self-certification and doctors' certificates.
- ***Health and safety***
 - Any special rules about, for example, protective clothing, hygiene or wearing jewellery. [Employers should be aware that all rules must be solely on the basis of health and safety, and should not discriminate against anyone because of their sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, disability (see note 2) or age (see note 3).

- Smoking policy (see note 5)
- Special dangers, machinery and chemicals
- Policies on alcohol, drug or other substance abuse
- **Using the organisation's facilities**
 - Private phone calls (see note 6)
 - Computers, e-mail and the internet
 - Company premises outside working hours
 - Using and borrowing equipment
- **Discrimination, bullying and harassment**
 - Equal opportunities policy
 - Policy on harassment relating to sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, disability (see note 2) or age (see note 3).
 - Bullying and harassment policy (see note 7)
 - Non-discriminatory clothing or uniform policies
 - Any standards of written or spoken language needed to help employees do their job safely and effectively.
- **Gross misconduct**
 - The types of conduct that might be considered as 'gross misconduct' (this is misconduct that is so serious that it may justify dismissal without notice but normally with investigation)

What should disciplinary procedures contain?

When drawing up and applying procedures, employers should always think about what is generally considered to be fair. For example, employees should be told in writing about any allegations made against them, together with the supporting evidence, before the meeting. Employees should be given the opportunity to challenge the allegations in a meeting before decisions are made and should be given the right to appeal.

Good disciplinary procedures should:

- be put in writing;
- say who they apply to (if there are different rules for different groups);
- not discriminate against anyone;
- provide for matters to be dealt with quickly;
- allow for information to be kept confidential;

- tell employees what disciplinary action might be taken;
- say what levels of management have the authority to take the various forms of disciplinary action;
- make sure that employees are told about the complaints made against them, and any supporting evidence, before any meeting;
- give employees a chance to explain their side of the story before management reaches a decision;
- give employees the right to be accompanied;
- make sure that no employee is dismissed after breaking disciplinary rules for the first time, except in cases of gross misconduct;
- make sure that management investigate the matter fully before any disciplinary action is taken, even gross misconduct;
- make sure that employees are told the reason for any penalty; and
- allow employees to appeal against a decision.

The procedures should also:

- apply to all employees, no matter how long they have worked for the organisation, their position or the number of hours they work;
- make sure that any investigatory period involving a suspension is with pay, and set out how pay will be worked out during this period (if the employee is going to be suspended without pay, this must be covered by the contract of employment);
- make sure that any suspension is not unreasonably long and is never used as a penalty against the employee before a disciplinary meeting and decision;
- make sure that the employee can give their side of the story without being judged; and
- make sure that, where the facts are in dispute, no disciplinary penalty is set until the case has been carefully investigated, and there is a reasonable belief that the employee committed the act in question.

There are examples of disciplinary procedures in Appendix 9 of this guide. These may be adapted according to the organisation's needs.

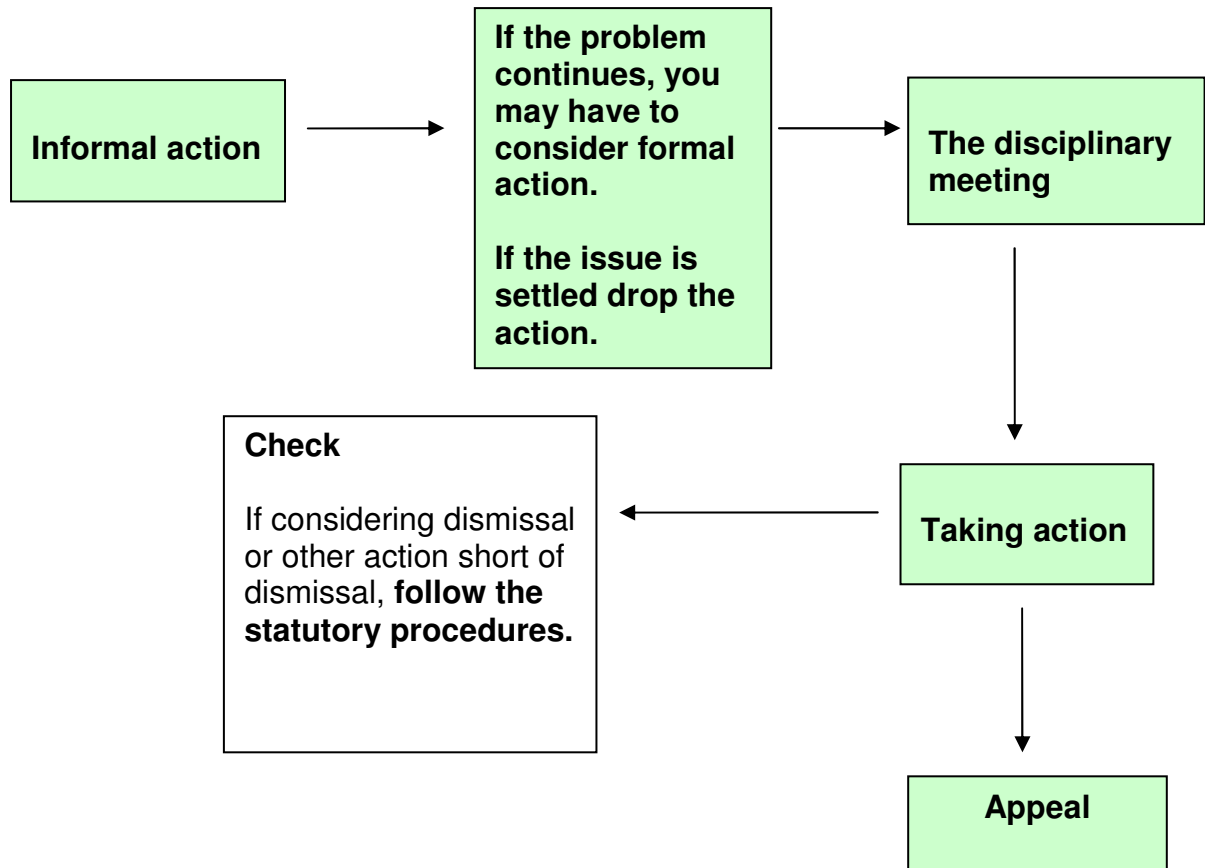
Training

The people responsible for applying the disciplinary rules and procedures should be trained for the task. Ignoring or finding a way to avoid following the

procedures when dismissing an employee is likely to have a negative effect on the outcome of any complaint made to an industrial tribunal.

Good training helps managers achieve positive outcomes, reducing the need for any further disciplinary action. If the organisation recognises trade unions, or there is any other form of employee representation, it can be useful to provide training on a joint basis – everyone then has the same understanding and has an opportunity to work through the procedure, clarifying any issues that might arise.

Handling discipline – an overview



Encouraging improvement

The main purpose of a disciplinary procedure is to encourage employees to improve, within a given framework and timescale, if their conduct or performance has been below acceptable standards.

Acting promptly

Problems dealt with early enough can be sorted out, whereas a delay can make things worse as the employee may not realise that they are below standard unless they are told. Arrange to speak to the employee as soon as possible – the matter may then be able to be dealt with informally, and not as part of the disciplinary process (see the chapter on 'Informal action').

Gathering the facts

By acting quickly, the relevant manager can clarify what the problem is and collect information before people's memories fade, including anything the employee has to say. Where necessary, the manager should collect

statements from witnesses as soon as possible and although it is important to keep details confidential, the manager should not guarantee that witnesses' identities will not be revealed. The manager should keep records of what is said as they may need to give copies to the individual if the matter progresses any further. Relevant personal details, such as previous performance, length of service and any current warnings, will need to be obtained before the meeting, as well as any appropriate records and documents.

Being firm and fair

Managers need to be firm and fair to maintain satisfactory standards when dealing with disciplinary issues. They should be unbiased, keep an open mind, and should not judge issues before they have all the facts.

Suspending with pay

In certain cases, for example in cases involving gross misconduct, where relationships have broken down or where there are risks to an employer's property or responsibilities to other people, the manager should consider suspending the employee concerned with full pay while they investigate the matter.

The manager should consider alternative actions which would be more acceptable to the employee but serve the same purpose as a suspension. Alternatives to suspension might include the employee agreeing to be transferred temporarily to other duties or another workstation without them having to lose pay or take any annual holiday. The manager should make it clear that any action taken is not disciplinary action.

The manager should not use suspension as a disciplinary penalty before the disciplinary meeting and decision.

Staying calm

The manager should carry out enquiries, investigations and proceedings carefully and avoid making snap decisions, without thinking about all the facts. Disciplining an employee is a serious matter and should never be dealt with casually.

Being consistent

The attitude and conduct of employees may be seriously affected if management fails to apply the same rules to each case. The manager should try to make sure that all employees are aware of the organisation's normal practice for dealing with misconduct or unsatisfactory performance.

Considering each case individually

While consistency is important, it is also essential to take account of the circumstances and people involved. Personal details such as length of service, past disciplinary history and any current warnings will be relevant. Any decision to discipline an employee must be reasonable in all the circumstances and must not discriminate because of their sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, disability (see note 2) or age (see note 3).

Following the disciplinary procedure

The manager must follow the disciplinary procedure at all times.

If the employee is dismissed or suffers a disciplinary penalty other than dismissal – such as demotion or suspension without pay – the manager must have followed the minimum statutory procedures. If not, and the employee makes a claim to an industrial tribunal, the dismissal will automatically be ruled unfair and will affect the award. To make a claim to an industrial tribunal, employees will normally have to have worked continuously for the organisation for one year (see note 1).

Is disciplinary action necessary?

Having collected all the facts, the manager should decide whether to:

- drop the matter – there may be no case to answer or not enough evidence, or the matter may be regarded as trivial;
- arrange counselling or immediate retraining to try to correct a situation and prevent it from getting worse without using the disciplinary procedure (see informal action); or
- write to the employee telling him or her that they are considering disciplinary action for specific reasons and invite the employee to a disciplinary meeting – this will be necessary when the matter is considered serious enough to need disciplinary action.

Main stages in handling disciplinary procedures

The following six sections have charts setting out the main stages of handling disciplinary matters. These charts refer you to the relevant management guidance contained in the Appendices.

Chart 1: Informal action

Chart 2: The disciplinary meeting

Chart 3: Taking disciplinary action – unsatisfactory performance

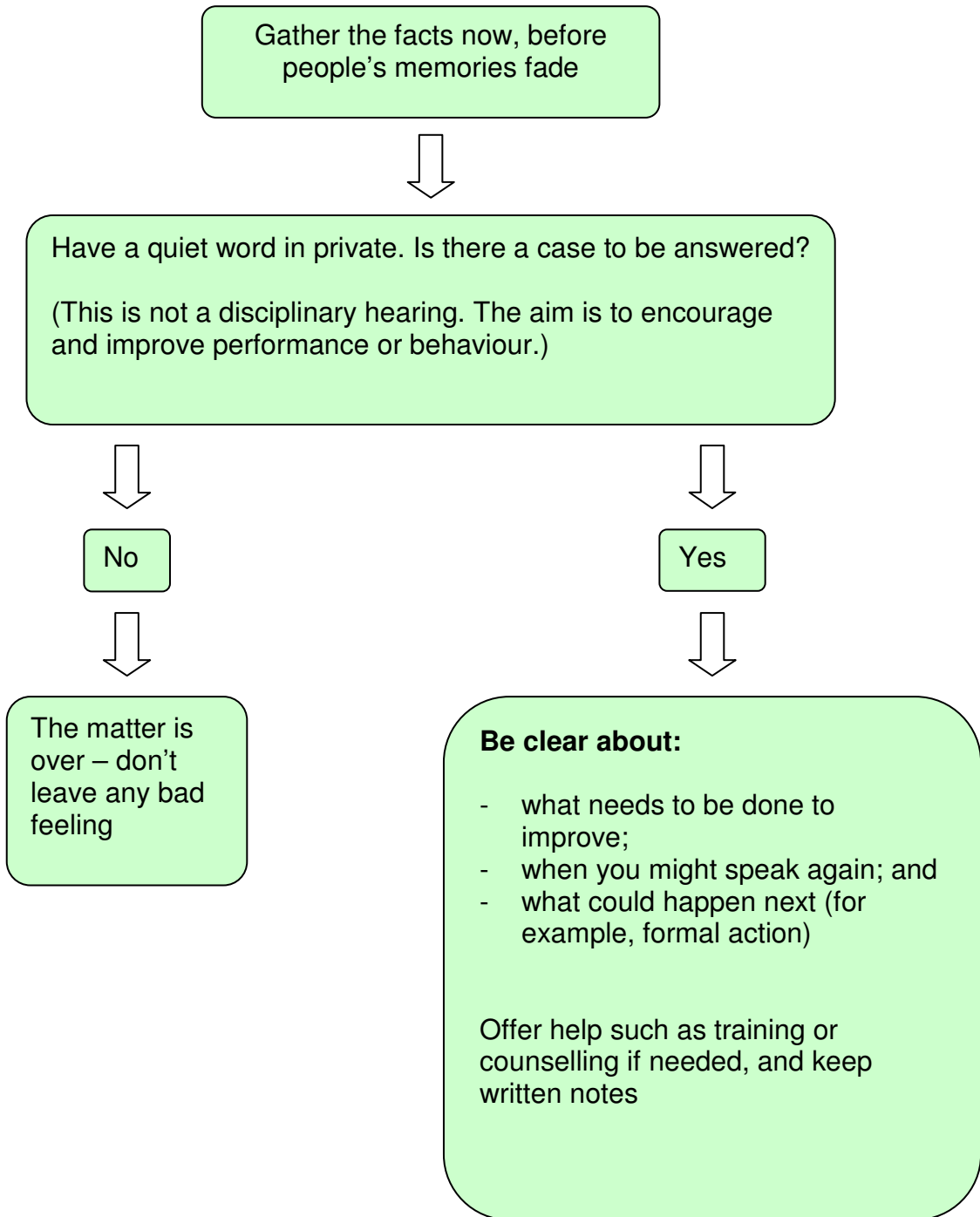
Chart 4: Taking disciplinary action – misconduct

Chart 5: Disciplinary appeals

Chart 6: The statutory dismissal and disciplinary procedure

1 Informal disciplinary action

(See Code paragraphs 12 and 13)



For management guidance on informal disciplinary action, see Appendix 1

2 The disciplinary meeting

(See Code paragraphs 14 to 19)

Carry out a thorough investigation before any meeting



Tell the employee *in writing before the meeting*

- what they are alleged to have done wrong; (give the employee copies of any information you will use during the meeting)
- the time and place for a meeting (making sure that the employee has had a reasonable opportunity to consider their response);; and
- that they have the right to be accompanied.
- **rearrange another meeting within five days if the employee or accompanying person cannot make it to the meeting.**



At the meeting:

- give the evidence again
- let the employee present their case; and
- let the accompanying person (if any) ask questions, but not answer direct questions put to the employee:
- consider new evidence if necessary



Adjourn the meeting to consider any action and think about:

- action taken for other employees in similar circumstances in the past;
- the employee's record, including current warnings; and
- any special circumstances that could explain the employee's behaviour



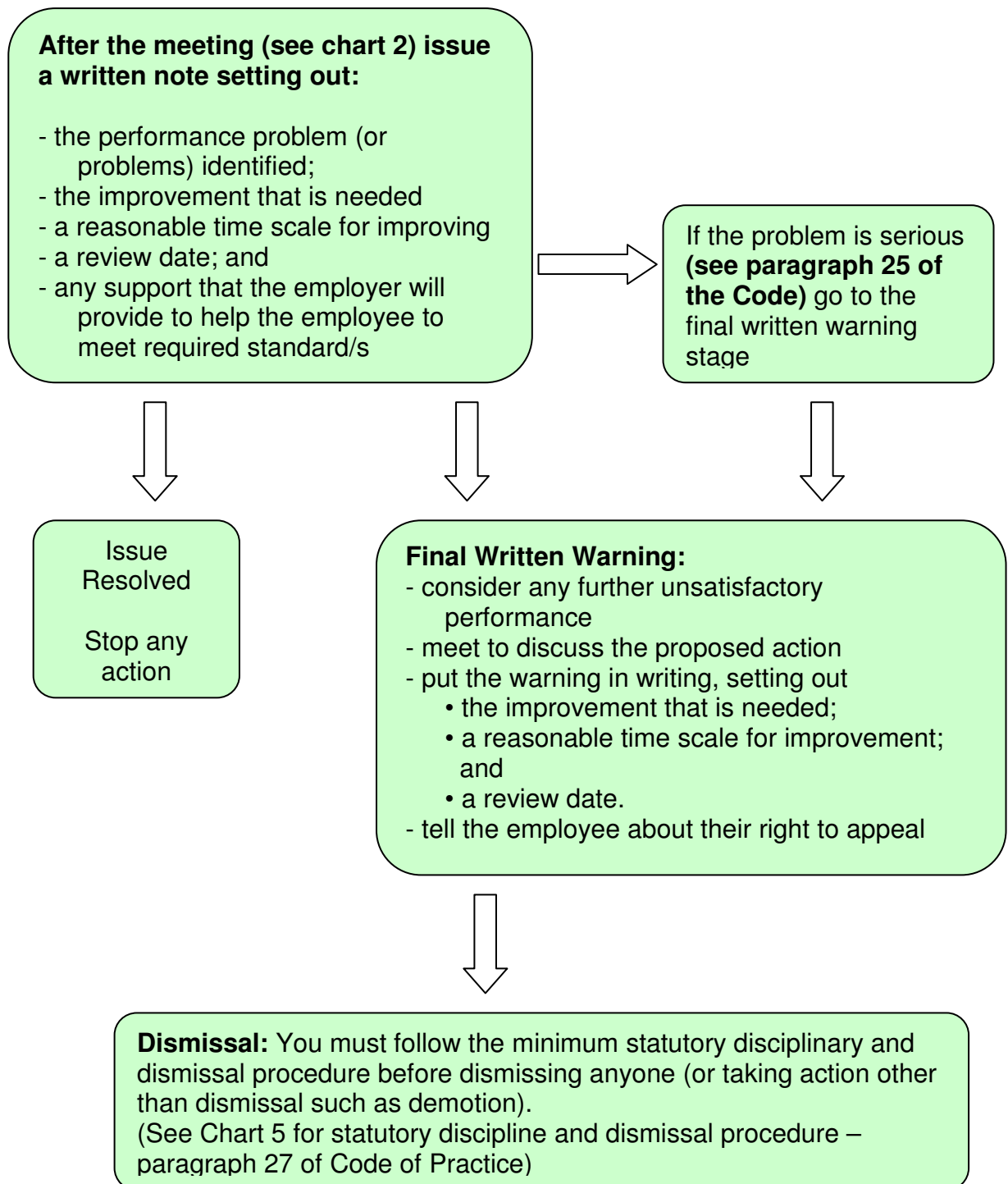
Make your decision

- tell the employee the decision and their right to appeal (See chart 3 'Taking disciplinary action' and chart 4 'Disciplinary appeals')
- monitor the situation

For management guidance on the disciplinary meeting see Appendix 2

3 Taking disciplinary action – Unsatisfactory performance

(See paragraphs 20 and 21 of the Code)

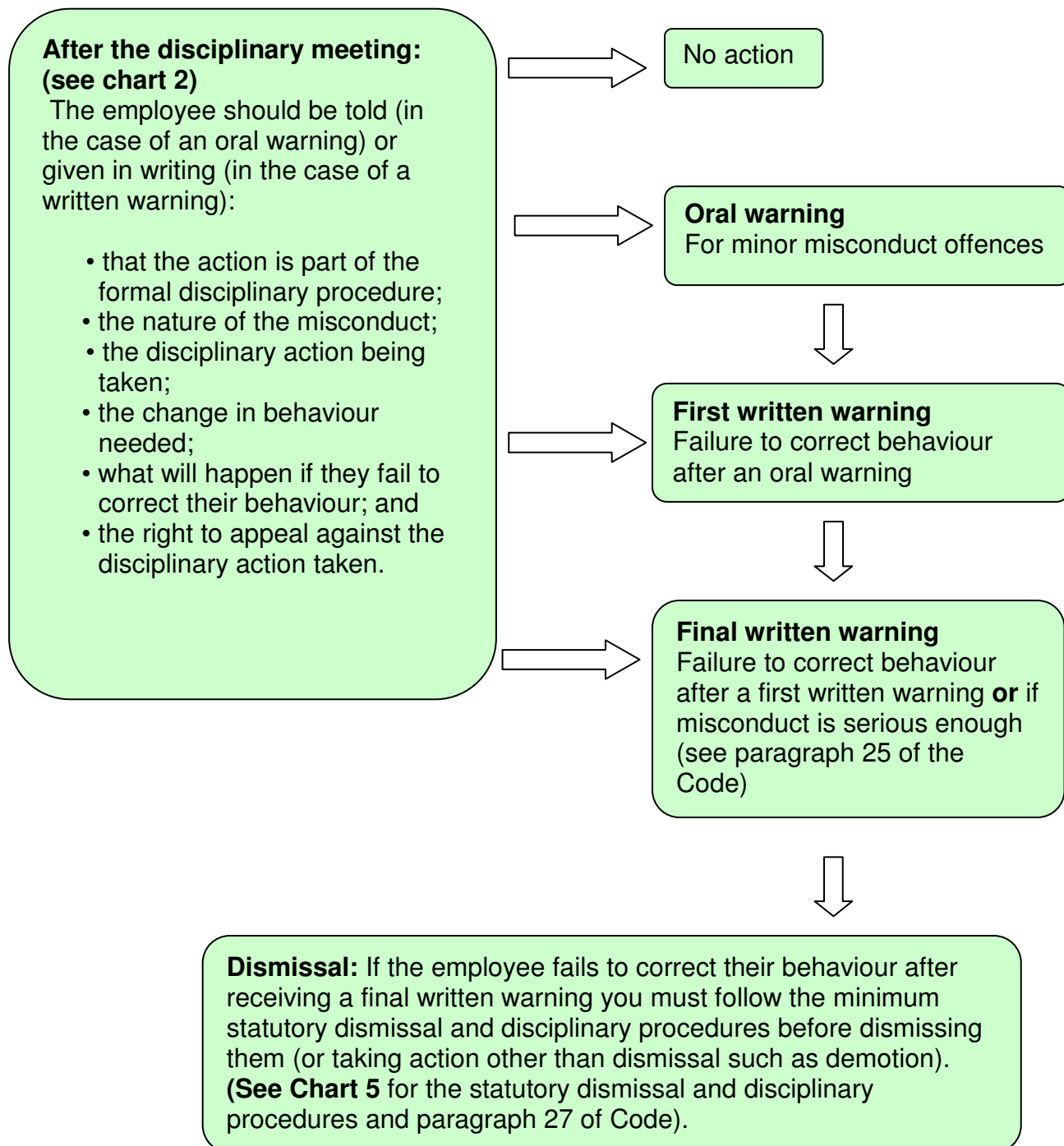


For management guidance on unsatisfactory performance see Appendix 3

4 Taking disciplinary action – Misconduct

(See paragraph 22 of the Code).

Different rules apply to cases of alleged 'gross misconduct'. (See paragraphs 37 and 38 of the Code).



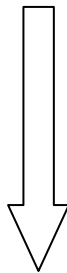
For management guidance on misconduct see Appendix 4

5 Disciplinary appeals

(See paragraphs 46 to 50 of the Code)

An appeal should:

- usually be made within five working days of the disciplinary decision; and
- be heard by someone senior to the manager who made the original disciplinary decision (wherever possible).



Remind the employee of their right to be accompanied at the meeting.

At the appeal meeting:

- listen to why the employee is not satisfied with the original decision
- consider any new evidence
- allow the employee to comment on any new evidence; and
- do not be afraid to overturn a previous decision



Appeal finding:

- tell the employee the result of the appeal and the reason for the decision
- confirm the decision in writing

For management guidance on disciplinary appeals see Appendix 5

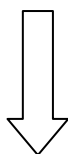
6 The statutory dismissal and disciplinary procedure

(See Annex A of the Code for full details)

Step 1:

- You must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead you to consider dismissing them or taking disciplinary action against them.
- You must send the statement (or a copy of it) to the employee and invite them to attend a meeting to discuss the matter.

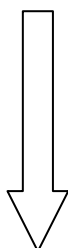
In certain limited cases, the three-step procedure will not apply to employers and employees. (See Annex F of the Code).



Step 2:

- Hold a meeting with the employee and their colleague or trade union representative (if they wish to be accompanied)
- Tell the employee your decision

The meeting must not take place unless you have told the employee your reasons for calling the meeting and given them the relevant information which has been obtained after investigation. The employee should be given a reasonable opportunity to consider their response to that information.



Issue resolved



Step 3:

- If the employee wants to appeal, you should hold an appeal meeting
- Tell the employee your final decision

For management guidance on the statutory dismissal and disciplinary procedure see Appendix 6

Part 2 – Handling grievances at work

Grievance procedures and the Code

Employers should read the sections of the Code which deal with grievance procedures and the statutory right to be accompanied.

What is a grievance?

Anybody working in an organisation may, at some time, have problems, concerns or complaints about their work, working conditions or relationships with colleagues that they want to talk about and sort out with management. They want the grievance to be sorted out to their satisfaction. It is also clearly in the management's interests to sort out problems before they can develop into major difficulties for everyone concerned.

Issues that may cause grievances include:

- terms and conditions of employment;
- health and safety;
- work relations;
- bullying and harassment;
- new working practices;
- working environment;
- organisational change; and
- equal opportunities.

People at all levels may have grievances. The Code and associated good practice applies equally to management and employees.

Why have a procedure?

Employers use grievance procedures to deal **formally** with employees' grievances.

Grievance procedures allow employers to deal with grievances fairly, consistently, quickly and in a structured manner.

Employers must have procedures available to employees so that they can consider their grievances properly.

The compensation given by industrial tribunals can be adjusted by usually between 10% to 50% if the employer, or employee, fails to follow the **statutory grievance procedures** as set out in Annexes C and D of the Code.

Employees must complete step 1 of the statutory procedure if they want to use the grievance as the basis of an application to an industrial tribunal.

7 The standard statutory grievance procedure

(See Annex C of the Code for full details)

An informal discussion between the employee and the line manager is often the best way to deal with the matter



Employees should tell the employer about their grievance.

If the employee wants to use the grievance as a basis for an application to an industrial tribunal the grievance must be set out in writing (See paragraph 76 and Annex C of the Code for the statutory grievance procedure).



Hold a meeting in private and remind the employee of their right to be accompanied at the meeting



Consider a response:

- Tell the employee in writing of your decision
- Arrange an appeal if necessary



A more senior manager should hold the appeal (where possible)

For management guidance on grievances see Appendix 7

Part 3 – The right to be accompanied

Checklist

- This right applies to all workers, not just employees. (See page 8)
- The right applies to certain disciplinary and grievance meetings which may result in some disciplinary action or where the grievance is about the employer's duty to the worker. This includes any meetings held as part of the statutory dismissal and grievance procedures
- You should tell workers that, by law, they have a right to be accompanied by a fellow worker or trade union official if they make a reasonable request to be accompanied. You should also remind workers of any rights they have over and above their legal rights, for instance through contractual or collective agreements.
- The worker can choose who accompanies them (See paragraph 106 of the Code). This can be either a co-worker or a trade union official (See paragraph 106 of the Code) The trade union official does not have to be from within the organisation, although if an organisation recognises trade unions then the official would normally come from the appropriate union. Trade union officials need to be trained or certified by their union to act as a worker's companion (see paragraph 110 of the Code). Trade unions do not have to provide a companion and people can refuse to act as a companion.
- The accompanying person can speak to people at the meeting, respond to views expressed by the panel, but not answer questions on behalf of the worker unless this is agreed by management.
- Refusing to allow a worker to be accompanied could lead to a finding of 'automatically unfair' dismissal if you dismiss the worker as a result of the disciplinary hearing, and they make an unfair dismissal claim to an industrial tribunal.

What is the right to be accompanied?

It is the right for a worker to be accompanied, by a work colleague or trade union official, at certain disciplinary and grievance meetings. Workers may feel intimidated by some hearings, and the accompanying person can help the individual to make all the necessary points.

It has always been good employment relations practice to allow workers to be accompanied or represented at a meeting, and many organisations include these rights in their contracts, sometimes extending the right to be represented by a husband or wife, partner, carer, or friend. Recognition agreements with trade unions will normally include rights for members to be represented by an official at disciplinary hearings.

The right to be accompanied does not depend on how long someone has worked for an employer.

What if the worker is dismissed?

If the worker is dismissed as a result of a disciplinary hearing, he or she may have the right to complain to an industrial tribunal for unfair dismissal. If you are considering dismissing a worker, you must have followed the **statutory minimum procedures**.

If you have failed or refused to act upon a reasonable request for a worker to be accompanied at the disciplinary meeting or appeal, the industrial tribunal may order compensation of up to two weeks' pay.

If the tribunal finds that you have broken a contract or dismissed an employee unfairly, the worker may be entitled to greater legal solutions.

Appendix 1

Management guidance

Informal disciplinary action

What is informal action?

In many cases, the right word at the right time and in the right way may be all that is needed, and will often be a more satisfactory way of dealing with someone who has broken the rules or not performed satisfactorily, than a formal meeting. Extra training, coaching and advice may be needed, and both the manager and employee should be aware that formal processes will start if there is no improvement or if any improvement fails to be maintained.

How should it be done?

- Talk to the employee in private. This should be a two-way discussion, aimed at pointing out the problems, sensitively but firmly, in relation to conduct or performance and encouraging them to improve. Criticism should be useful, with the emphasis being on finding ways for the employee to improve and for the improvement to be maintained.
- Listen to what the employee has to say about the issue. It may become evident there is no problem – if so, make this clear to the employee
- Make sure he or she understands what they need to do, how their performance or behaviour will be reviewed, and over what period. Tell the employee that if they do not improve, the next stage will be the formal disciplinary procedure. It is normal good employment practice to confirm the agreed action in writing.
- Be careful that any informal action does not unintentionally change into formal disciplinary action, as this may deny the employee certain rights, such as the right to be accompanied (see section 3 of the Code). If during the discussion it becomes obvious that the matter may be more serious, the meeting should be postponed to a later date. Tell the employee that the matter will continue under the formal disciplinary procedure.

Keep brief notes of any agreed informal action for reference purposes.
Review the employee's progress over specific periods.

Appendix 2

Management guidance

The disciplinary meeting

Preparing for the meeting

- Make sure that all the relevant facts are available, such as disciplinary records and any other relevant documents (for example, absence or sickness records), and, where appropriate, written statements from witnesses.
- Tell the employee about the complaint, the procedure to be followed, and that he or she has to go to a disciplinary meeting.
- Tell the employee that he or she is entitled to be accompanied at the meeting (see Section 3 of the Code).
- Where possible, arrange for a second member of management or an advisor (for example, human resources) to take notes of the proceedings and act as a witness.
- Check if there are any special circumstances to be taken into account. For example, are there personal or other outside issues affecting performance or conduct?
- Be careful when dealing with evidence from someone who wants to stay anonymous. Take written statements, get evidence to support the statements and check that the person's motives are genuine. Tell them that if the matter goes to an external hearing you cannot guarantee that their identity will not be revealed (see note 8).
- Are the standards of other employees acceptable? Is the treatment fair and consistent, or is this employee being unfairly singled out?
- Consider what explanations the employee may give, and if possible check them out beforehand.
- Give the employee time to prepare his or her case. It may be useful and save time at the meeting if the employee is given copies of any relevant papers and witness statements before the meeting.
- If the employee concerned is a trade union official, discuss the case with a trade union representative or full-time official, if the employee agrees to this. This is because the action may lead to a serious dispute with the union..
- Arrange a time for the meeting, which should be held as privately as possible, in a suitable room, and where there will be no interruptions.

The employee may offer a reasonable alternative date if their chosen companion cannot attend.

- If an employee fails to go to a meeting through unexpected circumstances outside their control, such as illness, the employer must arrange another meeting.
- Find out what disciplinary action was taken in similar circumstances in the past.
- If a witness is someone from outside the organisation who is not prepared or is not able to go to the meeting, try and get a written statement from him or her.
- Allow the employee to call witnesses or present witness statements.
- If there are any understanding or language difficulties, consider providing an interpreter or facilitator (perhaps a friend of the employee or a colleague).
- Think about the structure of the meeting and make a list of points you will want to cover.

How should the disciplinary meeting be carried out?

Meetings rarely follow neat, orderly stages but the following guidelines may be helpful.

- Introduce the people present to the employee and explain why they are there.
- Introduce and explain the role of the accompanying person if present.
- Explain that the purpose of the meeting is to consider whether disciplinary action should be taken in line with the organisation's disciplinary procedure.
- Explain what will happen at the meeting and in what order.

Statement of the complaint

- Say exactly what the complaint is, and once again outline the case briefly by going through the evidence that has been collected. Make sure that the employee and his or her companion (the accompanying person) are allowed to see any statements made by witnesses.
- Remember that the point of the meeting is to find out the actual facts and make reasonable decisions, not catch people out. Find out whether the employee is prepared to accept that he or she may have done something wrong. Then agree the steps which should be taken to put the situation right.

Employee's reply

- Give the employee the opportunity to present his or her case and answer any allegations that have been made. He or she should be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to talk to the employee in private and to respond to the views of the manager or panel carrying out the disciplinary meeting. However, the accompanying person cannot answer questions on the employees behalf. Listen carefully and be prepared to wait in silence for an answer as this can encourage the employee to give more information.
- If it is not practical for witnesses to go to the meeting, consider going ahead anyway if it is clear that their evidence will not affect the complaint.
- If someone raises a grievance during the meeting that relates directly to the case, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be considered.

General questioning and discussion

- Adjourn the meeting if further investigation is needed or if the employee or his or her accompanying person requests.
- Ask the employee if she or he has any explanation for the misconduct or failure to improve, or if there are any special circumstances to be taken into account.
- If it becomes clear during this stage that the employee has provided a suitable explanation or there is no real evidence to support the allegation, stop the proceedings.
- Keep the approach formal and polite, and encourage the employee to speak freely so you can find out all the facts. A disciplinary meeting should be a two-way process. Use questions to clarify the issues and to check that you have understood what has been said. Ask open-ended questions, for example, 'What happened then?', to get the broad picture. Only ask precise questions that need a 'yes' or 'no' answer when you need specific information.
- Do not get involved in arguments and do not make personal or humiliating remarks. Avoid inappropriate language, physical contact or gestures which could be misinterpreted or misunderstood as being judgemental.

Summing up

Summarise the main points of the discussion after you have completed the questioning. This reminds everyone of the nature of the offence, the arguments and the evidence put forward, and makes sure that nothing has been missed. Ask the employee if he or she feels that they have had a fair hearing, and whether they want to say anything else. This should help show the employee that they have been treated reasonably.

Adjournment

It is generally good practice to adjourn the meeting before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration. It also allows checking of any matters that have been raised, particularly if there is any disagreement over facts. If new facts emerge, consider whether to go ahead with the disciplinary meeting.

What problems may arise and how should they be handled?

It is quite possible that the disciplinary meeting may not go very smoothly – people may be upset or even angry.

If the employee becomes upset or distressed, give them time to settle down before continuing. If they are too distressed, rearrange the meeting for a later date. However, the issues should not be avoided and although it may be distressing it is accepted that there will always be some anxiety and stress with this subject matter. Clearly, during the meeting, people may 'let off steam', and this can be helpful in finding out what has actually happened. However, abusive language or conduct should not be accepted, and you should make this clear.

Appendix 3

Management Guidance

Taking disciplinary action – unsatisfactory performance

This section considers how to handle problems with below-standard work and unsatisfactory performance, and provides guidance on how to encourage people to improve.

Setting standards of performance

Under their contract, employees must achieve a satisfactory level of performance and should be given help and encouragement to reach it.

Employers are responsible for setting realistic and achievable standards, and making sure employees understand what is expected of them and how they can achieve this. It should be possible to measure standards in terms of quality, quantity, time and cost. Point out to the employee any shortfall in their performance, and consider whether this is due to poor instruction, training, supervision or some other failing on behalf of either the organisation or the individual. Care in recruitment, selection, probationary periods and training will reduce the risk of unsatisfactory performance.

You should follow the principles set out below when the employee starts in the organisation.

- Explain the standard of work you expect from employees.
- Make sure that the standards are understood by employees whose English is limited, by young people with little experience of working life, and by employees who are disabled and need reasonable adjustments.
- Job descriptions should accurately set out the main purpose and details of each job, the tasks involved, and the person who the employee must answer to.
- Explain what will happen if the employee fails to meet the necessary standards.
- If the employee is promoted within the organisation, explain what will happen if they fail to achieve the standards in the new job, after a probationary period if appropriate.

What is the role of training and supervision?

Proper training and supervision are essential to helping employees achieve satisfactory performance. Regular discussion with employees about performance, either formally through probationary interviews or regular

appraisals or informally, will help to identify any problem areas and allow action to put things right.

Poor performance, particularly during a probationary period, should be identified as quickly as possible, so that you can take appropriate action.

Appraisal systems

An appraisal system is a way of collecting and analysing information to assess an employee's performance in a job, and assess his or her training and development needs and potential for future promotion. It is essential that an appraisal is carried out in a **fair and unbiased manner**. Assessment **criteria must not** discriminate against anyone because of their sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, disability (see note 2) or age (see note 3).

They should be relevant to the requirements of the job. The people responsible for carrying out appraisals should be made aware of the dangers of stereotyping and making assumptions.

Is unsatisfactory performance due to negligence or lack of ability?

- **Negligence** usually involves some personal blame, for example, from lack of motivation or attention, for which some form of disciplinary action will normally be appropriate.
- **Lack of ability** is due to lack of skill, experience or knowledge, and may point to poor recruitment procedures or poor training. If new technology has replaced some existing skills, employers should consider whether to train employees in new skills if they are willing to take part in training.

How should unsatisfactory performance be dealt with?

In all cases, the cause of unsatisfactory performance should be investigated. The following guidelines will help to identify the cause and make sure that appropriate action is taken.

- Ask the employee for an explanation. If possible, check this reason against performance appraisal reports.
- If the reason is lack of necessary skills, give the employee training and time to reach the appropriate standard, preferably through an improvement programme.

- If, despite encouragement and support, the employee cannot reach the appropriate standard, consider finding the employee suitable alternative work.
- Develop an improvement programme to encourage the employee to reach a satisfactory standard.
- Meet the employee regularly to discuss the improvement programme.
- You should not normally dismiss an employee because of unsatisfactory performance, unless you have given them warnings and a chance to improve, with extra training if necessary.
- If the main cause of the unsatisfactory performance is a significant change to the nature of the job, employers should consider whether they can treat the situation as redundancy rather than as a capability issue (see note 9).

Action in serious cases

If an employee makes one mistake and the actual or possible consequences of that mistake are or could be extremely serious, or could be considered as gross negligence, warnings may not be appropriate. The disciplinary procedure should show that dismissal action may be taken in these circumstances.

Dismissal

If employees are not able to achieve a satisfactory level of performance even after an opportunity to improve, and with training support if necessary, consider whether you could find them suitable alternative work. If not, explain the situation sympathetically to the employee before taking dismissal action in line with the statutory procedures.

Note

If you want to dismiss an employee, you must follow the statutory dismissal and disciplinary procedures. The procedures also apply to penalties such as demotion or loss of pay.

Appendix 4

Management Guidance

Taking disciplinary action – misconduct

What should be considered before deciding any disciplinary penalty?

When deciding whether a disciplinary penalty is appropriate and what form it should take, consider the following.

- Whether the rules of the organisation say what the likely penalty will be as a result of the particular misconduct.
- The penalty consistently applied in similar cases in the past.
- The employee's existing disciplinary record, general work record, work experience, position and how long they have worked for the organisation
- Any special circumstances which might make it appropriate to set a less severe penalty.
- Whether the proposed penalty is reasonable in view of all the circumstances.

It should be clear what the organisation's normal practice is for dealing with the kind of misconduct being considered.

This does not mean that similar offences will always call for the same disciplinary action. Look at each case individually and take account of any relevant circumstances.

Relevant circumstances may include health or domestic problems, provocation or inconsistent treatment in the past.

Take the opportunity to review rules and procedures and the organisation's communications with employees. Make sure the process and investigation are consistent, rather than just the outcomes.

If you need guidance on formal disciplinary action, get advice, where possible, from someone who will not be involved in hearing any future appeal.

Call our helpline to talk to one of our advisors.

Warnings

1 Oral warning

In cases of misconduct, you should give the employee an oral warning setting out the nature of the misconduct and how they must change their behaviour.

The warning should also tell the employee that written warnings may be considered if they repeat the misconduct. Keep a record of the warning, but you should disregard it for disciplinary purposes after a specific period (for example, six months).

2 First written warning

If the employee repeats the misconduct, you should give them a first written warning after a disciplinary meeting. Keep a record of the warning, but you should disregard it for disciplinary purposes after a specific period (for example, 12 months).

3 Final written warning

If the employee has a first written warning for misconduct, any further misconduct may lead to a final written warning. This may also be the case where 'first offence' misconduct is serious, but would not justify dismissal. Such a warning should normally apply for a specific period, for example 12 months, and contain a statement that further misconduct may lead to dismissal.

Dismissal or other action

If the employee has received a final written warning, further misconduct or unsatisfactory performance may lead to dismissal. Or, the contract may allow for a different disciplinary penalty instead. Such a penalty may include disciplinary transfer, disciplinary suspension without pay (see note 10), demotion, loss of seniority or loss of an increment. These actions may only be applied if they are provided for in the employee's contract.

Note

Employers must have followed the minimum statutory dismissal and disciplinary procedures if they want to dismiss an employee. The procedures also apply to action such as demotion, loss of seniority or loss of pay.

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

There may be times when, depending on the seriousness of the misconduct involved, it will be appropriate to consider dismissing the employee without giving notice (see below).

Dismissal with notice

Employees should only be dismissed if, despite warnings, their conduct or performance does not improve to the necessary level within the given time period. The decision to dismiss an employee must be reasonable in all the circumstances of the case.

Unless the employee is being dismissed for reasons of gross misconduct, he or she should receive the appropriate period of notice or payment instead of notice. This payment should include payments to cover pension contributions and holiday pay as well as the value of any non-cash benefits such as a company car, medical insurance, and any commission which the employee might otherwise have earned.

Minimum periods of notice are set out in law. Employees are entitled to at least one week's notice if they have worked for a month but less than two years. This increases by one week (up to 12) for each completed year of service. If the contract of employment gives the employee the right to more notice than the legal minimum, the longer period of notice will apply (see note 11).

Dismissal without notice

You should give all employees a clear indication of the type of misconduct which will lead to dismissal without the normal period of notice or pay instead of notice. As far as possible, the types of offence which fall into this category of 'gross misconduct' should be clearly set out in the rules, although such a list cannot normally be complete.

No-one should be dismissed **instantly**. A dismissal for gross misconduct should only take place after the normal investigation, written invitation to a meeting explaining the reasons for this and a disciplinary meeting to find out all the facts. You should tell the employee about the complaint and give them the opportunity to present his or her case, as in any other disciplinary meeting. The employee has the right to be accompanied at any meeting (see section 3 of the Code).

Gross misconduct is generally seen as misconduct that is serious enough to destroy the contract between the employer and the employee, making any further working relationship and trust impossible. It is normally restricted to very serious offences, for example, physical violence, theft or fraud, but may depend on the nature of the business or other circumstances (see also paragraph 59 of the Code). Follow the full three-step standard statutory procedure before deciding whether to dismiss an employee – although, in

very exceptional circumstances, you may use the **modified statutory procedure** (see Annex B of the Code).

How should the employee be told about the disciplinary decision?

In all cases, give the employee the decision as soon as possible. Tell the employee the reasons for the decision, the results of any further investigations, and what action you are taking under the disciplinary procedure. The period that any warning will apply for, must be clearly given, and the possible consequences of any further misconduct or continuing unsatisfactory performance. The employee must understand what improvement they need to make, over what period and how they will be assessed.

Give the employee written details of any disciplinary action as soon as the decision is made. Keep a copy of this (the notification). The written notification should set out:

- the nature of the misconduct;
- any period of time given for improvement and the improvement expected;
- the disciplinary penalty and, where appropriate, how long it will last;
- what will happen if there is any further misconduct; and
- the timescale for making an appeal and how it should be made.

The organisation may want the employee to acknowledge that they have received the written notification.

Written reasons for dismissal

Employees with one year's service or more have the right to ask for a 'written statement of reasons for dismissal'. By law, you must provide this within 14 days of the request being made, unless it is not reasonably practical to do so.

A woman who is dismissed during pregnancy or maternity leave is automatically entitled to the written statement without having to ask for it and no matter how long she has worked for the organisation (see note 12).

The written statement can be used as evidence in any future proceedings, for example, in relation to a complaint of unfair dismissal.

What records should be kept?

It will be difficult to handle disciplinary matters consistently unless you keep simple records of all the decisions that have already been made. These records should be confidential, setting out:

- how the employee has broken the disciplinary rules;

- the action taken and the reasons for it;
- the date action was taken;
- whether an appeal was made;
- the outcome of the appeal; and
- any further developments.

The Data Protection Act 1998 covers the way manual and computer records are kept, and allows people to see their personal and personnel records. The Information Commissioner has produced an Employment Practices Code covering recruitment and selection, employment records, monitoring at work and information about an employee's health (see note 13).

In each particular case, you should give the employee copies of the relevant records without him or her needing to ask for them, although in certain circumstances you may withhold some information, for example, to protect a witness.

Time limits for warnings

Any disciplinary action taken should be disregarded for disciplinary purposes after a specific period of satisfactory conduct or performance. This period should be decided when the disciplinary procedure is being drawn up.

Normal practice is for different periods for different types of warnings. For example, an oral warning might be valid for up to six months while a final written warning may apply for 12 months. Warnings should stop being 'live' (will no longer apply) following the period of satisfactory conduct set, and so should be disregarded for future disciplinary purposes.

There may be times when an employee's conduct is satisfactory throughout the period the warning is in force, only to change very soon afterwards. If a pattern emerges and there is evidence of abuse, consider the employee's disciplinary record when deciding how long any warning should last.

Appendix 5

Management Guidance

Disciplinary appeals

Problems in the original disciplinary procedure may often be dealt with through an appeal. An appeal must never be used to punish the employee for appealing against the original decision, and good practice is that it should not result in any increase in penalty as this may put people off appealing in the future.

What should an appeals procedure contain?

An appeals procedure should:

- set a time limit within which the appeal should be made (the Code recommends five working days as usually appropriate);
- make sure appeals can be dealt with quickly, particularly those involving suspending or dismissing employees;
- wherever possible, make sure that the appeal is heard by someone senior in authority to the person who took the disciplinary decision and, if possible, who was not involved in the original meeting or decision;
- set out what action may be taken by the people hearing the appeal;
- set out the right to be accompanied at any appeal meeting (see section 3 of the Code); and
- make sure that the employee, or the person accompanying them, has an opportunity to comment on any new evidence arising during the appeal before any decision is made.

Small firms

In small firms, it may not be possible to find someone with higher authority than the person who made the original disciplinary decision. If this is the case, that person should act as impartially as possible when hearing the appeal, and should use the meeting as an opportunity to review the original decision.

How should an appeal hearing be carried out?

Before the appeal, make sure that the employee knows when and where it is going to be held, and their right to be accompanied (see section 3 of the Code). Make sure the relevant records and notes of the original meeting are available for everyone involved.

At the meeting

- Introduce the people at the meeting to each other, explaining why they are all there.
- Explain the purpose of the meeting, how it will be carried out, and the powers the person or people hearing the appeal have.
- Ask the employee why he or she is appealing against the decision.
- Pay particular attention to any new evidence that has been introduced, and make sure the employee has the opportunity to comment on it.
- Once the relevant issues have been thoroughly explored, summarise the facts close the meeting to give time to consider the decision.
- Do not be afraid to overturn a previous decision if it becomes apparent that it was not correct. This does not undermine authority, but rather reinforces the independent nature of the appeal. If the decision is overturned, does this mean that training for managers needs to be improved, do rules need explaining, or are there other factors to be considered?
- Tell the employee the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear that this decision is final.

Industrial tribunal time limits (unfair dismissal)

Employees who feel they have been unfairly dismissed (and meet the qualifying conditions), or want to claim compensation within the set limit for being dismissed for breaking the terms of their contract, have a legal right to make a complaint to an industrial tribunal. The tribunal must normally receive these complaints within three months, counting from and including the employee's last day of employment. In most cases, internal appeal decisions are made well within this time frame, but exceptional cases, or appeals to external bodies such as independent arbitrators, may take longer to be heard. If the disciplinary process is in progress, industrial tribunals can extend the time limit for presenting a case in the light of all the circumstances.

An employee can make a claim of wrongful dismissal for breaking the terms of their contract in a county court or the high court, in which case the time limit is six years from the date their employment ended.

Appendix 6

Management Guidance

The statutory dismissal and disciplinary procedure

What is the three-step procedure?

If an employer is thinking about dismissing an employee – or setting a penalty other than dismissal, such as suspension without pay, demotion, loss of seniority or loss of pay – they must follow the statutory procedure. The main steps may be summarised as follows.

Step 1

Write to the employee telling them what they are alleged to have done wrong in terms of performance or conduct. Set out the basis for the allegations, and invite them to a meeting to discuss the matter.

Step 2

Tell the employee why the allegations have been made and hold a meeting to discuss them – at which the employee has the right to be accompanied. Tell the employee the decision and their right to appeal.

Step 3

Hold an appeal meeting (if the employee wants to appeal) at which the employee has the right to be accompanied. Tell the employee the final decision.

The minimum requirements

You must follow the three-step procedure. It is strongly advisable for an employer and employee to start talking to each other long before any disciplinary process reaches even the likelihood of dismissal or other action other than dismissal. For example, counselling or a quiet word might be the most appropriate first step. Or, if formal action is needed, an improvement programme may help to sort out the problem in cases of unsatisfactory performance.

Failing to follow the procedure

An industrial tribunal will automatically find a dismissal unfair if you have not followed the statutory procedure where it applies. The tribunal will also, except in exceptional circumstances, increase compensation for the

employee by between 10% and 50% if you have not followed the statutory procedure.

Equally, if the industrial tribunal finds that an employee has been dismissed unfairly but has failed to take part in the procedure (for example, they have failed to go to the disciplinary meeting or appeal without a legally acceptable reason), compensation may be reduced by between 10% and 50%.

When the procedure does not apply

There will always be a certain amount of stress and anxiety for both sides when dealing with any disciplinary case, but employers and employees will normally be expected to go through the statutory dismissal and disciplinary procedure. There are exemptions which apply in very exceptional circumstances – see Annex F of the Code for details.

The modified statutory dismissal and disciplinary procedure

There may be some **very limited cases** where, despite the fact that an employer has dismissed an employee immediately without a meeting, an industrial tribunal will find the dismissal to be fair. To allow for these cases, there is a statutory modified procedure under which the employer must write to the employee after the dismissal setting out the reasons for the dismissal and hold an appeal meeting, if the employee wants one. The modified procedure is set out in Annex B of the Code.

Holding a meeting

Where possible, the timing and venue of the meeting should be agreed with the employee. Employees must take all reasonable steps to go to the meeting. At the meeting, the employer should explain the complaint against the employee and give them the chance to set out their case and answer any allegations. The employee should also be allowed to ask questions, present evidence and call witnesses.

Failing to go to a meeting

If an employee fails to go to the first meeting (see step 2 above) due to circumstances outside their control, such as unexpected illness, the employer must arrange another meeting. However, if there is not a good reason for the employee failing to go to the meeting, the employer can treat the statutory procedure as being at an end. If the meeting is rearranged, the employer is entitled to make a decision if the employee does not go to the meeting, whatever the reason. In these circumstances, the employee's compensation may be reduced if they bring a successful complaint before an industrial tribunal.

Appeals

It is often helpful to set a time limit for employees to appeal – five working days is usually enough. Reasons why employees choose to appeal include:

- they think the penalty is unfair;
- there is new evidence to consider;
- they are not happy with the way the disciplinary procedure was used; and
- there were problems in the disciplinary procedure.

Wherever possible, a senior manager not involved in the case should hear the appeal. They should remind the employee of their right to be accompanied and tell them the decision as soon as possible.

Appendix 7

Management Guidance

Grievances

Sorting out grievances informally

Employees should aim to settle 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 settled quickly.

If there is a grievance applying to more than one person, consider whether it should be sorted out with any recognised trade union or unions.

Sorting out grievances formally and the standard statutory grievance procedure

If a grievance cannot be settled informally or you would prefer a formal approach, the employee should raise it formally with management.

Employees must complete step 1 of the **statutory procedure** if they want to use the grievance as the basis of an application to an industrial tribunal.

Step 1 - Statement of grievance

- The employee must set out the reasons for the grievance in writing and send the statement (or a copy of it) to the employer.

Step 2 - Meeting

- You must invite the employee to a meeting to discuss the grievance.
- The meeting must not take place unless:
 - 1 the employee has told you what the grievance was when they made the statement under step 1; and
 - 2 you have had a reasonable opportunity to consider your response to that information.
- The employee must take all reasonable steps to go to the meeting.

- After the meeting, you must tell the employee your decision about the grievance and about their right to appeal against the decision if they are not satisfied with it.

Step 3 - Appeal

- If the employee wants to appeal, he or she must tell you.
- If the employee tells you they want to appeal, you must invite them to another meeting.
- The employee must take all reasonable steps to go to the meeting.
- After the appeal meeting, you must tell the employee your final decision.

Industrial tribunals may adjust any award of compensation by usually between 10% and 50% if either side has failed to follow relevant steps of the **statutory procedure** where it applies.

A written procedure can help clarify the process and help to make sure that employees are given their rights, such as to be accompanied at grievance meetings (see Appendix 11a).

What is a grievance hearing?

A grievance hearing is a meeting which deals with any grievance raised by an employee.

For the purposes of the legal right to be accompanied at a meeting, a grievance meeting is defined as a meeting where an employer deals with a complaint about a 'legal duty owed by them to a worker' (see paragraph 102 of our Code on disciplinary and grievance procedures).

An individual's request for a pay rise is unlikely to fall within the definition, unless a right to an increase is specifically provided for in the contract or the request raises an issue about equal pay.

Equally, most employers will be under no legal duty to provide their workers with car-parking facilities, and if someone has a grievance about these facilities, they would not have the right to be accompanied at a hearing by a companion. However, if a worker was disabled and, because of his or her disability, needed parking facilities to be able to go to work, he or she probably would be entitled to a companion at a grievance hearing, as an

issue might arise as to whether the employer was meeting his or her responsibilities under the Disability Discrimination Act 1995.

Preparing for the hearing

Any hearing should be held in private and without interruption from outside. Management may find it useful to have someone to take notes and act as a witness to the proceedings. Management will normally already have a written statement of the grievance, and should find out before the hearing whether similar grievances have been raised before, how they have been sorted out, and any follow-up action that has been necessary.

The hearing

Remember that a grievance hearing is not the same as a disciplinary hearing, and discussion alone may produce the answer. Invite the employee to explain their grievance and say how they would like to see it sorted out.

Care and thought needs to go into settling grievances. They are not normally issues calling for snap decisions, and the employee may have had the grievance for a long time. Make allowances if the employee is under stress, and after any summing up, you may find it useful to discuss possibilities with other managers about sorting out the grievance, or they may want to get advice on how to proceed further.

Tell the employee when they might reasonably expect a response if you cannot give them it at the time, taking account of the time limits set out in the procedure. Respond to the employee's grievance in writing within the time limits set out in the procedure.

If the employee is not happy with the decision, arrange an appeal. The appeal should be heard by a more senior manager than the one involved in the grievance. In small firms, if this is not possible, another manager, the owner or, in the case of a charity the board of trustees, should hear the appeal.

Be calm, fair and follow the procedure

In smaller organisations, grievances can sometimes be taken as personal criticism –you should be careful to hear any grievance in a calm, impartial and emotionally mature manner, being as fair to the employee as possible when sorting out the problem. This is easier if you follow the grievance procedure. Not following the procedure or failing to take any grievance seriously, may affect any future industrial tribunal or claim concerning an employee breaking the terms of their contract.

Grievances about colleagues

This can be made easier by following the grievance procedure. Failing to allow an individual access to the procedure, or failing to take any grievance seriously, may affect any future industrial tribunal or claim concerning an employee breaking the terms of their contract.

There are occasions when another employee may be the cause of grievances among his or her co-employees – perhaps because of their personal hygiene, attitude, or capability for the job.

Employers must deal with these cases carefully and should generally start by talking privately to the individual about the concerns of their other employees. This counselling may sort out the grievance to the satisfaction of the person's colleagues, who need to be told that some action has been taken.

Sorting out the grievance formally and the modified statutory grievance procedure

If the employee's employment ends before the grievance procedure has been followed, a **modified statutory grievance procedure may be applied if both sides agree**. [See also Annexes D and F in our Code for the modified grievance procedure and for possible exemptions to the procedure.] An example of the **modified statutory grievance procedure** is set out in Appendix 11b

Special cases

Some organisations may want to have separate procedures to deal with sensitive areas, such as complaints about bullying or harassment (see note 14), discrimination and 'whistle-blowing' (revealing information that is in the public interest). Confidentiality is very important when handling any grievance, although the outcome may need to be made known if, for example, someone is found to have bullied or harassed an individual and the result is disciplinary action.

Discrimination

By law, employees are protected against discrimination because of their sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, disability (see note 2) or age (see note 3).. Employers need to take any grievances very seriously – failure to do so may be discrimination.

Action taken by the organisation or any of its employees against someone because they have made a complaint under a grievance procedure may be victimisation which is against the law.

Training

Management and representatives who may be involved in grievance matters should be trained for the task. They should be familiar with the grievance procedure, and know how to carry out grievance hearings or represent employees at them. Where trade unions are recognised, you could consider training managers and trade union representatives together.

Records

Records, both paper copies and computerised held in a relevant filing system, should be treated as confidential and kept in line with the Data Protection Act 1998, which gives individuals the right to ask for and have access to certain personal information.

The main principles of the Data Protection Act 1998 are that any personal information kept should be necessary, fairly and lawfully processed, relevant, accurate and secure. Records of grievance matters should only be kept in line with the principles, and they must be accurate and confidential. The Information Commissioner has published an Employment Practices Code which covers recruitment and selection, employment records, monitoring at work and medical information. (See www.ico.gov.uk).

Appendix 8

Disciplinary rules for small organisations

Rules should:

- be simple, clear and in writing;
- be displayed clearly in the workplace;
- be known and understood by all employees;
- cover issues such as absences, timekeeping, health and safety, and use of the organisation's facilities and equipment (add any other items relevant to your organisation);
- give examples of the type of conduct which will normally lead to disciplinary action other than dismissal – examples may include persistent lateness or unauthorised absence;
- give examples of the type of conduct which will normally lead to dismissal without notice – examples may include working dangerously, stealing or fighting – although a lot will depend on the circumstances of each offence; and
- follow the three-step statutory procedures when considering dismissal or action other than dismissal.

The following sample procedures [appendices 9(a), 9(b), 10(a) and 10(b)] and letters [appendix 11] for use in handling discipline and grievance matters should be tailored to suit the needs of each organisation. If you need more help, you can contact us. Our contact details are at the front of this booklet.

Appendix 9 a Dismissal and disciplinary procedures for misconduct

[This is in line with the standard statutory dismissal and disciplinary procedure.]

Aim of the procedure

While most employees will achieve acceptable standards of conduct, employers must have a procedure for dealing with those employees who fail to follow the rules and regulations or who fail to reach or maintain acceptable standards. The aim of a disciplinary procedure is to give employees the opportunity to improve their conduct. It identifies who has authority to take disciplinary action and aims to make sure that employees are protected against unjustifiable or inconsistent disciplinary action. It also identifies the type of offence which would result in disciplinary action being taken, what that action would be and what further action would be taken if there is no improvement.

Informal action

Cases of minor misconduct or unsatisfactory performance may be dealt with informally. The employer may have a quiet word of caution or advice and encourage the employee to improve their conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. However, there will be situations where matters are more serious or where this informal approach has been tried but is not working.

If the employee fails to improve their conduct, the employer may consider taking formal action. If informal action does not lead to an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, the employer will take formal action.

General principles

- 1 The employer expects all its employees to follow the terms and conditions of their employment and its rules, regulations and standards.
- 2 Before taking any formal disciplinary action, there will be a thorough investigation into any allegation of misconduct.
- 3 In cases of misconduct, employees have the right to:
 - a have a fair disciplinary hearing, with the opportunity to present their case before any disciplinary actions are taken;
 - b a reasonable opportunity, before disciplinary hearings, to consider their responses to the information provided on the allegation; and

- c be accompanied at a disciplinary hearing by a work colleague or by a trade union official (who may be either employed by a union or a lay trade union official who has been certified in writing by his/her union as having experience of, or has received training in, acting as a worker's companion at disciplinary hearings) before any disciplinary action is taken.
- 4 Employees have the right to appeal against what might appear to be an unfair penalty. They also have the right to be accompanied at disciplinary appeal hearings.
- 5 The employer is responsible for making sure that the disciplinary rules and procedure are applied fairly and consistently.
- 6 The employer will try to make sure that:
 - all steps under the procedure are taken without unreasonable delay;
 - the timing and location of all hearings are reasonable;
 - employees can explain their cases at hearings; and
 - as far as is reasonably possible, disciplinary appeal hearings are carried out by a more senior manager than the manager who took the disciplinary action being appealed against. This does not apply where the most senior manager was at the disciplinary hearing where the decision was made to take the disciplinary action being appealed against.
- 7 The employee must take all reasonable steps to go to hearings under this procedure.
- 8 Precautionary suspension

In certain cases, for example in cases involving gross misconduct, where relationships have broken down or where there are risks to an employer's property or responsibilities to other people, the employer will consider suspending the employee with full pay while the investigation is being carried out. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension. Alternatives to suspension might include agreeing a temporary transfer to other duties or another workstation without loss of pay, or the employee taking annual holiday which they are entitled to. It will be made clear that any action taken is not considered to be disciplinary action.

9 Disciplinary warnings

Once the time limit for warnings has passed, they are removed from the employee's personal record for disciplinary purposes.

All warnings will clearly set out the misconduct concerned and explain what the eventual outcome will be if there is no improvement or if the misconduct happens again.

Warnings normally relate to the same or similar misconduct and cannot usually be transferred between different types of misconduct. However, if a number of warnings need to be given for different types of misconduct, management will be entitled to review whether the employee is suitable to continue to work for the organisation and, if necessary, to issue a final general warning no matter what the offence.

10 Keeping records

The employer will keep written records during the disciplinary process for future reference. Records will include:

- the complaint made against the employee;
- the employee's defence;
- findings made and actions taken;
- the reasons for actions taken;
- whether the employee appealed against a decision;
- the outcome of the appeal;
- any grievances raised during the disciplinary procedure; and
- anything else that happens in relation to the decision or appeal.

Records will be treated as confidential and be kept no longer than is necessary, in line with the Data Protection Act 1998. This Act gives people the right to ask for and have access to certain personal information.

Formal action

Step 1 Statement of reasons for the action and an invitation to a meeting

The employer should give the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal.

The employer should invite the employee to a hearing to discuss the issue.

Step 2 Meeting

Before the hearing, the employer must give the employee details of the allegation. After the meeting, the employer must tell the employee about the decision and their right to appeal (if this applies).

Step 3 Appeal

If the employee wants to appeal, he or she must tell the employer within 5 days. The employer will invite the employee to another hearing to discuss the appeal, and then tell them the final decision.

Formal procedure

Minor misconduct

If the incident is in the minor misconduct category and the employer is satisfied that an offence has been committed, the procedure will be as follows.

- Stage 1** You will be given an oral warning. It will be recorded and kept on file for 6 months.
- Stage 2** If the same or similar offence is repeated within 6 months, you will be given a first written warning. It will be recorded and kept on file for 12 months.
- Stage 3** If the same or similar offence is repeated within 12 months, you will be given a final written warning. This will contain a clear notice that if you repeat the offence within 12 months, you will be dismissed.
- Stage 4** If the same or similar offence is repeated within 12 months, you will be dismissed.

Major misconduct

If an incident falls within the major misconduct category and the employer is satisfied that it has happened, the disciplinary procedure will be followed from Stage 3 (that is, you will receive a final written warning which will contain clear notice that if you repeat the offence within 12 months, you will be dismissed).

Gross misconduct

Committing gross misconduct will lead to a disciplinary hearing during which the employee will be given the opportunity to offer an explanation. If it is decided that gross misconduct has been committed, the employee will be dismissed without notice and without wages instead of notice.

Appeal

The employee has the right to appeal against any disciplinary decision made under this procedure. All appeals must be made within 5 working days of the employee being informed of a disciplinary hearing decision to a more senior manager, setting out the reasons for the appeal and the date it will be heard by that senior manager. Appeal hearings will be held within 5 working days of the appeal being received.

The employee will be told the result of appeal hearings within 5 working days of the appeal hearing.

Disciplinary action and penalty decisions taken following disciplinary hearings may be put into practice before appeals against these decisions are heard.

Disciplinary authority

If the employee breaks any rules, disciplinary hearings and appeals will be held by the appropriate disciplinary authority as follows.

Stage 1 Recorded oral warning	Name of Manager	Appeal	Name of Manager
Stage 2 First written warning	Name of Manager	Appeal	Name of Manager
Stage 3 Final written warning	Name of Manager	Appeal	Name of Manager
Stage 4 Dismissal	Name of Manager	Appeal	Name of Manager

Disciplinary rules

The following list shows examples of the type of rules and offences which the employer has categorised for each level of misconduct. This is not a complete list and management has the right (for example, after consulting the recognised union), to decide how any other misconduct will be categorised.

- A Minor misconduct**
- Absence
 - Lateness
 - Failure to follow the absence notification and certification procedure
 - Careless work and poor effort at work
 - Breaking safety, hygiene or security rules
 - Extended tea and meal breaks
 - Failure to maintain a tidy and safe working environment
 - Misusing the phone
 - Too much time away from the job
 - Failure to wear any protective clothing or equipment provided
 - Failure to complete time, stock or work sheets as instructed
- B Major misconduct**
- Dangerous physical 'horseplay'
 - Neglect causing damage to or loss of the employer's, customer's or other employee's property, equipment or tools
 - Serious neglect of safety, hygiene or security rules
 - Smoking in areas where smoking is not allowed
 - Drinking alcohol or taking drugs during working hours, or bringing alcohol or drugs into the premises without permission
 - Entering any unauthorised areas
 - Wasting material
 - Unsatisfactory attitude to customers
 - Using bad language
 - Gambling on the premises
 - Not following orders
- C Gross misconduct**
- Theft
 - Physically violent behaviour
 - Leaving the premises or site without permission
 - Refusing to follow a reasonable work instruction

- Deliberately ignoring safety, hygiene or security rules, and so putting your own or another person's physical wellbeing or safety at risk
- Obscene behaviour
- Being under the influence of alcohol or drugs
- Fraud
- Telling other people confidential business information
- Purposefully damaging the employer's, customer's or other employee's property, equipment or tools
- Working for a competing organisation.
- Providing false records
- Using the employer's vehicle without permission
- Time recording offences for example, falsifying starting or finishing times or clocking in for another employee.

Note

Any allegation of bullying in the workplace, or any allegation of discrimination, victimisation or harassment linked to anti-discrimination laws including sex, marital status, civil partnership status, racial group, sexual orientation, religion or belief, political opinion, disability or age will be thoroughly investigated and, where appropriate, will be dealt with under the disciplinary procedure. How the matter is dealt with will depend on the nature and seriousness of the incident and in extreme cases will result in summary dismissal.

Appendix 9 b Modified dismissal and disciplinary procedure

[This is in line with the modified statutory dismissal and disciplinary procedure.]

There may be **some limited and very exceptional situations** involving incidents of gross misconduct where some of the general principles of the dismissal and disciplinary rules and procedures for misconduct (see part a) will not apply. These situations will be where:

- dismissal is without notice and happens at the time the employer became aware of the misconduct, or immediately after;
- the employer is entitled to dismiss the employee without notice and without pay instead of notice; and
- the employer believed that it was reasonable to dismiss the employee before finding out about the circumstances in which the misconduct took place.

In these **very exceptional situations**, the following modified procedure will apply.

Step 1 Statement of reasons for action

The employer will give the dismissed employee:

- a written statement of the alleged misconduct which led to the dismissal;
- written details of why the employer believes that the employee was guilty of the alleged misconduct; and
- a written confirmation of his or her right to appeal against the dismissal.

Step 2 Appeal

- If the employee wants to appeal, he or she must tell the employer.
- All appeal requests must be made to a more senior manager..
- The appeal hearing will be heard within 5 working days of the employer receiving the request.
- The employee must take all reasonable steps to go to the hearing.
- The employee has the right to be accompanied at the appeal hearing by a work colleague or by a trade union official (who may be either a full-time official employed by a union or a lay trade union official who has been

certified in writing by his/her union as having experience of, or received training in, acting as a worker's companion).

- The employee will be told the result of the appeal hearing within 5 working days of the appeal hearing.

Appendix 10 a Individual grievance procedures

(This is in line with the standard statutory grievance procedure.)

Aim

The aim of this procedure is to give an employee (or ex-employee) who has a grievance the opportunity to have it sorted out quickly and effectively. Ideally, employees should initially raise any grievances **informally** with the line manager, with a view to finding solutions. If an employee chooses to raise matters informally, the formal procedure outlined here does not apply.

General principles

The employer will try to make sure that:

- all steps under the procedure are taken without unreasonable delay;
- the timing and location of all hearings are reasonable;
- employees can explain their cases at hearings; and
- as far as is reasonably possible, appeal hearings are carried out by a more senior manager than the manager who made the decision which is being appealed against. This does not apply where the more senior manager was at the hearing where the decision being appealed against was made.

Keeping records

The employer will keep written records during the grievance process for future reference. Records will include:

- the nature of the grievance raised;
- a copy of the written grievance;
- the employer's response;
- the action taken;
- reasons for the action taken;
- whether there was an appeal and, if so, the outcome; and
- anything else that happens in relation to the decision or appeal.

Records will be treated as confidential and be kept no longer than is necessary, in line with the Data Protection Act 1998. This act gives people the right to ask for and have access to certain personal information.

Formal procedure

This procedure sets out the appropriate steps which must be followed when dealing with a grievance. The procedure contains 2*/3* stages. However, as it is the aim of this procedure to settle matters as early as possible, and at the first possible appropriate management level, not all grievances will go through all procedural stages. Any stages after stage 1, when the grievance is made, are considered to be appeal stages.

Stage 1 – Raising a grievance

If you want to raise a grievance about your employment, you must send a written statement of the grievance to the line manager. Before the hearing, you must also provide details of the reasons for the grievance. The line manager will then arrange a hearing with you within 5 working days of you providing the written statement and the details, to try to sort out the issue. You will receive the decision about the grievance as soon as possible and in any case within 3 working days from the date of the hearing. If you want, a work colleague may accompany you at the hearing.

(See note 3 below.)

Stage 2 – Appeal

If you are not satisfied with the decision from the line manager, you may appeal against this to a more senior manager.

When this manager receives your request, they will make arrangements to hear the appeal within 5 working days. At this hearing, you may be accompanied by a work colleague if you want. **[See note 3 below.]**

You will receive the decision as soon as possible, and not later than 3 working days from the appeal being heard.

This will be the final stage of the employer's individual grievance procedure and the decision is final.

**Depending on the number of management levels in the organization further appeal stages may need to be included.*

- 1 *All timescales referred to in this document must be followed. If this is not possible, the matter will be dealt with as soon as possible.*
- 2 *Any employee who has a grievance must go through each stage of the procedure before moving on to the next stage. If this has not been done, the matter will be referred back to the appropriate stage.*
- 3 ***This procedure does not remove any rights which you might have by law to be accompanied by certain types of trade union officials at certain types of grievance hearings under Article 12 of the Employment Relations (Northern Ireland) Order 1999 and in line with Part IV of Schedule 1 to the Employment (Northern Ireland) Order 2003.***

Appendix 10 b Individual grievance procedure for ex-employees

(This is in line with the modified statutory grievance procedure.)

The individual grievance procedure [see appendix 10a] applies to most circumstances. **This modified procedure applies only where all of the following three conditions have been met.**

- You have left employment.
- The employer was not aware of the grievance before you left, or was aware of the grievance but the individual grievance procedure had not started or been completed before you left.
- Both you and the employer have agreed in writing, after the employer has been made aware of the grievance, that this procedure should be used instead of the individual grievance procedure.

Procedure

- 1 You must give your manager a written statement of the grievance and the reasons for it.
- 2 The employer will consider your written statement and respond in writing.

There are no further stages in this procedure.

The employer will try to make sure that there is no unreasonable delay in providing a response.

Appendix 11 – sample letters

1. Notice of the disciplinary meeting
2. Notice of the recorded oral warning, first written warning or final written warning
3. Notice of the appeal meeting against the warning
4. Notice of the result of the appeal against the warning
5. Letter to be sent by the employer, setting out the reasons for the proposed dismissal or action other than dismissal and arranging the meeting (for the statutory procedure)
6. Letter to be sent by the employer after the disciplinary meeting arranged in letter 5 (for the statutory procedure)
7. Notice of the appeal meeting against the dismissal or relevant disciplinary action (for the statutory procedure)
8. Notice of the result of the appeal against the dismissal or relevant disciplinary action (for the statutory procedure)
9. Model letter of enquiry about the likely cause of an absence, addressed to a worker's GP
10. Employee raising a grievance
11. Employee's request for an appeal hearing (grievance procedures)

1. Notice of the disciplinary meeting

Date

Dear.....

I am writing to tell you that you have to come to a disciplinary meeting on/...../..... at....., which is to be held in.....

At this meeting, we will discuss the possibility of disciplinary action against you, in line with the organisation’s disciplinary procedure, in relation to:

.....
.....
.....
.....
.....
.....
.....
.....

You are entitled to be accompanied by another work colleague or your trade-union representative.

Yours sincerely

.....

Manager

2. Notice of the recorded oral warning, first written warning or final written warning

Date

Dear.....

You went to a disciplinary hearing on ...I am writing to confirm the decision made that you will receive a recorded oral warning, first written warning or final written warning under the organisation's disciplinary procedure.

This warning will be placed in your personal file but will not be considered for disciplinary purposes aftermonths, as long as your conduct improves or performance reaches a satisfactory level.

- a. The nature of the unsatisfactory conduct or performance was: -----

- b. The conduct or performance improvement expected is: -----

- c. The timescale within which the improvement must be made is: -----

- d. The likely consequence of further misconduct or not enough improvement is a first written warning, a final written warning or dismissal.

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

Yours sincerely

.....
Manager

3. Notice of the appeal meeting against the warning

Date.....

Dear.....

You have appealed against the recorded oral warning, first written warning or final written warning confirmed to you in writing on Your appeal will be heard by in..... on.....at.....

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

The decision of this appeal hearing is final and you cannot ask for a review.

Yours sincerely

.....
Manager

4. Notice of the result of the appeal against the warning

Date.....

Dear

You appealed against the decision of the disciplinary hearing that you be given a warning under stage of the organisation's disciplinary procedure. The appeal hearing was held on..... .

I am now writing to confirm that the decision made by the manager who carried out the appeal hearing, still applies / will be withdrawn [say if no disciplinary action is being taken or what the new disciplinary action is].

You have now used your right of appeal under the organisation's disciplinary procedure, and this decision is final.

Yours sincerely

.....

Manager

5. Letter to be sent by the employer, setting out the reasons for the proposed dismissal or action other than dismissal and arranging the meeting (for the statutory procedure)

Date

Dear.....

I am writing to tell you that..... [insert organisation's name] is considering dismissing you or taking disciplinary action [enter proposed action] against you.

This action is being considered in the following circumstances.

.....
.....
.....
.....

You are invited to come to a disciplinary meeting onat....., which is to be held in

You are entitled to be accompanied by another work colleague or your trade-union representative.

Yours sincerely

.....
Manager

6. Letter to be sent by the employer after the disciplinary meeting arranged in letter 5 (for the statutory procedure)

Date

Dear.....

On we told you that..... [insert organisation's name] was considering dismissing you or taking disciplinary action [enter the proposed action] against you.

This was discussed in a meeting on..... At this meeting, it was decided that

[*delete as appropriate]

*your conduct or performance was still not satisfactory and that you be dismissed.

*your conduct or performance was still not satisfactory and that the following disciplinary action would be taken against you.

*no further action would be taken against you.

*The reasons for your dismissal are as follows.

.....
..... am writing to you to confirm the decision that you will be dismissed and that your last day of employment with the organisation will be.....

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

.....
.....

You have the right to appeal against this decision.

Please write towithindays of receiving this disciplinary decision.

Yours sincerely

.....
Manager

7. Notice of the appeal meeting against the dismissal or relevant disciplinary action (for the statutory procedure)

Date

Dear.....

You have appealed against your dismissal or disciplinary action on, which was confirmed to you in writing on.....Your appeal will be heard byin onat.....

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

The decision of this appeal meeting is final and you cannot ask for a review.

Yours sincerely

.....
Manager

8. Notice of the result of the appeal against the dismissal or relevant disciplinary action (for the statutory procedure)

Date

Dear.....

You appealed against the decision of the disciplinary hearing that you should be dismissed or that disciplinary action should be taken against you. The appeal meeting was held on.....

I am now writing to confirm that the decision made by..... [enter the name of the manager] who carried out the appeal meeting still applies / will be withdrawn [say if no disciplinary action is being taken or what the new disciplinary action is].

You have now used your right of appeal under the organisation's disciplinary procedure. This decision is final.

Yours sincerely

.....
Manager

9. Model letter of enquiry about the likely cause of an absence, addressed to a worker's GP

Doctor's name

Date

Address

Please acknowledge you have received this letter if there is likely to be any delay in replying.

Name,

Address

To help us manage Statutory Sick Pay, and the organisation's sick pay scheme, and to plan the work in the department, it would be helpful to have a report on your patient, <name>, who works for our organisation.

As a [Job Title]..., he or she has the following responsibilities.

<List the responsibilities.>

The absence record for the past year is summarised as follows.

Total days lost: This month:

 Previous months:

I have attached your patient's permission for us to ask for the following information. He or she wants / does not want to have access to the report under the Access to Personal Files and Medical Reports (Northern Ireland) Order 1991.

What date are they likely to return to work?

Will there be any disability at that time?

How long is it likely to last?

Are there any reasonable adjustments we could make?

Is there any underlying medical reason for this attendance record?

Is he or she likely to be able to work for us in the future?

Is there any specific recommendation you want to make about him or her which would help us find him or her an alternative job, if that is necessary?

I have enclosed a stamped addressed envelope. Please reply as early as possible and attach your account to the report (following the BMA guidance on fees).

Yours sincerely

Signed name (BLOCK LETTERS)

Role in the company

10. Employee raising a grievance

Date

Dear

I am writing to tell you that I want to raise a grievance about the following.

.....
.....
.....

I am entitled to a hearing to discuss this matter. I am also entitled to be accompanied by a work colleague or my trade union representative. Please reply within..... [not more than 28] days of the date of this letter.

Yours sincerely

.....

Employee

11. Employee's request for an appeal hearing (grievance procedures)

Date

Dear

On....., I was told that the organisation had decided to
..... based on my grievance
of..... raised on..... .

I would like to appeal against this decision. Please take account of the following information.

.....
.....
.....

Please reply within..... *[five days may often be long enough]* days from the date of this letter.

Yours sincerely

.....

Employee

Appendix 12

Basic principles of the Human Rights Act 1998, Data Protection Act 1998 and Disability Discrimination Act 1995

Human Rights Act 1998

The Human Rights Act 1998 includes the principles of the European Convention on Human Rights (1953), and can be enforced against state and public authorities. **The actions and failures of private employers will be judged against the standards of the convention, and all courts, including industrial tribunals, will take the Act into consideration when hearing employment or worker- related claims.**

The Articles of the convention that are most likely to **affect employment-related law** are as follows.

- Article 4, prohibition of forced labour and slavery
- Article 6(1), the right to a free trial (both civil and criminal law)
- Article 8, the right to privacy and respect for family life (including correspondence)
- Article 9, freedom of thought, conscience and religion
- Article 10, freedom of expression
- Article 11, freedom of assembly and association
- Article 14, prohibition of discrimination (such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status).

There are exceptions to many of these, and some do not 'stand alone' as independent rights, but are limited to protect the rights of other people. Employers would need to be able to defend any claim that the Act has been broken and that the actions were necessary for business reasons.

You should get legal advice if any claim is made.

Employers should review the organisation's rules and procedures to make sure that the principles of the Act are taken into account. An obvious example would be if an organisation carries out drug tests on workers without having in place a policy making it clear to those workers that they can be drug tested and also making clear why it is necessary for the employer to be able to do this, for example, where workers are in high-risk situations.

Data Protection Act 1998

The particular points to note in the 1998 Data Protection Act are as follows.

- It includes a broad definition of 'data', including information held electronically (whether on computer or by other electronic methods) and in manual or paper-based filing systems.
- It includes a broad definition of 'processing'.
- The rights of 'data subjects' (workers in this case) are extended to have access to information held about them, to know for what purpose information is held, and its relevance to their working life.

There are eight principles governing how personal data information is processed.

Personal information

- must be processed fairly and within relevant laws;
- must be collected only for specified and legal purposes
- must be appropriate, relevant and not excessive in relation to the purposes for which it is processed;
- must be accurate and, where necessary, kept up to date;
- must not be kept for longer than is necessary for the purposes for which it is processed;
- must be processed in line with the rights of data subjects under the Act;
- must be protected against unauthorised or unlawful processing and accidental loss, destruction or damage; and
- must not be transferred to a country or territory outside the European Economic Area, unless that country or territory has an appropriate level of data protection.

The 1998 Act introduces new restrictions on holding and processing what is called 'sensitive personal data', such as racial or ethnic origin, political opinions, religious or other beliefs, whether the person is a member of a trade union, physical or mental health, sexual life, and any court record. The eight principles above will apply, and at least one of the following conditions must be met.

- The worker has given his or her permission for the information to be processed.
- The information needs to be processed to enforce any right or meet any responsibilities connected with employment.

- The information needs to be processed in connection with any legal proceedings or to get legal advice.
- The information needs to be processed by law.
- If the processing relates to sensitive data about racial or ethnic origin, it is needed to allow you to monitor equal opportunities or make sure that people of different racial or ethnic origins are treated fairly.

The Act also covers the use of computerised decision-making packages, such as those used in recruitment.

Employers should think carefully about what kind of information they ask their workers for.

- What is the purpose of the information?
- Who will have access to it and under what conditions?
- Unauthorised access to workers' records should be a disciplinary matter, and may be a criminal offence under Section 55 of the Act. Remember that the worker can have access to their personal records, demand that any mistakes are corrected, and claim compensation for damage caused by breaking the act and also for distress in certain circumstances. Someone in the organisation must take responsibility for adhering to the Act.

Since October 2001, individuals have been able to see all manual files, and been able to make complaints, ask for them to be corrected and claim compensation.

Enforcement is the responsibility of the Information Commissioner. The Commissioner published the Employment Practices Code (June 2005). This Code gives detailed advice for employers and further recommendations for good practice. You can download this Code from the Information Commissioner's website at www.ico.gov.uk.

Disability Discrimination Act 1995 (DDA)

The DDA gives disabled people rights in the areas of employment, access to goods, facilities and services, and in managing, buying or renting land or property. The Act applies to all employers.

A disabled person is defined in the Act as **‘anyone with a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day-to-day activities’**.

However, disability does not necessarily affect someone’s health, so insisting on a medical report purely on the basis of the disability may be unlawful discrimination.

Discrimination means treating someone less favourably without any justification. Under the Act, employers must make **reasonable adjustments** if that will then remove the reason for the unfavourable treatment. An example of a reasonable adjustment could be providing a suitable computer keyboard to an operator who had difficulty using a normal keyboard because of their disability.

In relation to discipline and grievance procedures, employers must make sure they do not discriminate in any area of practice which could lead to dismissal or any other detriment (for example, warnings).

The Act also covers people who become disabled during the course of their employment, and this is particularly relevant to the **absence handling section** of this guide. It is vital that the employer should discuss with the worker what their needs really are and what effect, if any, the disability may have on future work with the organisation.

Any dismissal, including compulsory early retirement, of a disabled employee for a reason relating to the disability would have to be justified, and the reason for it would have to be one which could not be removed or reduced substantially by any reasonable adjustment.

The Disability Rights Commission (Helpline 08457 622 633, website www.drc-gb.org) and the Equality Commission for Northern Ireland (phone 028 9050 0600, website www.equalityni.org) provide information and advice about all aspects of the Disability Discrimination Act. They can also offer advice on employing disabled people.

Notes

- 1 There are no service requirements if the dismissal is connected with discrimination, pregnancy, trade-union activities, trying to assert a statutory right, and a number of other reasons which make the dismissal 'automatically unfair'. The full list is in the DEL leaflet employment rights 13, 'Unfairly dismissed?'
- 2 You can get more advice and Codes of Practice from the Equality Commission for Northern Ireland (phone 028 9050 0600).
- 3 Legislation to make it illegal to discriminate against someone because of their age was introduced on 1 October 2006. For more details, visit the Age Positive website at www.agepositive.gov.uk or www.ofmdfmi.gov.uk/index/equality/age.htm
- 4 The right to receive a Written Statement of the Main Terms and Conditions of Employment is covered under Part III (Right to statements of employment particulars) of the Employment Rights (Northern Ireland) Order 1996.
- 5 The Health and Safety Executive has published a booklet called 'The health risks of passive smoking'. Visit www.hseni.gov.uk.
- 6 Article 8 of the European Convention on Human Rights provides for a 'right to respect for private and family life', and covers any monitoring of workers that is done without their knowledge. It may be argued that employers who regularly tape-record phone calls should provide workers with the facility to make private unrecorded calls. This Article also applies to e-mail monitoring and other forms of surveillance, such as closed-circuit television. The Information Commissioner has published a Code of Employment Practice and a CCTV Code of Practice (visit www.ico.gov.uk). Following the Regulation of Investigatory Powers Act 2000, the Home Office has produced Codes of Practice which also affect the monitoring of workers' e-mails, phone calls and so on (contact the Home Office at www.homeoffice.gov.uk).
- 7 See the joint Equality Commission for Northern Ireland and Labour Relations Agency publication, 'Harassment and bullying in the workplace'.
- 8 Guidance given by the Employment Appeal Tribunal in *Linfood Cash and Carry v Thomson* [1989] IRLR 235 sets out the approach that should be taken with people who have given information anonymously. In particular, statements should be in writing, available to the accused employee, and give details of the time, place and dates as appropriate. The employer should find out about the character of the person who has provided the information and assess the credibility of the evidence.

- 9 Redundancy has a legal meaning as defined in the Employment Rights (Northern Ireland) Order 1996, Part XII, Chapter II. There is more information in the DEL booklet employment rights 3 '*Redundancy payments*'.
- 10 You should give special consideration before suspending an employee without pay. It must be allowed for in the worker's contract of employment, and no suspension should last longer than the maximum period set out in the contract. It must not be an unreasonably long period, as the worker could take action for breach of contract, or resign and claim constructive dismissal i.e. the employee is forced to quit their job against their will because of your conduct or treatment.
- 11 There is more guidance on employees' rights to notice in the DEL booklet employment rights 15, '*Rights to notice and reasons for dismissal*'.
- 12 There are more details about employees' rights to receive written reasons for dismissal in the DEL booklet employment rights 15, '*Rights to notice and reasons for dismissal*'.
- 13 You can get the recommendations for good practice from:
The Information Commissioner's Office Northern Ireland
Room 101
Regus House
33 Clarendon Dock
Laganside
Belfast
BT1 3BG.
Phone: 028 9051 1270
Fax: 028 9051 1606
- 14 See the joint Equality Commission for Northern Ireland and Labour Relations Agency publication, '*Harassment and bullying in the workplace*'

Labour Relations Agency
Head Office, 2-8 Gordon Street, Belfast BT1 2LG
Phone: 028 9032 1442

Regional Office, 1-3 Guildhall Street, Londonderry BT48 6BB
Phone: 028 7126 9639

Website: www.lra.org.uk

E-mail: info@lra.org.uk