

# Code of practice

disciplinary and  
grievance procedures

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



# Disciplinary and Grievance Procedures

## **LRA Code of Practice**

This Code of Practice provides practical guidance to employers, workers and their representatives on:

- The statutory requirements relating to disciplinary and grievance issues;
- What constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- Producing and using disciplinary and grievance procedures; and
- A worker's statutory right to bring a companion to grievance and disciplinary hearings.

The statutory dismissal, disciplinary and grievance procedures, as set out in the Employment (Northern Ireland) Order 2003, apply only to employees<sup>1</sup> as defined in the 2003 Order and this term is used throughout sections 1 and 2 of the Code. However, it is good practice to allow all workers<sup>1</sup> access to disciplinary and grievance procedures. The statutory right to be accompanied at certain types of disciplinary and grievance hearings as set out in the Employment Relations (Northern Ireland) Order 1999 applies to all workers (which includes employees) and this term is used in section 3 of the Code except where reference is made to the right of accompaniment under the statutory discipline and grievance procedures.

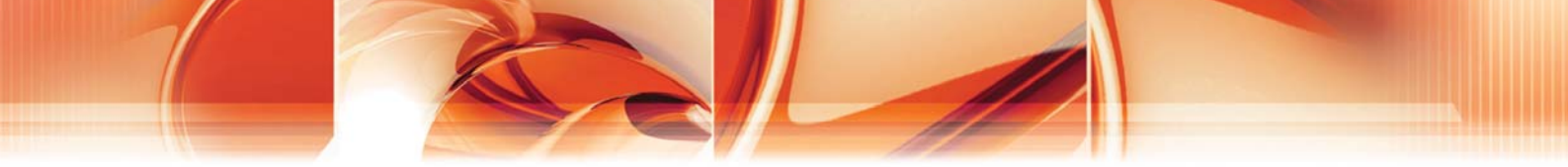
A failure to follow any part of this Code does not, in itself, make a person or organisation liable to proceedings. However, tribunals will take the Code into account when considering relevant cases. Similarly, arbitrators appointed by the LRA to determine relevant cases under the LRA Arbitration Scheme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

A failure to follow the statutory disciplinary and grievance procedures where they apply may have a number of legal implications which are described in the Code. Further information on the detailed provisions of the statutory disciplinary and grievance procedures can be found on the Department for Employment and Learning website at [www.delni.gov.uk/resolvingdisputes](http://www.delni.gov.uk/resolvingdisputes).

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

---

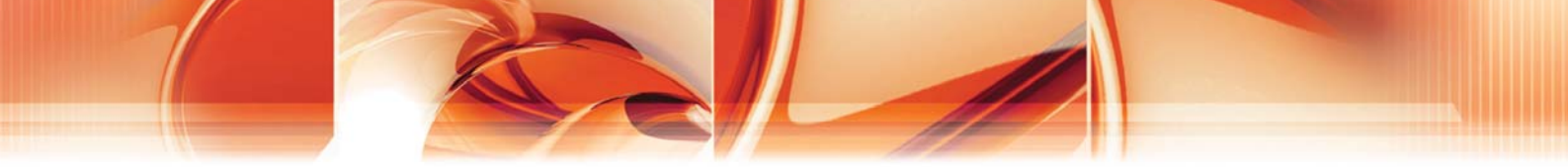
<sup>1</sup> 'Employees' are individuals who have entered into or who work under a contract of employment which is a contract of service or apprenticeship. The term 'worker' includes employees but additionally includes individuals who have entered into or who work under any other contract whereby the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



December 2002. On the day on which the new Code comes into effect in pursuance of an order under Article 90(7) of the Industrial Relations (Northern Ireland) Order 1992, the previous Code shall cease to have effect (subject to any transitional provision or saving made by the Order).

# Contents

<b>Section 1: Disciplinary rules and procedures</b>	Page
<b>At a glance</b>	6
<b>Guidance</b>	
• Why have disciplinary rules and procedures?	7
• Dealing with disciplinary issues in the workplace	9
• What if a grievance is raised during a disciplinary case?	15
• Dealing with gross misconduct	16
• Dealing with absence from work	16
• Dealing with special situations	17
• Appeals	18
• Keeping records	18
• Drawing up disciplinary rules and procedures	19
• Further action	22
<b>Section 2: Grievance procedures</b>	
<b>At a glance</b>	24
<b>Guidance</b>	
• Why have grievance procedures?	25
• Dealing with grievances in the workplace	25
• Raising a grievance	26
• Grievance meetings	27
• Appeals	28
• Special considerations	28
• Keeping records	29
• Drawing up grievance procedures	29
<b>Section 3: A worker's statutory right to be accompanied</b>	
<b>At a glance</b>	32
<b>Guidance</b>	
• What is the right to be accompanied?	33
• What is a disciplinary hearing?	33
• What is a grievance hearing?	33
• What is a reasonable request?	34
• The companion	34
• Applying the right	35



**Section 4: Annexes**

Annex A: Standard statutory dismissal and disciplinary procedure	38
Annex B: Modified statutory dismissal and disciplinary procedure	40
Annex C: Standard statutory grievance procedure	41
Annex D: Modified statutory grievance procedure	43
Annex E: Statutory procedures: general requirements	44
Annex F: Statutory procedures: exemptions and deemed compliance	45



# Section 1

## **Disciplinary rules and procedures**

## At a glance

### Drawing up disciplinary rules and procedures

- Involve management, employees and their representatives where appropriate (Paragraph 54).
- Make rules clear and brief and explain their purpose (Paragraph 55).
- Explain rules and procedures to employees and make sure they have a copy or ready access to a copy of them (Paragraph 57).

### Operating disciplinary procedures

- Establish facts before taking action (Paragraph 8).
- Deal with cases of minor misconduct or unsatisfactory performance informally (Paragraphs 12-13).
- For more serious cases, follow formal procedures, including informing the employee of the alleged misconduct or unsatisfactory performance (Paragraph 14).
- Invite the employee to a meeting and inform them of the right to be accompanied (Paragraphs 14-17).
- Where performance is unsatisfactory explain to the employee the improvement required, the support that will be given and when and how performance will be reviewed (Paragraphs 20-21).
- If giving a warning, tell the employee why and how they need to change, the consequences of failing to improve and that they have a right to appeal (Paragraphs 22-23).
- If dismissing an employee, tell them why, when their contract will end and that they can appeal (Paragraph 26).
- Before dismissing or taking disciplinary action other than issuing a warning, always follow the statutory dismissal and disciplinary procedure (Paragraphs 27-33).
- When dealing with absences from work, find out the reasons for the absence before deciding on what action to take (Paragraph 39).

### Holding appeals

- If the employee wishes to appeal invite them to a meeting and inform the employee of their right to be accompanied (Paragraphs 46-50).
- Where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision (Paragraph 48).

- Inform the employee about the appeal decision and the reasons for it (Paragraph 50).

### Records

- Keep written records for future reference (Paragraph 51).

## Guidance

### Why have disciplinary rules and procedures?

1. Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals. Compliance with certain disciplinary procedures is also a legal requirement in certain circumstances (see paragraph 6).
2. *Disciplinary rules* tell employees what behaviour employers expect from them. If an employee breaks specific rules about behaviour, this is often called *misconduct*. Employers use disciplinary procedures and actions to deal with situations where employees break or allegedly break disciplinary rules. Disciplinary procedures may also be used where employees do not meet their employer's expectations in the way they do their job. These cases, often known as *unsatisfactory performance* (or incapability), may require different treatment from misconduct, and disciplinary procedures should allow for this. When addressing *unsatisfactory performance*, employers should consider whether this is due to lack of ability to perform a job to the standard required or to negligent behaviour by an otherwise able employee in order to determine whether they are dealing with a genuine capability problem or a conduct problem.
3. Guidance on how to draw up disciplinary rules and procedures is contained in paragraphs 54-64.
4. When dealing with disciplinary cases, employers need to be aware of both the law on unfair dismissal and the statutory minimum procedures contained in the Employment (Northern Ireland) Order 2003 for dismissing or taking disciplinary action against an employee. Employers must also be careful not to discriminate on the grounds of gender, race (including colour, nationality and ethnic or national origins), disability, age, sexual orientation, political opinion or religion. Where employers conclude that *unsatisfactory performance* is due to a lack of ability which in turn is due to a disability, they should take account of the provisions of the Disability Discrimination Act 1995 and, in particular, the statutory provisions regarding making reasonable adjustments under that Act.

## The law on unfair dismissal

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

## The statutory minimum procedure

6. Employers are also required to follow a specific statutory minimum procedure if they are contemplating dismissing an employee or imposing some other disciplinary penalty other than suspension on full pay or a warning. Guidance on this statutory procedure is provided in paragraphs 27-33. If an employee is dismissed without the employer following this statutory procedure [where it applies], and makes a claim to a tribunal, providing he/she has the necessary qualifying service and providing he/she is not prevented from claiming unfair dismissal by virtue of his/her age, the dismissal will be ruled automatically unfair. The statutory procedure is a minimum requirement and even where the relevant statutory procedure is followed the dismissal may still be unfair if the employer has not acted reasonably in all the circumstances.

## What about small businesses?

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

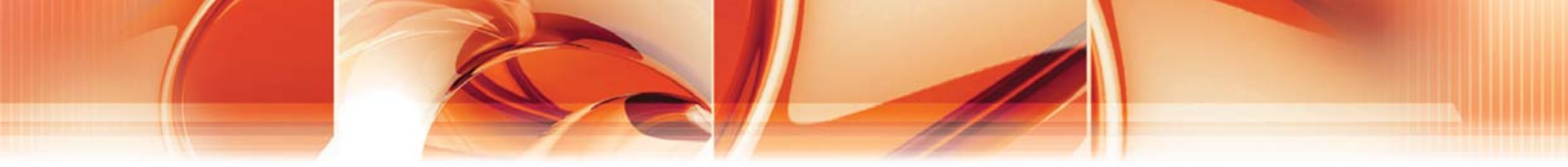
### Core principles of reasonable behaviour

- Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- Inform employees of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss employees for a first disciplinary offence, unless it is a case of gross misconduct.

- Give employees a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give employees an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
- Act consistently.

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

8. When a potential disciplinary matter arises, the employer should make necessary investigations to establish the facts promptly before memories of events fade. It is important to keep a written record for later reference. Having established the facts, the employer should decide whether to drop the matter, deal with it informally or arrange for it to be handled formally. Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary meeting.
9. The need to investigate is also applicable in incapability or suspected incapability situations where, for example, an employer may need to identify relevant facts or evidence concerning an employee's failings and possible reasons for these. Such investigation should also assist in clarifying whether the issue is one of conduct or capability and, where the latter is identified, may also help an employer to determine measures which allow an employee to carry out his/her job satisfactorily without the need to raise the employee's performance as an issue either formally or informally, for example, where the employer establishes that the root cause of poor performance is inadequate supervision.
10. In certain cases, for example in cases involving alleged gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration should be given to a brief period of suspension with full pay whilst unhindered investigation is conducted. Such a suspension should only be imposed after careful consideration of the necessity for this. Employers should also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension. Alternatives to suspension might include the agreeing of a temporary transfer to other duties or another work station without loss of pay or the taking of annual holidays to which the employee is entitled. Any action taken should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that any action taken is not considered a disciplinary action. [See also paragraph 37].

- 
11. When dealing with disciplinary issues in the workplace employers should bear in mind that they are required under the Disability Discrimination Act 1995 to make reasonable adjustments to cater for employees who have a disability, for example providing for wheelchair access if necessary.

### **Informal action**

12. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word of caution or advice and encouragement is often all that is required to improve an employee's conduct or performance. The informal approach may be particularly helpful in dealing with problems quickly and confidentially. There will, however, be situations where matters are more serious or where an informal approach has been tried but is not working.
13. An employer at the time of taking informal action may take the view that where there is a failure to improve formal action will be the next step. In such circumstances the employer, at the time of taking the informal action, should inform the employee of this view. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, employers should take formal action.

### **Formal action**

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

14. The first step in any formal process is to let employees know in writing what it is they are alleged to have done wrong. The letter or note setting out the allegation can also be used to provide information which explains the basis for making the allegation. If information on the basis of the allegation is not provided in writing, this should be conveyed orally to the employee before any meeting takes place. [While this approach is not required by law under the standard statutory dismissal and disciplinary procedure where the disciplinary action is a warning, it is good practice to take these steps regardless of any meeting outcome possibilities. See Annex A.] If employees have difficulty reading, or if English is not their first language, the employer should explain the content of the letter or note to them orally. The letter or note should also invite the individual to a meeting at which the problem can be discussed, and it should inform the individual of his/her right to be accompanied at the meeting (see Section 3). The employee should be given copies of any documents that will be produced at the meeting: in certain circumstances (for example to protect a witness) the employer may withhold some information.

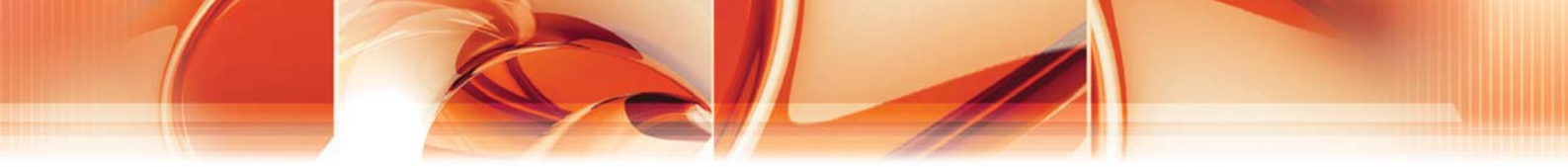


### ***Hold a meeting to discuss the problem***

15. Where possible, the timing and location of the meeting should be agreed with the employee. The length of time between the written notification and the meeting should be long enough to allow the employee to prepare but not so long that memories fade. The employer should hold the meeting in a private location and ensure there will be no interruptions.
16. At the meeting, the employer should begin by restating the complaint against the employee and going through the evidence that has been gathered. The employee should be allowed to set out his/her case and answer any allegations that have been made. The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.
17. An employee who cannot attend a meeting should inform the employer in advance whenever possible. If the employee fails to attend through circumstances outside his/her control and unforeseeable at the time the meeting was arranged (e.g. illness) the employer should arrange another meeting. Employees should be made aware that decisions may be taken in their absence if they fail to attend re-arranged meetings without good reason. If an employee's 'statutory companion' (see Section 3) cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer. This five day time limit may be extended by mutual agreement.

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

18. Following the meeting the employer must decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee should be informed. Where it is decided that disciplinary action is justified the employer will need to consider what form this should take. Before making any decision the employer should take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case within the organisation, the explanations given by the employee and – most important of all – whether the severity of any intended disciplinary action is reasonable in all the circumstances. In considering the circumstances employers should take account of, in particular, the extent to which standards have been breached. Employers should also consider any special circumstances which might make it appropriate to adjust the severity of any intended action.
19. Examples of actions the employer might choose to take are set out in paragraphs 20-26. It is normally good practice to give employees at least



one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or unsatisfactory performance – or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss for a first offence of a particular kind. (Further guidance on dealing with gross misconduct is set out at paragraphs 37-38).

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

20. Following the meeting, an employee who is found to be performing unsatisfactorily due to incapability should be given a written note setting out:

- the performance problem/s identified;
- the improvement [realistic and, where possible, measured] that is required;
- a reasonable timescale for achieving this improvement;
- a review date; and
- any identified measures of support the employer will provide to assist the employee in meeting the required standard/s.


21. The employee should be informed that the note represents the first stage of a formal procedure and that failure to improve could lead to a final written warning<sup>2</sup> and, ultimately, dismissal. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over the specified timescale. The employee should also be informed that he/she may appeal.

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

22. Where, following a disciplinary meeting, an employee is found guilty of misconduct, a first step would be to give him/her a formal oral warning or a written warning depending on the seriousness of the misconduct. When issuing such warnings employees should be informed (either orally where a formal oral warning has been given or in writing where a written warning has been given) [a] that the action is part of the formal disciplinary procedure, [b] of the nature of the misconduct, [c] of the level of the disciplinary action being taken, [d] of the change in behaviour required and [e] of the consequences of failing to correct behaviour. The employee should also be informed that

---

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



he/she may appeal against the disciplinary action taken. Where a formal oral warning has been given a note of the warning should be kept but disregarded for disciplinary purposes after a specified period (for example 6 months). Where a written warning has been issued a copy should be kept but disregarded for disciplinary purposes after a specified period (for example 12 months).

23. Where the first warning is an oral warning and there is a failure to correct behaviour the consequence will normally be the issue of a written warning, a final written warning and ultimately dismissal. Where the first warning is a written warning and there is a failure to correct behaviour the consequence will normally be the issue of a final written warning and ultimately dismissal.
24. Guidance on dealing with cases of gross misconduct is provided in paragraphs 37-38.

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

25. Where there is a failure to improve or change behaviour in the timescale set, or where an offence is sufficiently serious, the employee should normally be issued with a final written warning – but only after he/she has been given a chance to present his/her case at a meeting. The final written warning should, as appropriate, give details of those points set out above at [a] to [e] in paragraph 22 including the grounds for the action being taken. It should warn the employee that failure to improve or modify behaviour may lead to dismissal or to some other penalty, and refer to the right of appeal. The final written warning should normally be disregarded for disciplinary purposes after a specified period (for example 12 months in cases of misconduct). Where the problem concerns incapability a specified period might take the form of a further reasonable timescale for achieving the performance improvement required. An employer may commence the formal process at this stage if an incapability problem is sufficiently serious.

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

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

procedures. The standard statutory procedure to be used in almost all cases requires the employer to:

**Step 1**

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


**Step 2**

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

**Step 3**

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

28. More detail on the statutory standard procedure is set out at Annex A. There is a modified two step procedure for use in special circumstances involving gross misconduct and details of this are set out at Annex B. Guidance on the modified procedure is contained in paragraph 38. There are a number of situations in which it is not necessary for employers to use the statutory procedures or where they will have been deemed to be completed and these are described in Annex F.
29. If the employer fails to follow this statutory procedure (where it applies), and an employee who is qualified to do so makes a claim for unfair dismissal, the tribunal will find the dismissal automatically unfair. The tribunal will normally increase the compensation awarded by 10 per cent, or, where it feels it is just and equitable to do so, up to 50 per cent. Equally, if the tribunal finds that an employee has been dismissed unfairly but has failed to follow the procedure (for instance he/she has failed to attend the disciplinary meeting without good cause), compensation will be reduced by, normally, 10 per cent, or, if the tribunal considers it just and equitable to do so, up to 50 per cent.
30. If the tribunal considers there are exceptional circumstances, compensation may be adjusted (up or down) by less than 10 per cent or not at all.
31. Employers and employees will normally be expected to go through the statutory dismissal and disciplinary procedure unless they have reasonable grounds to believe that by doing so this would result in a significant threat, such as violent, abusive or intimidating behaviour, or, that this would result in further harassment. There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case, but this

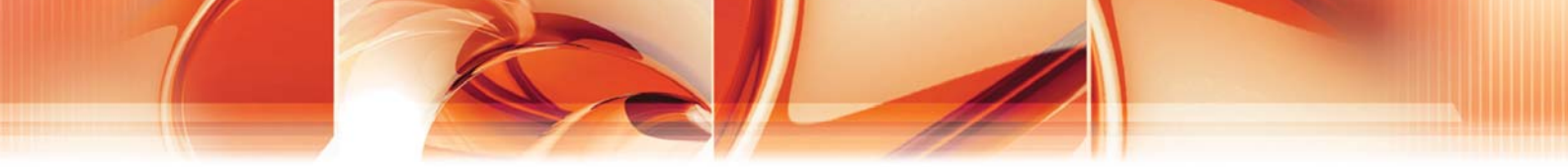


exemption will only apply where the employer or employee reasonably believes that they [or some other person] would come to some serious physical or mental harm; their property [or that of some other person] would be threatened or the other party has already harassed them and this may continue.

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

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

34. In the course of a disciplinary process, an employee might raise a grievance about an issue which is related to the case and which, for example, could possibly and unfairly influence the conduct or outcome of the process to his/her detriment if left unresolved. If this happens, the employer should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance, the employer may need to consider bringing in another manager to deal with the disciplinary process. In small organisations this may not be possible, and the existing manager should deal with the case as impartially as possible.
35. Where the action taken or contemplated by the employer is dismissal the statutory grievance procedures do not apply. Nor do the statutory grievance procedures apply where the employer takes or contemplates action short of dismissal (other than warnings and suspensions on full pay) wholly or mainly on conduct or capability grounds. In these cases the statutory dismissal and discipline procedures apply.
36. However, where the employer takes or contemplates action short of dismissal (as described above) the statutory grievance procedures apply if the grievance is that the action amounts, or would amount, to unlawful discrimination or that the true reason for the action is not related to the



employee's conduct or capability. Where the statutory dismissal and discipline procedures are not being followed, in order to be treated as having complied with the statutory grievance procedures, the employee must have submitted a written statement of the grievance to the employer before presenting any complaint to a tribunal about the issue raised by the grievance. Where the statutory dismissal and discipline procedures are being followed and the written grievance is submitted by the employee before a disciplinary appeal meeting, the statutory grievance procedures will be deemed to have been complied with. In this situation the employer may use the appeal meeting to discuss the grievance.

### **Dealing with gross misconduct**

37. If an employer considers an employee guilty of gross misconduct, and thus potentially liable for summary dismissal, it is still important to establish the facts before taking any action. A short period of suspension with full pay may be helpful or necessary, although it should only be imposed after careful consideration and should be kept under review. It should be made clear to the employee that the suspension is not a disciplinary action and does not involve any prejudgement. [See also paragraph 10].
38. It is a core principle of reasonable behaviour that employers should give employees the opportunity of putting their case at a disciplinary meeting before deciding whether to take action. This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct or unsatisfactory performance. There may however be some very limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting a tribunal will, very exceptionally, find the dismissal to be fair. To allow for these cases there is a statutory modified procedure under which the employer is required to write to the employee after the dismissal setting out various details relating to the dismissal and to hold an appeal meeting, if the employee wants one. The statutory procedure that must be followed by employers in such cases is set out in Annex B. If an employer fails to follow this procedure and the case goes to tribunal, the dismissal will be found to be automatically unfair.

### **Dealing with absence from work**

39. When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.
40. If the absence is due to genuine illness, the issue becomes one of capability, and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:

- how soon the employee's health and attendance will improve;
- whether alternative work is available;
- the effect of the absence on the organisation;
- how similar situations in the organisation have been handled in the past; and
- whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply.

41. The impact of absences will nearly always be greater on small organisations, and they may be entitled to act at an earlier stage than large organisations.

42. In cases of extended sick leave both statutory and contractual issues will need to be addressed and specialist advice may be necessary.

### **Dealing with special situations**

#### **If the full procedure is not immediately available**

43. Special arrangements might be required for handling disciplinary matters among nightshift employees, employees in isolated locations or depots, or others who may be difficult to reach. Nevertheless the appropriate statutory procedure must be followed where it applies.

#### **Trade union representatives**

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

#### **Criminal charges or convictions not related to employment**

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

## Appeals

46. Employees who have had action taken against them on conduct or capability grounds should be given the opportunity to appeal. It is useful to set a time limit for asking for an appeal – five working days is usually enough.

47. Employees may choose to appeal for example because:

- they think a finding or penalty is unfair;
- new evidence comes to light; or
- they think the disciplinary procedure was not used correctly.

It should be noted that the appeal stage is part of the statutory procedure and if the employee pursues a tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal.

48. A more senior manager not previously involved with the case should hear the appeal. Where a person at the most senior management level has already been involved with the case and there is a manager of the same status who has not, the appeal should be heard by the latter. In the event that neither of these is possible and the same manager who took the disciplinary action, unavoidably, has to hear the appeal, that manager should act as impartially as possible. Records and notes of the original disciplinary meeting should be made available to the person hearing the appeal where that person had no previous involvement.

49. The employer should contact the employee with appeal arrangements as soon as possible, and inform him/her of his/her statutory right to be accompanied at the appeal meeting.

50. The manager must inform the employee about the appeal decision as soon as possible. He/she should also explain the reasons for it and confirm it in writing. If the decision is the final stage of the organisation's appeals procedure, the manager should make this clear to the employee.

## Keeping records

51. It is important, and in the interests of both employers and employees, to keep written records during the disciplinary process for future reference. Records should include:

- the complaint against the employee;
- the employee's defence;
- findings made and actions taken;
- the reason for actions taken;
- whether an appeal was lodged;

- the outcome of the appeal;
- any grievances raised during the disciplinary procedure; and
- subsequent developments.

52. Records should be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and have access to certain personal data.

53. Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

### **Drawing up disciplinary rules and procedures**

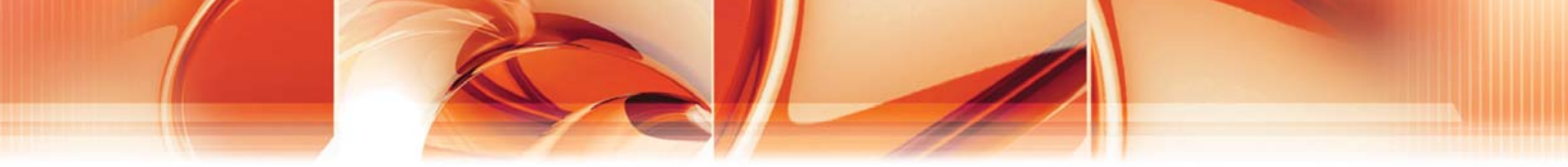
54. Management is responsible for maintaining and setting standards of conduct and performance in an organisation and for ensuring that disciplinary rules and procedures are in place. Employers must follow the requirements of the statutory discipline and dismissal procedures [as a minimum] where these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

### **Rules**

55. When making rules, the aim should be to specify those that are necessary for ensuring a safe and efficient workplace and for maintaining good employment relations.

56. It is unlikely that any set of rules will cover all possible disciplinary issues, but rules normally cover:

- bad behaviour, such as fighting or drunkenness;
- negligence in the performance of duties;
- harassment or victimisation;

- 
- misuse of company facilities (for example e-mail and internet);
  - poor timekeeping;
  - unauthorised absences; and
  - repeated or serious failure to follow instructions.

57. Rules should be specific, clear and recorded in writing. They also need to be readily available to employees, for instance on a noticeboard or, in larger organisations, in a staff handbook or on the Intranet. Management should do all they can to ensure that every employee knows and understands the rules, including those employees whose first language is not English or who have trouble reading. This is often best done as part of an induction process.

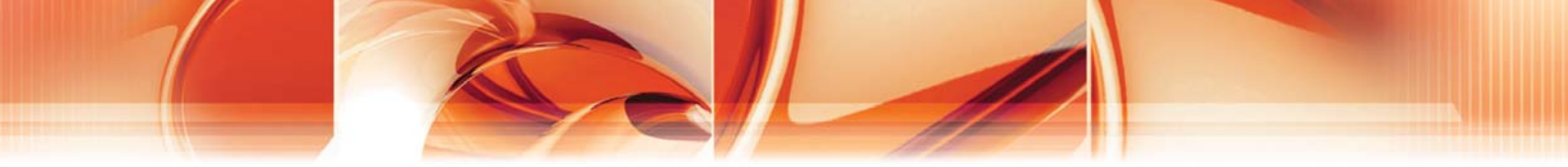
58. Employers should inform employees of the likely consequences of breaking disciplinary rules. In particular, they should list examples of acts of gross misconduct that will warrant summary dismissal.

59. Acts which constitute gross misconduct are those resulting in a very serious breach of contractual terms and are best decided by organisations in the light of their own particular circumstances. Such acts, whilst they occur only once, might be said to strike at the very root or heart of a contract of employment such as to destroy the essential bond of trust and confidence between the parties to the contract. Examples of gross misconduct might include:

- theft or fraud;
- physical violence or very serious incidents of bullying;
- deliberate and serious damage to property;
- very serious misuse of an organisation's property or name;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- very serious insubordination;
- very serious cases of unlawful discrimination or harassment;
- bringing the organisation into very serious disrepute;
- very serious incapability at work brought on by alcohol or illegal drugs;
- causing loss, damage or injury through very serious negligence;
- a very serious breach of health and safety rules; and
- a very serious breach of confidence.

## Procedures

60. Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement amongst employees whose conduct or performance is unsatisfactory. Some organisations may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying.
61. When drawing up and applying procedures employers should always bear in mind the requirements of natural justice. This means that employees should be given the opportunity of a meeting with someone who has not been involved in the matter where possible. They should be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Employees should be given the opportunity to challenge the allegations before decisions are reached and should be provided with a right of appeal.
62. Good disciplinary procedures should:
- be put in writing;
  - say to whom they apply;
  - be non-discriminatory;
  - allow for matters to be dealt without undue delay;
  - allow for information to be kept confidential;
  - tell employees what disciplinary action might be taken;
  - say what levels of management have the authority to take various forms of disciplinary action;
  - require employees to be informed of the complaints against them and supporting evidence, before a meeting;
  - give employees a chance to have their say before management reaches a decision;
  - provide employees with the right to be accompanied;
  - provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
  - require management to investigate fully before any disciplinary action is taken;
  - ensure that employees are given an explanation for any sanction; and
  - allow employees to appeal against a decision.



63. It is important to ensure that everyone in an organisation understands the disciplinary procedures including the statutory requirements. In small firms this is best done by making sure all employees have access to a copy of the full procedures, for instance on a noticeboard, and by taking a few moments to run through the procedures with the employee. In large organisations formal training for those who use and operate the procedures may be appropriate.

**Further action**

64. It is sensible to keep rules and procedures under review to make sure they are always relevant and effective. New or additional rules should only be introduced after reasonable notice has been given to all employees and any employee representatives have been consulted.



## Section 2

### Grievance procedures

## At a glance

### Drawing up grievance procedures

- Involve management, employees and their representatives where appropriate (Paragraph 92).
- Explain procedures to employees and make sure they have a copy or ready access to a copy of them (Paragraphs 96-97).

### Operating grievance procedures

- Many grievances can be settled informally with line managers (Paragraph 69).
- Employees should raise formal grievances with management (Paragraph 70).
- Invite the employee to a meeting and inform him/her that he/she may be accompanied (Paragraph 79).
- Give the employee an opportunity to have their say at the meeting (Paragraph 80).
- Write with a response within a reasonable time and inform the employee of their right to appeal (Paragraph 83).

### Appeals

- If possible, a more senior manager should handle the appeal (Paragraph 84).
- Tell the employee that he/she may be accompanied (Paragraph 84).
- The senior manager should respond to the grievance in writing after the appeal and tell the employee if it is the final stage in the grievance procedure (Paragraph 85).

### Records

- Written records should be kept for future reference (Paragraph 89).

## Guidance

### Why have grievance procedures?

65. Grievances are concerns, problems or complaints that employees raise with their employers.
66. Grievance procedures are used by employers to deal with employees' grievances.
67. Grievance procedures help employers to deal with grievances fairly, consistently and speedily. Employers are required by law to specify, through written statements of employment particulars, a person to whom an employee can apply for the purpose of seeking redress of any grievance relating to his/her employment, how the employee should make such applications and any further steps in this process which are available to the employee. In the case of 'further steps', statements can refer to reasonably accessible documents which specify these.
68. Guidance on drawing up grievance procedures is set out in paragraphs 92-97.

### Dealing with grievances in the workplace

69. Employees should aim to resolve most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly.
70. If a grievance cannot be settled informally, the employee should raise it formally with management. There is a statutory grievance procedure that employees must invoke if they wish subsequently to use the grievance as the basis of certain applications to a tribunal.
71. Under the standard statutory procedure, where it applies, employees must:

#### **Step 1**

Inform the employer of their grievance in writing;

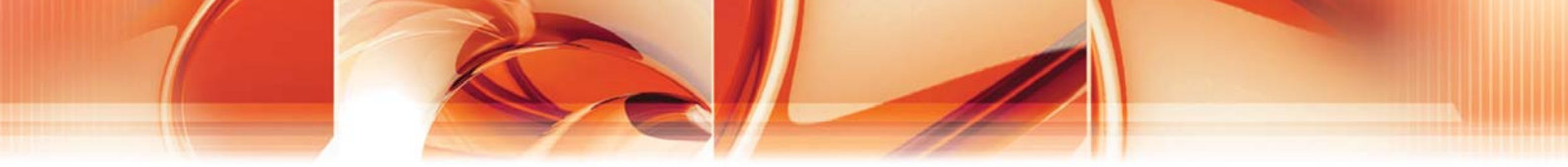
#### **Step 2**

Be invited by the employer to a meeting to discuss the grievance and be notified of the decision. The employee must take all reasonable steps to attend this meeting;

#### **Step 3**


Be given the right to an appeal meeting if they feel the grievance has not been satisfactorily resolved and be notified of the final decision.

More detail on the standard statutory procedure is set out in Annex C.

- 
72. There are certain occasions when it is not necessary to follow the statutory procedure for example, if the employee is raising a concern in compliance with the Public Interest Disclosure (Northern Ireland) Order 1998 or a grievance is raised on behalf of at least two employees by an appropriate representative such as an official of an independent trade union. A full list of exemptions is set out in Annex F.
  73. It is important that employers and employees follow the statutory grievance procedure where it applies. The employee should (subject to the exemptions described in Annex F) at least have raised the grievance in writing with his/her employer and waited 28 days before presenting any tribunal claim relating to the matter. A premature claim will be rejected automatically by the tribunal although (subject to special time limit rules) it may be presented again once the written grievance has been raised with the employer. Furthermore if a grievance comes before a tribunal and either party has failed to follow the procedure then the tribunal will normally increase or reduce any award by 10 per cent or, where it feels it just and equitable to do so, by up to 50 per cent, depending on which party has failed to follow the procedure. In exceptional cases compensation can be increased or reduced by less than 10 per cent or not at all.
  74. Wherever possible a grievance should be dealt with before an employee leaves employment. A statutory grievance procedure (“the modified grievance procedure” described in Annex D), however, applies where an employee with a grievance has already left employment. Under the modified procedure the employee must write to the employer setting out both the grievance and the basis for this as soon as possible after leaving employment and the employer must write back setting out his/her response.

### **Raising a grievance**

75. Employees should normally raise a grievance with their line manager unless someone else is specified in the organisation’s procedure. If the complaint is against the person with whom the grievance would normally be raised the employee should be allowed to approach that person’s manager or, if that is not reasonably practicable, another manager in the organisation. Where this is not possible, the line manager should hear the grievance and deal with it as impartially as possible.
76. Managers should deal with all grievances raised, whether or not the grievance is presented in writing. However, employees need to be aware that if the statutory procedure applies, they will not be able subsequently to take the case to a tribunal unless they have first raised a grievance in writing and waited a further 28 days before presenting the tribunal claim.
77. Setting out a grievance in writing might not be easy – especially for those employees whose first language is not English or who have difficulty

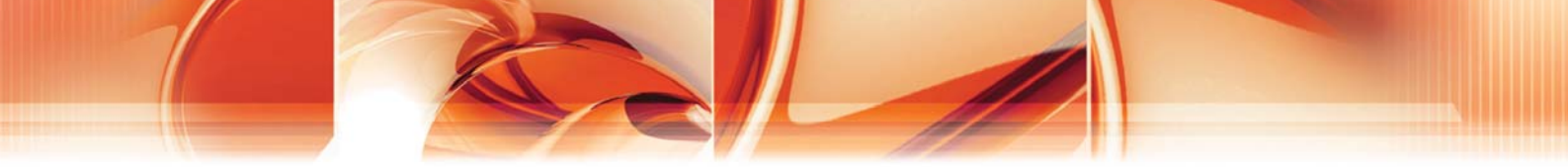


expressing themselves on paper. In these circumstances the employee should be encouraged to seek help for example from a work colleague, a trade union or other employee representative. Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments which may include assisting employees to formulate a written grievance if they are unable to do so themselves because of a disability.

78. In circumstances where a grievance may apply to more than one person and where a trade union is recognised it may be appropriate for the problem to be resolved through collective agreements between the trade union(s) and the employer.

### **Grievance meetings**

79. On receiving a formal grievance, a manager should invite the employee to a meeting as soon as possible and inform him/her that he/she may be accompanied (see Section 3). It is good practice to agree a time and place for the meeting with the employee. Small organisations might not have private meeting rooms, but it is important that the meeting is not interrupted and that the employee feels that his/her grievance is being treated confidentially.
80. Employees should be allowed to explain their complaint and say how they think it should be settled. If employers reach a point in the meeting where they are not sure how to deal with the grievance or feel that further investigation is necessary the meeting should be adjourned to get advice or make further investigation. This might be particularly useful in small organisations where employers might lack experience of dealing with formal grievances. The employer should give the grievance careful consideration before responding.
81. Employers and employees will normally be expected to go through the statutory grievance procedures unless they have reasonable grounds to believe that by doing so this would result in a significant threat, such as violent, abusive or intimidating behaviour, or that this would result in further harassment. There will always be a certain amount of stress and anxiety for both parties when dealing with grievance cases, but this exemption will only apply where the employer or employee reasonably believes that they [or some other person] would come to some serious physical or mental harm; their property [or that of some other person] would be threatened or the other party has already harassed them and this may continue.
82. Equally, the statutory procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but



wherever possible the employer should consider appointing another manager to deal with the procedure.


83. The employer should respond [preferably in writing] to the employee's grievance within a reasonable time and should let the employee know that he/she can appeal against the employer's decision if he/she is not satisfied with it. What is considered reasonable will vary from organisation to organisation and may depend on such matters as the complexity of the grievance and/or solutions to this, but five working days is normally long enough for most grievances. If it is not possible to respond within five working days the employee should be given an explanation for the delay and told when a response can be expected.

### **Appeals**

84. If an employee informs the employer that he/she is unhappy with the decision after a grievance meeting, the employer should arrange an appeal. It should be noted that the appeal stage is part of the standard statutory procedure and if the employee pursues a tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal. The appeal should be heard by a more senior manager than the one who dealt with the original grievance. Where a person at the most senior management level has already been involved with the case and there is a manager of the same status who has not, the appeal should be heard by the latter. In the event that neither of these is possible and the same manager who already heard the grievance, unavoidably, has to hear the appeal, that manager should act as impartially as possible. At the same time as inviting the employee to attend the appeal, the employer should remind him/her that he/she may be accompanied at the appeal meeting (see Section 3).
85. As with the first meeting, the employer should inform the employee, preferably in writing, of his/her decision on the grievance as soon as possible. The employer should also tell the employee if the appeal meeting is the final stage of the grievance procedure.
86. In large organisations it is good practice to allow a further appeal to a higher level of management, such as a director. However, in smaller firms the first appeal will usually mark the end of the grievance procedure.

### **Special considerations**

87. Complaints about discrimination, bullying and harassment in the workplace are sensitive issues, and large organisations often have separate grievance procedures for dealing with these. It is important that these procedures meet the statutory minimum requirements.



88. Organisations may also wish to consider whether they need a whistleblowing procedure in the light of the Public Interest Disclosure (Northern Ireland) Order 1998. This Order provides protection to employees who raise concerns about certain kinds of wrongdoing in accordance with its procedures.

### **Keeping records**

89. It is important, and in the interests of both employer and employee, to keep written records during the grievance process for future reference. Records should include:

- the nature of the grievance raised;
- a copy of the written grievance;
- the employer's response;
- action taken;
- reasons for action taken;
- whether there was an appeal and, if so, the outcome; and
- subsequent developments.

90. Records should be treated as confidential and kept in accordance with the Data Protection Act 1998, which gives individuals the right to request and have access to certain personal data.

91. Copies of meeting records should be given to the employee including any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

### **Drawing up grievance procedures**

92. When employers draw up grievance procedures, it pays to involve everybody they will affect, including managers, employees and, where appropriate, their representatives.

93. Grievance procedures should make it easy for employees to raise issues with management and should:

- be simple and put in writing;
- enable an employee's line manager to deal informally with a grievance, if possible;
- keep proceedings confidential; and
- allow the employee to have a companion at meetings.



94. Issues that may cause grievances include:

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

95. Where separate procedures exist for dealing with grievances on particular issues (for example, harassment and bullying) these should be used instead of the normal grievance procedure.

96. It is important to ensure that everyone in the organisation understands the grievance procedures including the statutory requirements and that, if necessary, supervisors, managers and employee representatives are trained in their use. Employees should be given a copy of the full procedures or have ready access to them, for instance on a noticeboard. Large organisations can include them with disciplinary procedures as part of an induction process.

97. Take the time to explain the detail of grievance procedures to employees. This is particularly useful for people who do not speak English very well or who have difficulty with reading.



## Section 3

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



## At a glance

### The right to be accompanied

- All workers have the right to be accompanied at a disciplinary or grievance hearing (Paragraph 98).
- Workers must make a reasonable request to the employer if they want to be accompanied (Paragraph 98).
- Disciplinary hearings, for these purposes, include meetings where formal warnings or some other actions might be taken against the worker. Appeal hearings are also covered (Paragraphs 99-101).
- Grievance hearings are defined as meetings where an employer deals with a worker's complaint about a duty owed to them by the employer (Paragraphs 102-104).

### The companion

- The companion can be a fellow worker or a union official (Paragraph 106).
- Nobody has to accept an invitation to act as a companion (Paragraph 109).
- Fellow workers who are acting as companions can take paid time off to prepare for and go to a hearing (Paragraph 111).

### Applying the right

- Agree a suitable date with the worker and the companion (Paragraph 112).
- The worker should tell the employer who the chosen companion is (Paragraph 114).
- The companion can have a say at the hearing but cannot answer questions for the worker (Paragraphs 115-116).
- Don't disadvantage workers who have applied the right, or their companions (Paragraph 118).

## Guidance

### **What is the right to be accompanied?**

98. Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings. They must make a reasonable request to their employer to be accompanied. Further guidance on what is a reasonable request and who can accompany a worker appears at paragraphs 105-111.

### **What is a disciplinary hearing?**

99. For the purposes of this right, disciplinary hearings are defined as meetings that could result in:

- a formal warning being issued to a worker (i.e. a warning that will be placed on the worker's record);
- the taking of some other action (such as suspension without pay, demotion or dismissal); or
- the confirmation of a warning issued or some other action taken (such as an appeal hearing).

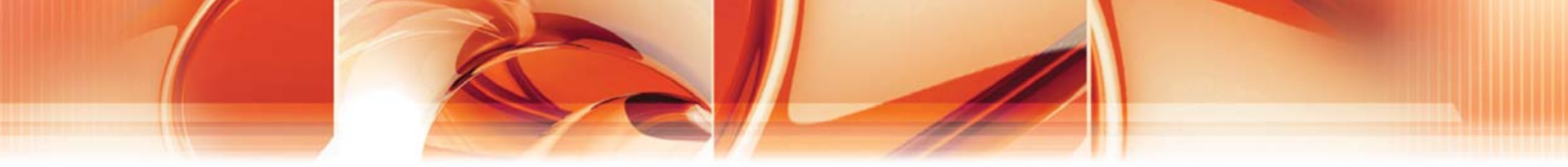
100. The statutory right of employees to be accompanied also applies to any disciplinary meetings held as part of the statutory dismissal and disciplinary procedures. This includes any meetings held after an employee has left employment.

101. Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions. Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the worker will have the right to be accompanied.

### **What is a grievance hearing?**

102. For the purposes of this right, a grievance hearing is a meeting at which an employer deals with a complaint about a legal duty owed by him/her to a worker, whether the duty arises from statute or common law (for example contractual commitments).

103. For instance, 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 a statutory issue about equal pay. Equally, most employers will be under no legal duty to provide their workers with car



parking facilities, and a grievance about such facilities would carry no right to be accompanied at a hearing by a companion. However, if a worker was disabled and, because of his/her disability, needed parking facilities in order to attend work, he/she probably would be entitled to a companion at a grievance hearing, as an issue might arise as to whether the employer was meeting his/her obligations under the Disability Discrimination Act 1995.


104. The statutory right of employees to be accompanied also applies to any meetings held as part of the statutory grievance procedures where these are applicable. This includes any meetings after the employee has left employment.

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

105. Whether a request for a companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. However, when workers are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for a worker to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

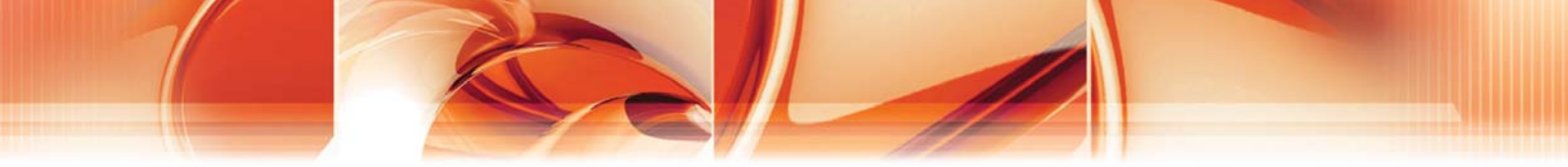
### **The companion**

106. The companion may be:
- a fellow worker (i.e. another of the employer's workers);
  - a trade union official who is employed by a trade union; or
  - a lay trade union official, as long as he/she has been reasonably certified in writing by his/her union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.
107. Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative). If workers are disabled, employers should consider whether it might be reasonable to allow them to be accompanied because of their disability. Additionally, some workers may experience personal difficulties in raising and pursuing certain grievances because of their sexual orientation and may request to be accompanied by a companion from an organisation which has a special interest in assisting and supporting such workers: employers should be sensitive to such workers' needs in these circumstances.

- 
108. Workers may choose an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether the union is recognised or not. However, where a union is recognised in a workplace, it is good practice for workers to ask an official from that union to accompany them.
  109. Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
  110. Trade unions should ensure that their officials are trained in the role of acting as a worker's companion. Even when a trade union official has experience of acting in the role, there may still be a need for periodic refresher training.
  111. A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise him/herself with the case and confer with the worker before and after the hearing. A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another employer, both time off and payment for this are matters for agreement between that lay official and his/her employer.

### **Applying the right**

112. Where possible, the employer should allow a companion to have a say in the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.
113. In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also cater for a companion's disability, for example providing for wheelchair access if necessary.
114. Before the hearing takes place, the worker should tell the employer whom they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.
115. The companion should be allowed to address the hearing in order to:
  - put the worker's case;
  - sum up the worker's case;
  - respond on the worker's behalf to any view expressed at the hearing.

- 
116. The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including being given the opportunity to raise points about any information provided by witnesses. The companion has no right to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it. Additionally, a companion must not act in a manner which would prevent either an employer from explaining his/her case or any other person at the hearing from making his/her contribution to it.
  117. Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to a tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay.
  118. Employers should be careful not to disadvantage workers for using their right to be accompanied or for being companions, as this is against the law and could lead to a claim to a tribunal.



# Section 4

## **Annexes**

## Annex A

### **Standard statutory dismissal and disciplinary procedure**

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

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

#### **Step 1**

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

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

#### **Step 2**

##### **The meeting**

- The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.
- The meeting must not take place unless:
  - i) the employer has informed the employee what the basis was for including in the statement under Step 1 the ground or grounds given in it; and
  - ii) the employee has had a reasonable opportunity to consider their response to that information.
- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of his/her decision and notify him/her of the right to appeal against the decision if he/she is not satisfied with it.



### Step 3

#### Appeal

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

See also Annexes E and F.

## Annex B

### Modified statutory dismissal and disciplinary procedure

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

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

#### Step 1

##### Statement of grounds for action

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

#### Step 2

##### Appeal

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

See also Annexes E and F.

## Annex C

### Standard statutory grievance procedure

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

For purposes of the standard statutory procedure a grievance is defined as ‘a complaint by an employee about action which his/her employer has taken or is contemplating taking in relation to him/her’. The standard statutory procedure applies in relation to any grievance about action by an employer that could form the basis of a complaint [or could do so if the action took place] by an employee to a tribunal under certain jurisdictions set out in the 2003 Order. These jurisdictions include, among others, complaints concerning unlawful discrimination on certain grounds and unlawful deductions from wages.

#### Step 1

##### Statement of grievance

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

#### Step 2

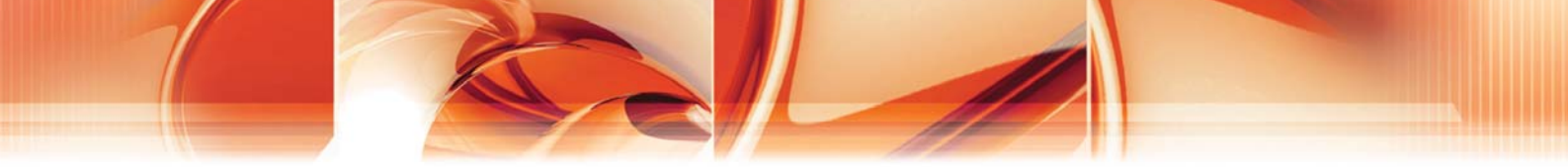
##### Meeting

- The employer must invite the employee to attend a meeting to discuss the grievance.
- The meeting must not take place unless:
  - i) the employee has informed the employer what the basis for the grievance was when he/she made the statement under Step 1; and
  - ii) the employer has had a reasonable opportunity to consider his/her response to that information.
- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of his/her decision as to his/her response to the grievance and notify the employee of the right of appeal against the decision if he/she is not satisfied with it.

#### Step 3

##### Appeal

- If the employee wishes to appeal, he/she must inform the employer.

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

See also Annexes E and F.

## Annex D

### Modified statutory grievance procedure

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

The definition of a grievance for purposes of the modified statutory procedure and the jurisdictions to which the modified procedure applies are the same as those applying to the standard grievance procedure [see Annex C].

The modified procedure applies where an employee has left employment, the employer was unaware of the grievance before the employee left or was so aware but the standard statutory grievance procedure had not commenced or been completed before the employee left and both parties have **agreed in writing** that it should be used instead of the standard statutory procedure. Such agreement can only be reached after the employer has been made aware of the grievance. If such agreement is not reached, employees and employers must comply with the standard statutory procedure summarised at Annex C.

#### Step 1

##### Statement of grievance

- The employee must set out in writing:
  - i) the grievance; and
  - ii) the basis for it.
- The employee must send the statement or a copy of it to the employer.

#### Step 2

##### Response

- The employer must set out his/her response in writing and send the statement or a copy of it to the employee.

See also Annexes E and F.



## Annex E

### **Statutory procedures: general requirements**

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

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

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

## Annex F

### **Statutory procedures: exemptions and deemed compliance**

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

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

#### **(a) Situations in which the Statutory Procedures do not apply at all**

The disciplinary and dismissal procedures do not apply where:

- The employee is dismissed in circumstances covered by the modified dismissal procedure and presents a tribunal complaint before the employer has taken Step 1; or
- All of the employees of the same description or category are dismissed and offered re-engagement either before or upon termination of their contracts; or
- The dismissal is one of a group of redundancies covered by the employer's duty of collective consultation with appropriate representatives under Article 216 of the Employment Rights (Northern Ireland) Order 1996; or
- The employee is dismissed while taking part in (i) unofficial industrial action or (ii) industrial action [which is neither unofficial nor protected], unless the circumstances of the dismissal are such that a tribunal is entitled to determine whether the dismissal was fair or unfair by virtue of Article 144(3) of the 1996 Order; or
- The reason for the dismissal is that the employee took 'protected industrial action' and the dismissal would be regarded, by virtue of Article 144A(2) of the 1996 Order, as unfair for the purposes of Part XI of that Order; or
- The employer's business suddenly ceases to function because of an unforeseen event with the result that it becomes impractical to employ any employees; or
- The employee cannot continue to work in his/her particular position without contravening a statutory requirement; or

- 
- The employee is one to whom a dismissal procedure agreement designated under Article 142 of the 1996 Order applies.

The grievance procedures do not apply where:

- The employee is no longer employed, neither of the procedures has been commenced and, since the employee ceased to be employed, it has ceased to be reasonably practicable for the employee to take Step 1 of the procedures; or
- The employee wishes to complain about an actual or threatened dismissal; or
- The employee raises a concern as a “protected disclosure” in compliance with the provisions of the Public Interest Disclosure (Northern Ireland) Order 1998. However, the statutory grievance procedures are applicable to the kind of disclosure dealt with in Part VA of the Employment rights (Northern Ireland) Order 1996 where the information is disclosed by an employee to his/her employer in circumstances where this relates to a matter which the employee could raise as a grievance with his/her employer and it is the employee’s intention that the disclosure should constitute the raising of the matter as a grievance with his/her employer. This provision is contained in the 2003 Order, not the Regulations; or
- The employee wishes to complain about (actual or threatened) action short of dismissal to which the standard disciplinary procedure applies, unless the grievance is that this involves unlawful discrimination (including under the Equal Pay Act (Northern Ireland) 1970) or is not genuinely on grounds of capability or conduct.

In addition, neither party need comply with an applicable statutory procedure where to do so would be contrary to the interests of national security.

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

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

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



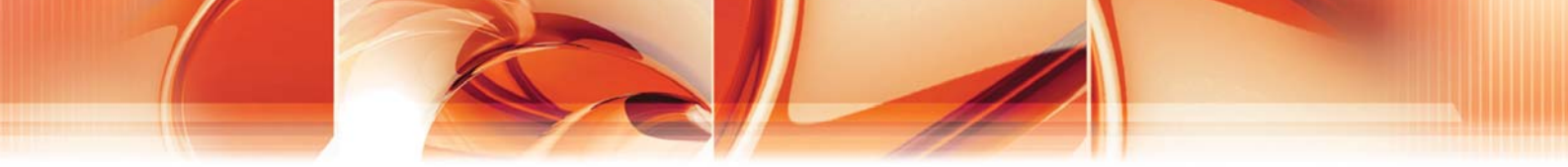
The grievance procedures are treated as having been complied with where:

- The employee is complaining that action short of dismissal to which the standard disciplinary procedure applies is not genuinely on grounds of conduct or capability, or involves unlawful discrimination, and the employee has raised that complaint with the employer as a written grievance before any appeal hearing under a statutory dismissal and disciplinary procedure or, if none of these is being followed, before presenting a complaint arising out of the grievance to a tribunal; or
- The employment has ended and the employee has raised a written grievance under Step 1 of the standard grievance procedure but, since cessation, it has become not reasonably practicable for either the employee or employer to comply with the requirements of Steps 2 or 3 of that procedure. However, if the procedure has progressed as far as and including the penultimate stage of Step 2 [see Annex C] but it has not been reasonably practicable to have a meeting, the employer must give the employee a written decision as to his/her response to the grievance; or
- An ‘appropriate representative’ [as defined by the Regulations] of the employee with the grievance has written to the employer setting out both the grievance and the names of at least two employees (of whom one is the employee having the grievance) as being those on whose behalf he/she is raising the grievance; or
- The employee is entitled to pursue [and pursues] the grievance against his/her employer using a procedure available under a collective agreement between one or more independent trade unions and two or more employers or an employers’ association.

**(c) Other Special Circumstances in which the Statutory Procedures need not be begun or completed**

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

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



## **HEAD OFFICE**

Labour Relations Agency  
2-8 Gordon Street  
Belfast, BT1 2LG

Tel: 028 9032 1442

Fax: 028 9033 0827

TDD (Textphone): 028 9023 8411

Email: [info@lra.org.uk](mailto:info@lra.org.uk)

Website: [www.lra.org.uk](http://www.lra.org.uk)

## **REGIONAL OFFICE**

Labour Relations Agency  
1-3 Guildhall Street  
Londonderry, BT48 6BJ

Tel: 028 7126 9639

Fax: 028 7126 7729

Email: [info@lra.org.uk](mailto:info@lra.org.uk)

Website: [www.lra.org.uk](http://www.lra.org.uk)