



ADVICE

on

Handling Discipline and Grievances at Work

April 2011

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Introduction

This advisory guide complements the Labour Relations Agency (Agency) Code of Practice on disciplinary and grievance procedures (Code) which sets out principles for handling disciplinary and grievance situations in the workplace.

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

This guide deals with the non-statutory approach to dealing with grievances in the workplace as well as the requirement to comply with the statutory procedures in respect of dismissal and disciplinary situations.

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

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

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

This guide is purely advisory. It complements the Agency's Code by giving more practical advice and guidance that employers and employees and their representatives will often find helpful both in general terms and in respect of individual cases. Industrial tribunals are not required to have regard to the guidance in this booklet that does not form part of the Code.

The guide contains examples of dismissal, disciplinary and grievance procedures to help employers in all types and size of organisation. Although organisations can be flexible about how formal or extensive their **dismissal**

and disciplinary 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. The tribunal will increase the compensation awarded by between 10 per cent and 50 per cent, where it feels it is just and equitable to do so. Equally, if the tribunal finds that an employee has been dismissed unfairly but has failed to follow the procedure (for instance he/she has failed to attend the disciplinary meeting without good cause), compensation will be reduced by between 10 per cent and 50 per cent where it feels it is just and equitable to do so. The law on unfair dismissal also requires employers to act reasonably when making dismissal related decisions. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for industrial tribunals to decide.

In those **grievance cases**, for which an industrial tribunal has jurisdiction to determine, a failure to follow the grievance procedure set out in the Code (e.g. – where the employer does not offer a meeting to discuss the grievance matter or the employee does not invoke an appeal) may mean that the Industrial Tribunal adjusts any awards by a percentage of up to, or down by, 50% to reflect that the provisions of the Code have not been reasonably followed.

The foreword to the Code and this guide emphasise that employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. If discipline and grievance issues are settled at an early stage they are normally less time-consuming and less likely to damage working relationships. **(See details of Mediation on page 6)**

Using mediation

An independent mediator can sometimes help resolve grievance or disciplinary issues. Mediation is a voluntary process where the mediator helps two or more people in dispute attempt to reach an agreement. Any agreement reached is developed by those in dispute and not the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is there to assist the parties in resolving the issue in dispute.

Mediators may be employees trained and accredited by an external mediation service who act as internal mediators in addition to their day jobs. Or they may be from an external mediation provider. They can work individually or in pairs as co-mediators.

There are no hard-and-fast rules for when mediation is appropriate but it can be used:

- for disputes involving colleagues of a similar job or grade, or between a line manager and their staff;
- at any stage in the dispute as long as any ongoing formal procedures are put on hold, or where mediation is included as a stage in the procedures themselves;
- to rebuild relationships after a formal dispute has been resolved;
- to address a range of issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment.

In some organisations mediation is written into formal discipline and grievance procedures as an optional stage. Where this is not the case, it is useful to be clear about whether the discipline and grievance procedure can be suspended if mediation is deemed to be an appropriate method of resolving the dispute. Grievances most obviously lend themselves to the possibility of mediation.

Managers may not always see it as appropriate to surrender their discretion in relation to disciplinary issues where they believe a point of principle is at stake, such as misconduct or poor performance. However, disciplinary and grievance issues can become blurred, and the employer may prefer to tackle the underlying relationship issues by means of mediation.

Cases unsuitable for mediation

Mediation may not be suitable if:

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation;
- it is used by a manager to avoid their managerial responsibilities;
- a decision about right or wrong is needed, for example where there is possible criminal activity;
- the individual bringing a discrimination or harassment case wants it investigated;
- the parties do not have the power to settle the issue;
- one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.

The Labour Relations Agency provides a mediation service to assist parties resolve disputes.

Further information on mediation is available on the Agency's website www.lra.org.uk or by contacting any of the following

Elaine Clarke	028 90337201
Stewart Dickson	028 90337407
Penny Holloway	028 90337427
Maxine Murphy-Higgins	028 90337441
Karen Tarr	028 71269639

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. The main aim should be about changing or correcting people's behaviour.

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

This guide gives advice on 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;
- In most cases, employers should aim to improve employees' performance or correct their behaviour, not punish them;
- Discipline and grievances are primarily about people not just processes.

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.

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 dismissal and disciplinary procedure they must follow as a minimum if they are considering dismissing an employee or imposing 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.

In summary the statutory procedure involves the following three steps:

- A statement in writing of what the employee is meant to have done wrong (the allegation) and what the employer is contemplating;
- A meeting to discuss the situation and a decision;
- Offering the right of appeal.

(See Flowchart 6 on page 42 for more details)

The statutory procedure is the **minimum standard**. Industrial tribunals also expect employers to make decisions on discipline and dismissal which are **fair and reasonable**.

Disciplinary procedures help employers to manage people effectively, and should not be viewed just as a way of imposing 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 in order to submit a claim (**see note 1 on page 97**). The employer must show the reason for the dismissal and that it was a potentially fair reason. The tribunal will decide whether the dismissal was procedurally and substantively fair or unfair. The tribunal will also take into account the size and administrative resources of the employer when deciding whether they acted reasonably or unreasonably. The tribunal will also take account of the guidance given in the Code (see Annexes A and B of the Code) and consider how far the Code has been followed and whether the compensation should be increased or decreased as outlined in the introduction to this guide.

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 how 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, reasonable and proportionate 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 the term "workers" is used in **section 3 of the Code**];*
- Rules and procedures should be clear, and should preferably be put in writing. All employees should have access to a copy of the rules and disciplinary procedures;
- Management should, as good employment practice or employee engagement, 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 implementing/applying 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 employment practice to develop rules with employees (through their representatives and trade union where appropriate) and with 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. Ideally all employees should be given their own copy, for example, as part of their statement of main terms of employment. It is good employment practice to discuss the rules 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, or allows customers or the public to 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 on grounds of sex, pregnancy and maternity leave, marital status, gender reassignment, religious belief (or, similar philosophical belief), political opinion, age, race (including colour, nationality, ethnic or national origins. 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 (**see note 2 on page 97**).

Where a rule is no longer used or has not been applied consistently, employees should always be told before the rule is fully reinstated and a change in standards is introduced.

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
- Absence
- Health and safety
- Using the organisation's facilities
- Discrimination, bullying and harassment
- Personal appearance
- Gross misconduct offences (this is misconduct that is so serious that it may justify dismissal without notice but normally with investigation - **(see paragraph 61 of the Code)**)

What should disciplinary procedures contain?

When drawing up and applying procedures, employers should always think about what is generally considered to be objectively fair. For example, employees should be told in writing, before the meeting, about any allegations made against them, together with the supporting evidence. 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 provided with the 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 the standards required of changes in behaviour;
- allow employees to invoke an 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 precautionary suspension is **with pay**, setting out how pay will be worked out during this period;
- 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 is given the opportunity to give their side of the story; and
- make sure that, where the facts are in dispute that:
 - (a) no disciplinary penalty is set until the case has been carefully investigated and
 - (b) there is an honest, genuine and reasonable belief that the employee committed the act in question.

There are examples of disciplinary procedures in Appendix 2(a) (see page 62) and 2(b) (see page 69) of this guide. These may be adapted according to the organisation's needs.

Reviewing rules and procedures

Keep rules and procedures under review to make sure they are always relevant and effective. Address any shortcomings as they arise and allow rules to evolve in line with developments in employment law.

It is good employment practice to consult employees and their representatives before new or additional rules are introduced and that all employees understand these rules.

Training

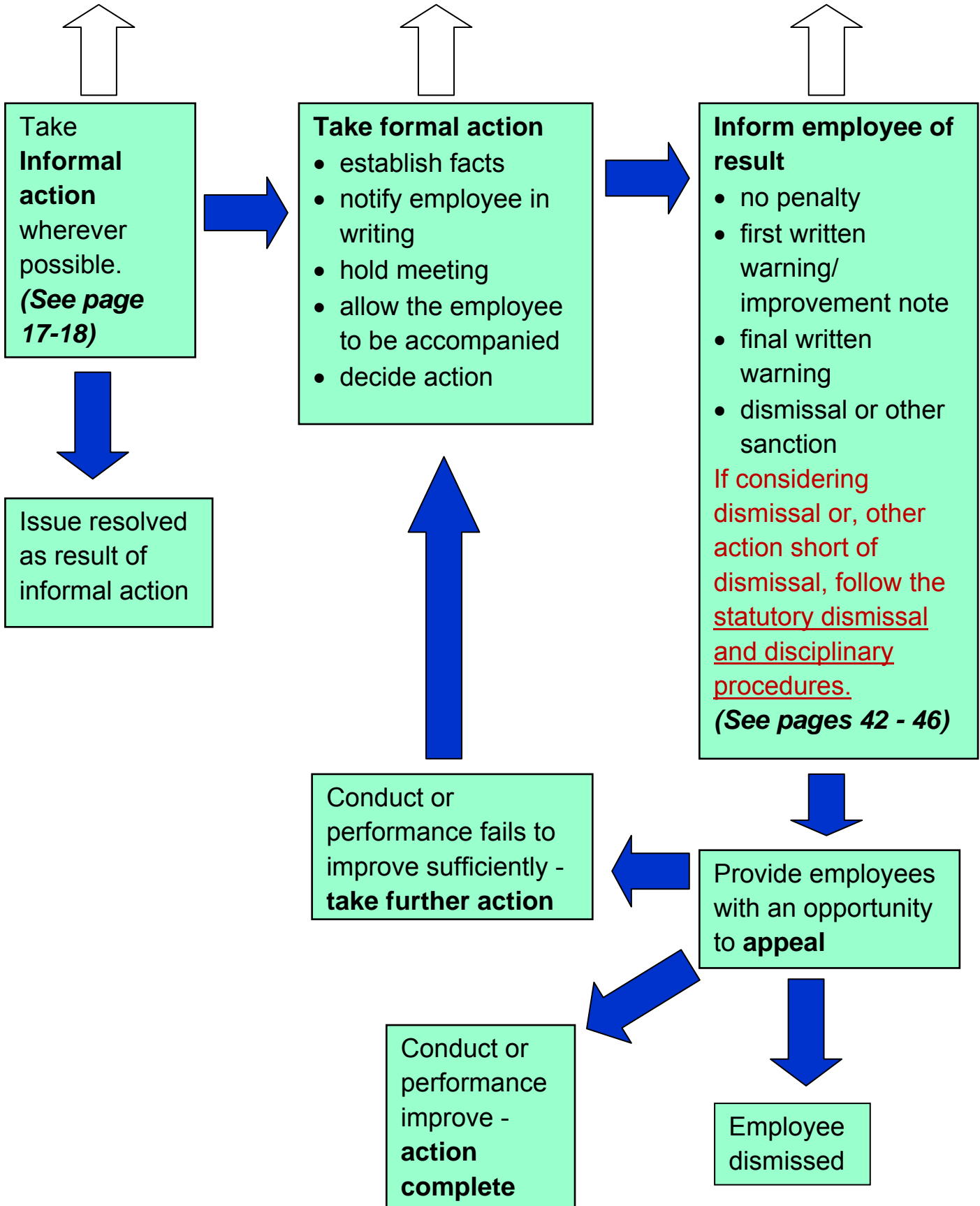
Good training helps managers achieve effective positive outcomes, reducing the need for any disciplinary action. Those responsible for using and operating

the disciplinary rules and procedures, including managers at all levels should be trained for the task. Ignoring or circumventing the procedures when dismissing an employee is likely to have a negative bearing on the outcome of any subsequent industrial tribunal claim.

If the organisation recognises trade unions, or there is any other form of employee representation, it is good employment practice to undertake 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

- Always follow the Labour Relations Agency’s Code of Practice on disciplinary and grievance procedures
- It may be helpful to consider mediation at any stage - (*see page 6*).



Encouraging improvement

The main purpose of a disciplinary procedure is to encourage employees to modify or improve their behaviour, within a given framework and timescale, where 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 handled **informally** and not as part of the **formal** disciplinary process

Establishing the facts

When investigating a disciplinary matter take care to deal with the employee in a fair and reasonable manner. The nature and extent of the investigations will depend on the seriousness of the matter. The more serious it is then the more thorough the investigation should be.

In exceptional circumstances or where the facts speak for themselves it is not always necessary to hold an investigatory meeting (often called a fact finding meeting). If a meeting is held, give the employee advance notice and time to prepare.

Any investigatory meeting should be conducted by a management representative not involved in the incident or to be involved in any future disciplinary process. The investigatory meeting should be confined to establishing the facts of the case. It is important that disciplinary action is not considered at an investigatory meeting. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a later formal meeting at which the employee will have the statutory right to be accompanied.

There may be instances where suspension with pay is necessary while investigations are carried out, for example in cases involving alleged 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 during the investigation which should be conducted in a prompt and reasonable manner. 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 loss of pay. The manager should make it clear that any suspension action taken is not a disciplinary action or sanction, nor is an indication of blame or guilt. Suspension on full pay, should be reviewed frequently to ensure it is not unnecessarily protracted

The manager should not use suspension as a disciplinary penalty before following the statutory procedure.

More extensive advice on investigations is available in the *Agency's advisory guide - 'Advice on Conducting Employment Investigations'* available to download on the Agency website www.lra.org.uk.

Being firm and fair

Managers need to be firm and fair in maintaining 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.

Staying calm

The manager should make arrangements for carrying 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 cases with the same or similar facts. 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 and any current warnings will be relevant.

Any decision to discipline an employee must be reasonable in all the circumstances. The employer must not discriminate on the grounds of sex, pregnancy and maternity leave, marital status, gender reassignment, religious belief (or, similar philosophical belief), political opinion, age, race (including colour, nationality, ethnic or national origins), disability and sexual orientation. Where the manager concludes 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. **(see note 2 on page 97).**

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 dismissal and disciplinary procedures**. If these statutory procedures are not followed, 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 on page 97)**.

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 formal disciplinary meeting – this will be necessary when the matter is considered serious enough to warrant disciplinary action.

Main stages in handling disciplinary procedures

The following six flowcharts set out the main stages of handling disciplinary matters. These flowcharts are followed by relevant management guidance.

Flowchart 1: Informal disciplinary action

Management guidance - Informal disciplinary action

Flowchart 2: The disciplinary meeting

Management guidance - The disciplinary meeting

Flowchart 3: Taking disciplinary action – unsatisfactory performance

Management guidance - Taking disciplinary action – unsatisfactory performance

Flowchart 4: Taking disciplinary action – misconduct

Management guidance - Taking disciplinary action - misconduct

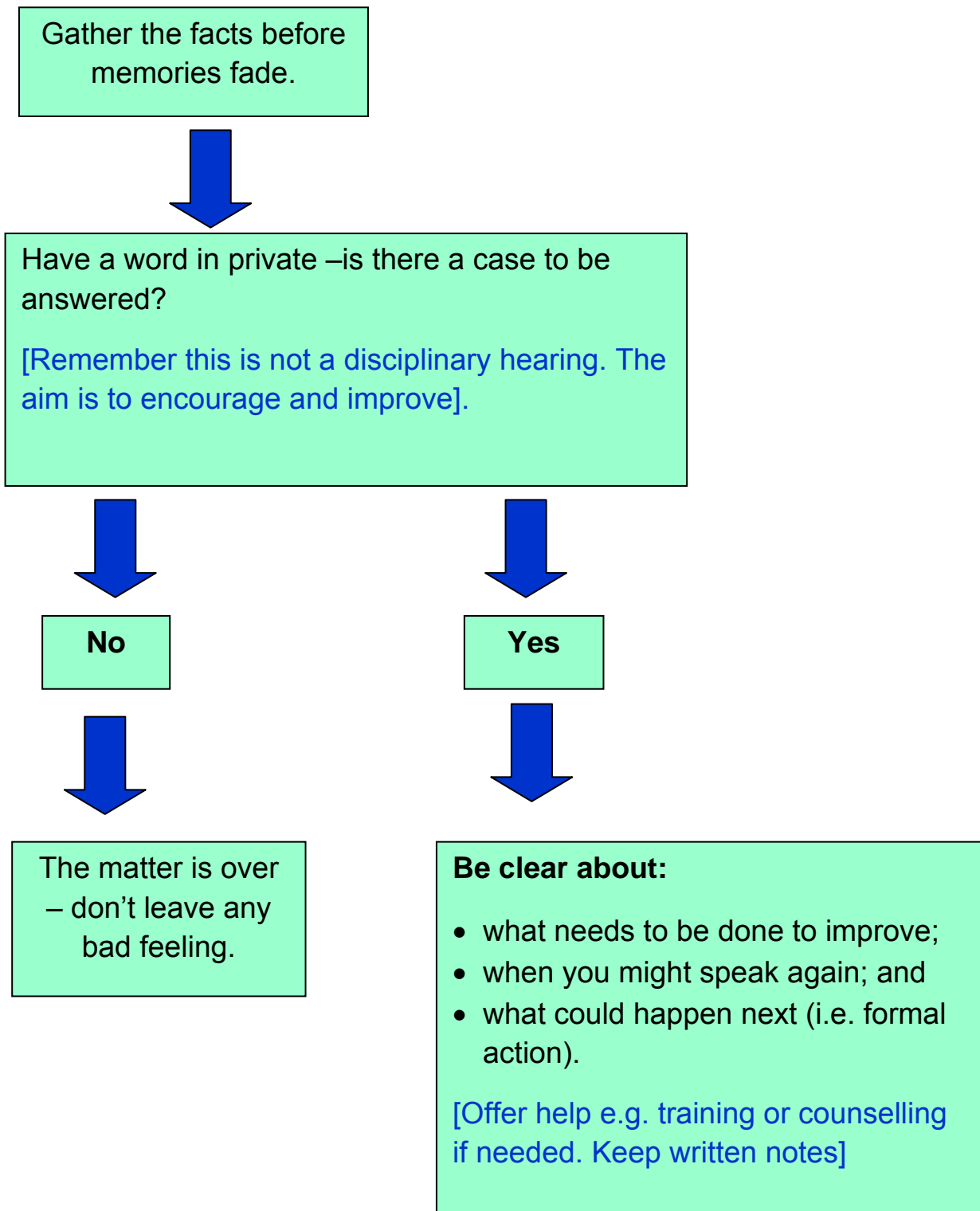
Flowchart 5: Disciplinary appeals

Management guidance - Disciplinary appeals

Flowchart 6: The statutory dismissal and disciplinary procedure

Management guidance - The statutory dismissal and disciplinary procedure

Flowchart 1: Informal action
(See paragraphs 13 - 14 of the Code)



Management guidance - Informal action

What is informal action?

In many cases, the right word by the right manager at the right time and in the right way may be all that is needed. This will often be a more satisfactory means 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. 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. Constructive criticism may 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 as a performance plan;
- 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 adjourned or halted so that arrangements can be made to deal with the matter under the formal disciplinary procedure;
- Keep brief notes of any agreed informal action for reference purposes;
- Review the employee's progress over specific periods.

Flowchart 2 - The disciplinary meeting (See Code paragraphs 15 to 21)

Carry out a thorough investigation before any meeting



Before the meeting

Tell the employee *in writing*:

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



At the meeting:

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



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'**)

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/allegation in writing, the procedure to be followed, and that he or she should attend 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 4 on page 97**);
- 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. Good practice suggests that 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, it may be possible to get a written statement from him or her;
- Allow the employee to call use witness statements which have been admitted before the meeting;
- If there are any understanding or language difficulties, consider providing an interpreter or facilitator (perhaps a friend of the employee or a colleague); and
- 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, for example, a note taker;
- 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; and
- 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) have seen any statements made by witnesses; and
- Remember that the point of the meeting is to confirm 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. State 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 and present evidence;
- 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 employee's behalf;
- Listen carefully and be prepared to wait in silence for an answer as this can encourage the employee to give more information; and
- 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. (see paragraph 37 of the Code).

General questioning and discussion:

- Adjourn the meeting if it becomes apparent that further investigation is needed or if the employee or his/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 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; and

- 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.

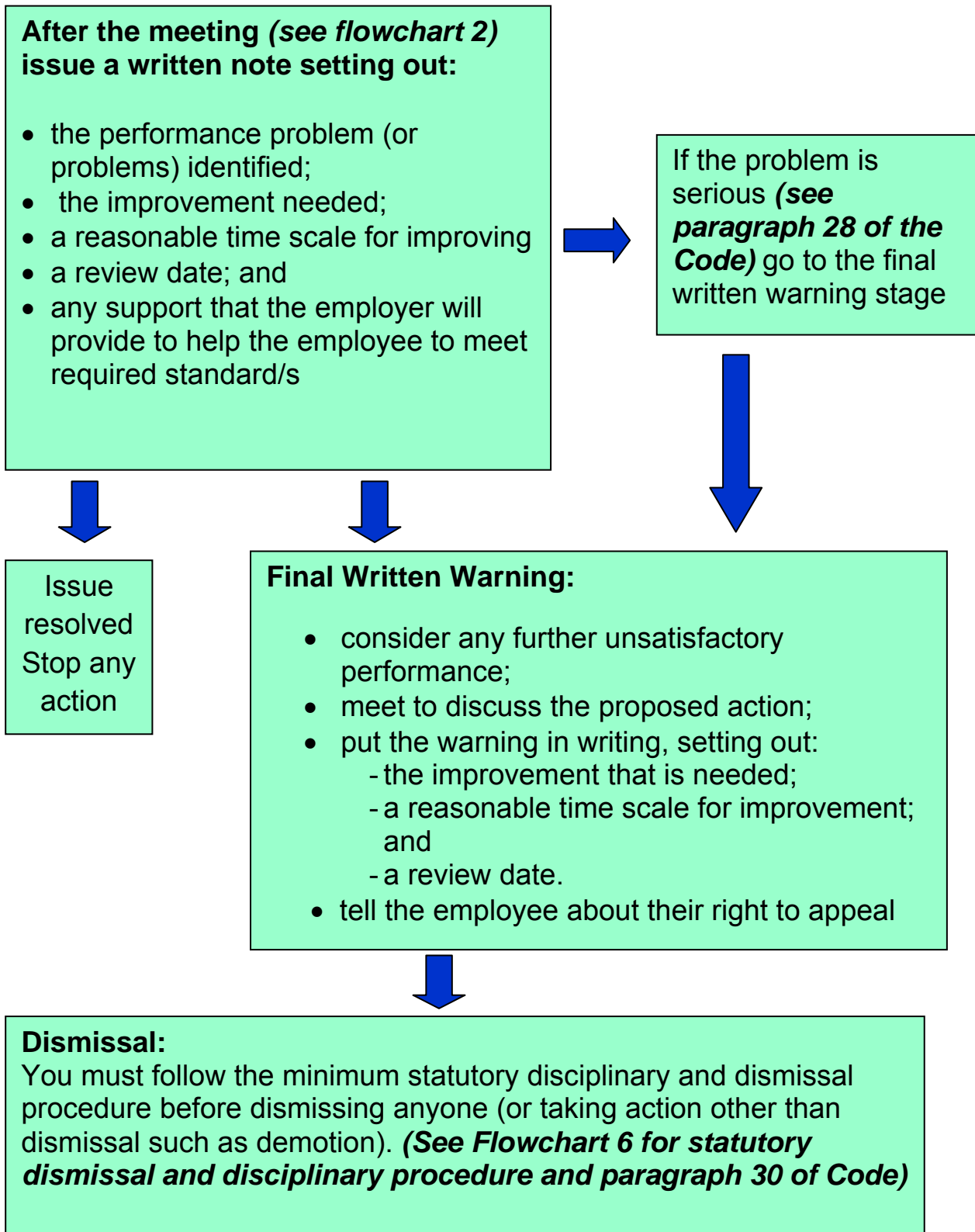
Pre-decision adjournment:

- 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 for checking 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, or if further investigation is required.

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, adjourn for a short period or 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. Although it may be distressing it is implied and accepted that there will always be some anxiety and stress with disciplinary matters. Clearly, during the meeting, people may ‘let off steam’. This can be helpful in finding out what has actually happened. However, abusive language or conduct should not be accepted.

Flowchart 3 - Taking disciplinary action – Unsatisfactory performance
(See paragraphs 22 to 23 of the Code)



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. Effective 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 all employees, especially 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; and
- If the employee is promoted within the organisation, explain what will happen if they fail to achieve the standards in the new job including, 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 by an informal chat, 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 grounds of sex, pregnancy and maternity leave, marital status, gender reassignment, religious belief (or, similar philosophical belief), political opinion, age, race (inc. colour, nationality, ethnic or national origins) (**see note 2 on page 97**). 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 responsibility, for example, carelessness 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 train employees in new skills.

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 initial findings of unsatisfactory performance, unless you have given them warnings and a chance to improve, with extra training if necessary; and
- If the main cause of the unsatisfactory performance is a significant change to the nature of the job, employers may find that the issue is one of redundancy rather than capability (**see note 5 on page 97**).

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 may result from these circumstances.

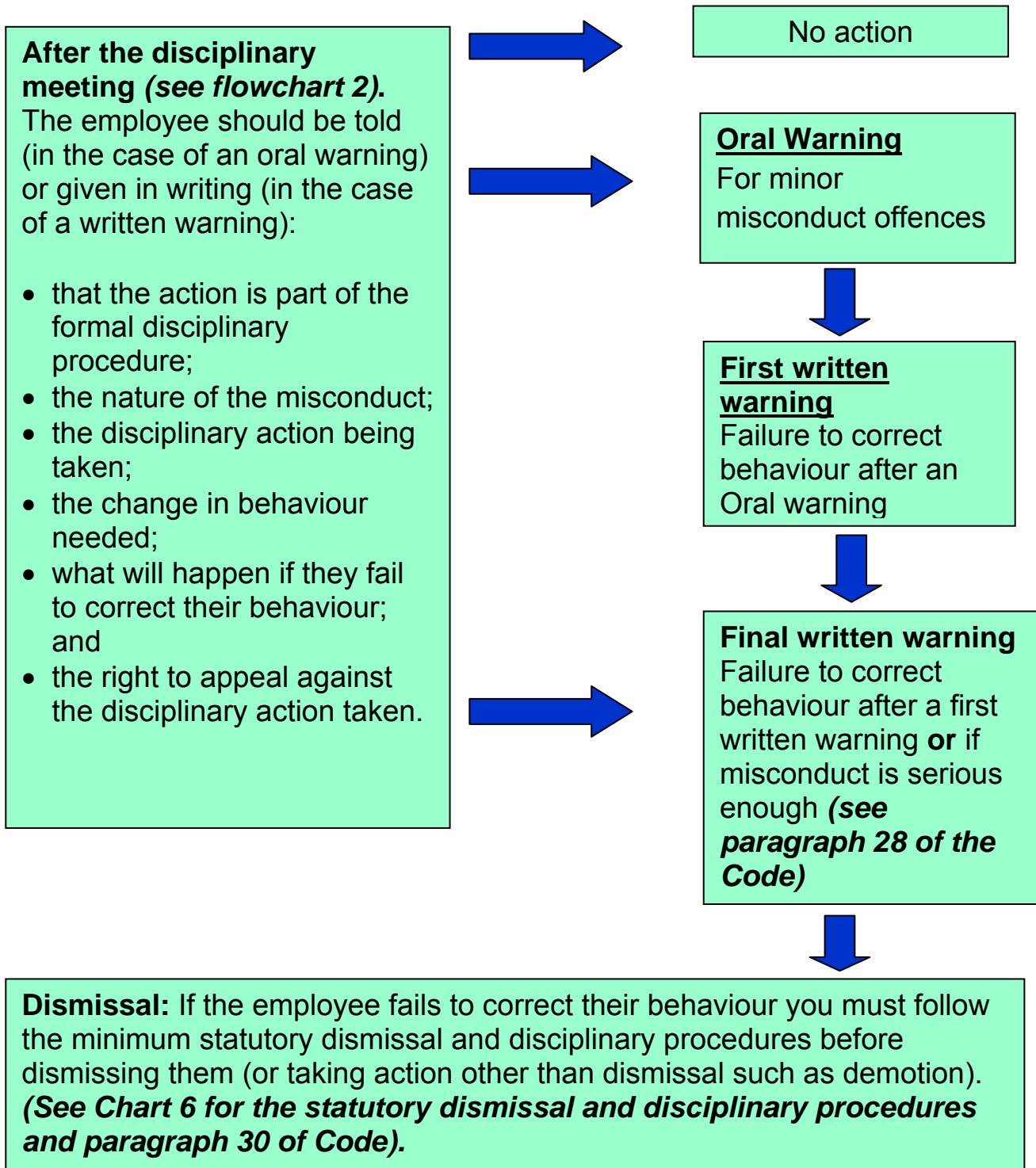
Dismissal

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.

Flowchart 4 -Taking disciplinary action – misconduct

Different rules apply to cases of alleged 'gross misconduct'. (See paragraphs 38 - 39 of the Code).



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 disciplinary policy, procedure or rules of the organisation say what the likely penalty will be as a result of the particular misconduct;
- Has the penalty been consistently applied in the same or similar cases in the past?
- The employee's existing disciplinary record, general work record, work experience and position;
- Any special circumstances which might make it appropriate to set a less severe penalty;
- Whether the proposed penalty is proportionate 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, including disability, 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.

Formal warnings

1. Oral warning

In cases of misconduct, you should give the employee an oral warning setting out the nature of the misconduct and by when 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 oral 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 due investigation and 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. A final written warning should normally apply for a specific period, for example 12 months, and contain a statement that further misconduct may lead to dismissal.

4. Dismissal or other action

If the employee has received a final written warning, further related misconduct or unsatisfactory performance may lead to dismissal. Or, the contract may allow for a different disciplinary penalty. Such a penalty may include disciplinary transfer, disciplinary suspension without pay (**see note 6 on page 97**), 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 sanction should be confirmed in writing, with the procedure and time limits for appeal set out clearly.

There may be times when, depending on the seriousness of the misconduct 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 and procedurally correct.

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 in the relevant notice period. This should be stated in the statement of main terms and conditions of employment as a pay in lieu of notice (PILON) clause.

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 7 on page 98**).

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 without 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 exhaustive.

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. 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 specific nature of the business or other circumstances (see also paragraphs 38 - 39 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 dismissal procedure (see Annex B of the Code) and sample document on page 69 of this guide.**

How should the employee be informed 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, as must 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. This applies no matter how long she has worked for the organisation (**see note 8 on page 98**).

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 accurate 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.

The Data Protection Act (1998) covers the way manual and computer records are kept. The Act 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 page 94**).

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 who has a genuine fear, for example, of physical reprisal.

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 live 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 should be disregarded for future disciplinary purposes.

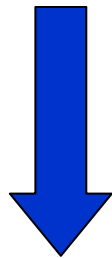
There may be times when an employee's conduct is satisfactory throughout the period the warning is in force, only to change very soon afterwards. If a pattern emerges and there is evidence of abuse, consider the employee's disciplinary record when deciding how long any warning should last. You may also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

Flowchart 5 - Disciplinary appeals

(See paragraphs 47 - 52 of the Code)

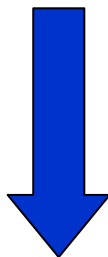
An appeal should:

- 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).
- Allow the employee their right to be accompanied at the appeal 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

Management Guidance - Disciplinary appeals

Problems arising from the application of the disciplinary procedure, for example procedural flaws or unknown facts, may often be dealt with through an appeal. An appeal must never be used to punish the employee for appealing against the original decision. The appeal 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 (***Paragraph 47 of the Code recommends five working days as usually appropriate***);
- make sure appeals can be dealt with quickly, particularly those involving dismissal or action short of dismissal, such as suspension without pay;
- 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 i.e. uphold or overturn the decision;
- 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 businesses

In small businesses, 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 to be held, and has been informed of 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 authority of 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 procedural flaws identified or new evidence that has been introduced, and make sure the employee has the opportunity to comment ;
- Once the relevant issues have been thoroughly explored, summarise the facts and 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), 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.

Flowchart 6 - The statutory dismissal and disciplinary procedure
(See Annex A of the Code for full details and page 71 for a statutorily compliant dismissal procedure)

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.

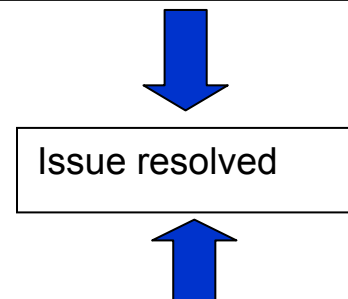
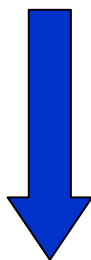
In certain limited cases, the three-step procedure will not apply to employers and employees. (See Annex D of the Code).



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, before the meeting. The employee should be given a reasonable opportunity to consider their response to that information.



Step 3:

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

Management Guidance - The statutory dismissal and disciplinary procedure

What is the three-step procedure?

If an employer is thinking about dismissing an employee – or imposing 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 and what you are contemplating. Set out the basis for the allegation/s, and invite them to a meeting to discuss the matter.

Step 2

Tell the employee why the allegation/s have been made and hold a meeting to discuss them – at which the employee has the right to be accompanied. Following the meeting 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. Following the meeting 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 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 meeting 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 D 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 and present evidence.

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 flaws 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.

Grievances raised during a disciplinary process

Situations where grievances are raised during a disciplinary case are normally in one of the following categories:

If the grievance:

- is **totally unrelated to the disciplinary allegations**. It would normally be safe to progress with the disciplinary matter and deal with the grievance at a later stage;

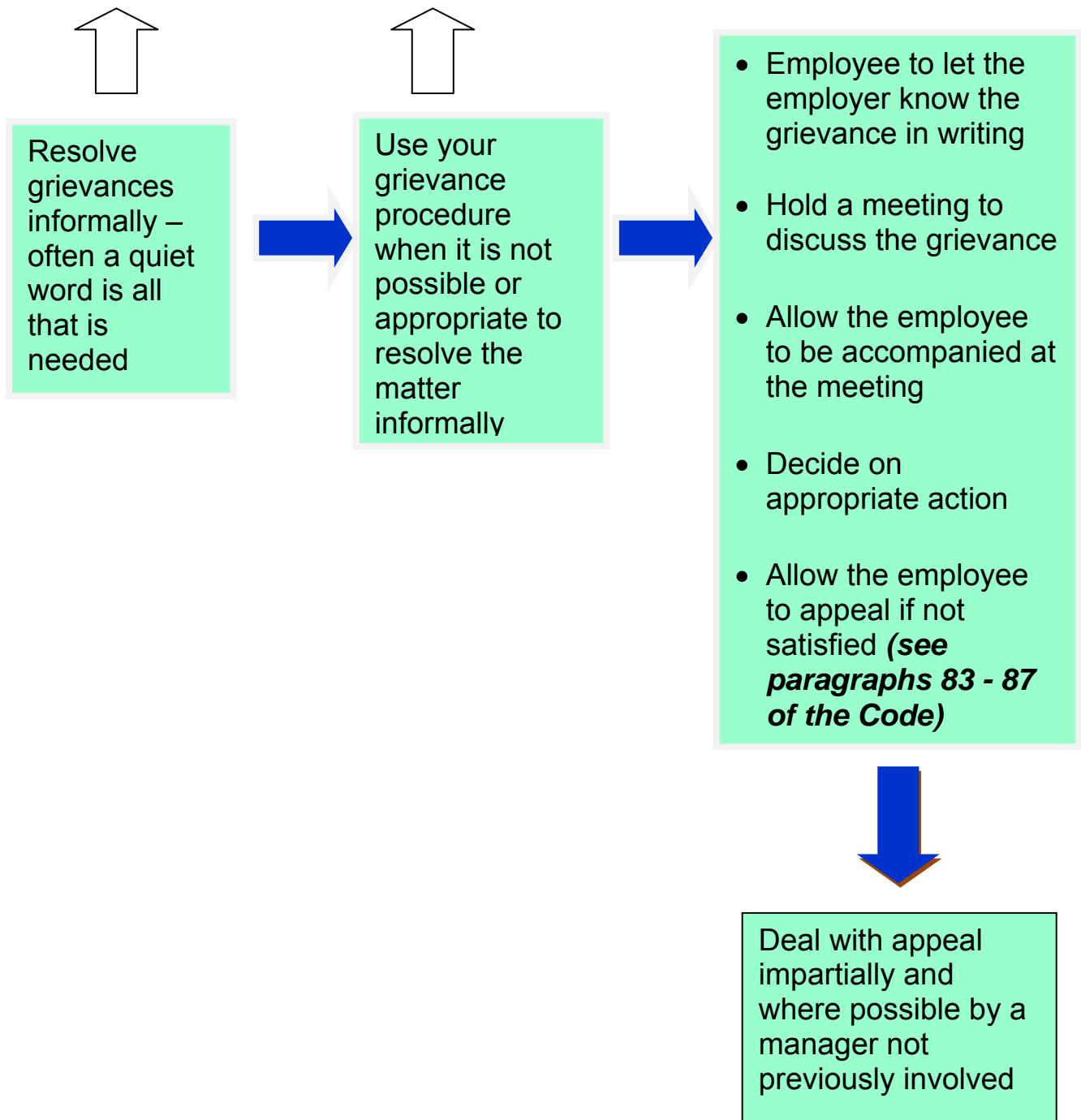
- **essentially constitutes the employee's defence to the disciplinary issues.** It would be desirable to deal with the two things at the same time. For example --- a proposed dismissal for poor performance where the grievance alleges this was due to a manager's bullying. No discussion of the one could sensibly be carried out without a rehearsal of the other; or
- **seeks to criticise or cast doubt on the integrity of the individual who is to make the disciplinary or dismissal decision** then the safest course of action may be to adjourn the disciplinary hearing until the grievance has been resolved or to sidestep the grievance by shifting the making of the proposed disciplinary decision to another manager if the employer's hierarchy gives space to do so.

(See paragraph 37 of the Code).

Part 2 – Handling grievances at work

Handling grievances – an overview

- Always follow the Labour Relations Agency's Code of Practice on disciplinary and grievance procedures
- It may be helpful to consider mediation at any stage - **see page 6.**
- Train managers and employee representatives to handle grievances effectively



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. It is clearly in 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.

Grievances may occur at all levels. The Code and this associated guidance apply equally to management and employees.

Why have a procedure?

A written procedure can help clarify the process and help to ensure that employees are aware of their rights such as to be accompanied at grievance meetings (see Section 3 of the Code on the right to be accompanied). Some organisations use, or may wish to use, external mediators to help resolve grievances (**see page 6**). Where this is the case the procedure should explain where and when mediators may be used.

Employees might raise issues about matters not entirely within the control of the organisation, such as client or customer relationships (for instance where an employee is working on another employer's site). These should be treated in the same way as grievances within the organisation, with the employer/manager investigating as far as possible and taking action if required. The organisation should make it very clear to any third party that grievances are taken seriously and action will be taken to protect their employees.

Employers use grievance procedures to deal **formally** with employees' problems, concerns or complaints. Grievance procedures allow employers to deal with grievances fairly, consistently, promptly and in a structured manner.

Collective grievances

Occasionally a collective grievance may arise where a number of people have the same grievance at the same time. If there is a grievance which applies to more than one person this should be resolved in accordance with the organisation's collective grievance process – where one exists.

Training for dealing with grievances

Management and employee representatives who may be involved in grievance matters should be trained for the task. They should be familiar with the provisions of the grievance procedure, and know how to conduct or accompany at grievance hearings. It is good employment practice to train managers and employee representatives jointly.

Keeping written records

Employers should keep a written record of any grievance cases they deal with. Records should include:

- the nature of the grievance;
- what was decided and actions taken;
- the reason for the actions;
- whether an appeal was lodged;
- the outcome of the appeal.

Records should be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 1998. (**See the basic principles of the Data Protection Act 1998 on page 94**). This Act gives individuals the right to request and have access to certain personal data. The Information Commissioner has produced Codes of Practice covering recruitment and selection, employment records, monitoring at work and information about an employee's health.

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 who has a genuine fear of physical reprisal) the employer might withhold some information.

Sorting out grievances informally

In organisations where managers have an open policy for communication and consultation, problems and concerns are often raised and settled promptly and informally as a matter of course.

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.

In some cases outside help such as an independent mediator can help resolve problems especially those involving working relationships. **(See page 6 for more information).**

Using formal procedures

Letting the employer know the nature of the grievance

Where a grievance is serious or an employee has attempted to raise a problem informally without success, the employee should raise it formally with management **in writing**.

Where employees have difficulty expressing themselves because of language or other difficulties they may like to seek help from trade union or other employee representatives or from colleagues.

When stating their grievance, employees should stick to the facts and avoid language which may be considered insulting or abusive.

Where the grievance is against the line manager the employee may approach another manager or raise the issue with their HR department if there is one. It is helpful if the grievance procedure sets out who the individual should approach in these circumstances.

In small firms run by an owner/manager there will be no alternative manager to raise a grievance with. It is in the interests of such employers to make it clear that they will treat all grievances fairly and objectively even if the grievance is about something they have said or done.

Investigating grievances

A grievance investigation normally takes place after the employee has explained his/her grievance at a grievance meeting. The meeting is normally adjourned so that the investigation can take place. Once the investigation is complete the hearing will be reconvened so that the findings can be discussed with the employee

The investigation is usually conducted by a manager not involved in hearing the grievance, however, in small businesses the investigation may be carried out by the same manager.

The investigating manager should:

- gather all the relevant facts promptly;
- maintain confidentiality as appropriate;
- talk to relevant witnesses;
- establish the exact nature of the grievance and the evidence to substantiate or refute this;
- keep notes of investigation meetings;
- compare statements and notes and attempt to resolve any discrepancies;
- summarise findings in an investigation report;
- present evidence when the grievance hearing is reconvened after the investigation and answer questions as required;
- attend any appeal hearing as a witness, where required.

Holding a grievance meeting

In general terms a grievance meeting deals with any grievance raised by an employee. For the purposes of the legal right to be accompanied, a grievance meeting is defined as a meeting where an employer deals with a complaint about a 'duty owed by them to a worker' (***see paragraph 101 of the Code***).

- Employers should arrange for a **formal meeting** to be held without unreasonable delay after a grievance is received;
- Employers, employees and their companions should make every effort to attend the meeting;
- Employees should be allowed to explain their grievance and how they think it should be resolved;
- Consideration should be given to adjourning the meeting for any further investigation that may be necessary.

Preparing for the meeting

Managers should:

- arrange a meeting, ideally within five working days, in private where there will not be interruptions;
- consider arranging for someone who is not involved in the case to take a note of the meeting and to act as a witness to what was said;
- identify whether similar grievances have been raised before, how they have been resolved, and any follow-up action that has been necessary. This allows consistency of treatment;
- consider arranging for an interpreter where the employee has difficulty speaking English;
- consider whether any reasonable adjustments are necessary for a person who is disabled and/or their companion;
- consider whether to offer independent mediation – **see page 6**.

Conduct of the meeting

Managers should:

- remember that a grievance hearing is not the same as a disciplinary hearing, and is an occasion when discussion and dialogue may lead to an amicable solution;
- make introductions as necessary;
- invite the employee to re-state their grievance and how they would like to see it resolved;

- put care and thought into resolving grievances. They are not normally issues calling for snap decisions, and the employee may have been holding the grievance for a long time. Make allowances for any reasonable 'letting off steam' if the employee is under stress;
- consider adjourning the meeting if it is necessary to investigate any new facts which arise;
- sum up the main points;
- tell the employee when they might reasonably expect a response if one cannot be made at the time, bearing in mind the time limits set out in the organisation's procedure.

Be calm, fair and follow the procedure

In smaller organisations, grievances can sometimes be taken as personal criticism – employers should be careful to hear any grievance in a calm and objective manner, being as fair to the employee as possible in the resolution of the problem.

Following the grievance procedure can make this easier.

Deciding on appropriate action

It is generally good employment practice to adjourn a meeting before a decision is taken about how to deal with an employee's grievance. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised.

In order that the employee fully understands why a particular decision was made set out clearly in writing the reasons for any action to be taken and the employee's right of appeal. Where an employee's grievance is not upheld make sure the reasons are carefully explained

Bear in mind that action taken to resolve a grievance may have an impact on other individuals, who may also feel aggrieved e.g. to carry out investigations, to suspend or take disciplinary action.

If the grievance highlights any issues concerning policies, procedures or conduct (even if not sufficiently serious to merit separate disciplinary procedures) they should be addressed as soon as possible.

Ensure any action taken is monitored and reviewed, as appropriate, so that the issues are dealt with effectively.

Appealing a decision

If an employee informs the employer that they are unhappy with the decision after a grievance meeting, the employer should invite them to another meeting (an appeal meeting). As far as reasonably practicable the appeal should be with a more senior manager than the one who dealt with the original grievance.

In small organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If this is not possible consider whether the owner or, in the case of a charity, the board of trustees, should hear the appeal. Whoever hears the appeal should consider it as impartially as possible.

At the same time as inviting the employee to attend the appeal, the employer should remind the employee of their right to be accompanied at the appeal meeting.

As with the first meeting, the employer should write to the employee with a decision on their grievance as soon as possible. They should also tell the employee if the appeal meeting is the final stage of the grievance procedure.

Large organisations may wish 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.

A sample individual grievance procedure is set out in Appendix 4 on page 73.

An unreasonable failure to follow the Code in relation to grievances in those cases which a tribunal can hear may mean that the tribunal adjusts any award by a percentage of up to, or down by, 50%. Examples of this may be where the employer does not offer a meeting to discuss the grievance or the employee does not invoke an appeal.

Grievances about fellow employees

These can be made easier by following the grievance procedure. An employee may be the cause of grievances among his or her co-employees – perhaps on grounds of 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 fellow employees and propose solutions. This may resolve the grievance. If not the grievance procedure should be followed.

Alternatively, if those involved are willing, an independent mediator may be able to help (**see page 6**). Care needs to be taken that any discussion with someone being complained about does not turn into a meeting at which they would be entitled to be accompanied (**See Section 3 of the Code**).

Part 3 – The right to be accompanied

What is the right to be accompanied?

Workers, not just employees, 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 below.

What is a disciplinary hearing?

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).

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.

Informal discussions, investigation meetings 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?

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).

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.

What is a reasonable request?

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

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.

Some workers may, however, have additional contractual rights to be accompanied or perhaps be represented by persons other than those listed above (for instance a partner, spouse or legal representative).

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example the provision of a support worker or advocate who has knowledge of the disability and its effects.

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.

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 by the employer 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.

Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressed to do so.

Trade unions should ensure that their officials are trained in the roles and responsibilities 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.

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 employment 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

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.

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.

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.

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.

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 written 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.

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 in finding against the employer may order compensation of up to two weeks' pay.

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 an industrial tribunal.

The right to have legal representation at a disciplinary hearing

In disciplinary/dismissal matters where the result could have serious, career ending implications, and where the employer may need to report the employee to a regulatory authority (such as the General Medical Council), which could strike the employee off their record and effectively prevent the employee from practicing their profession, it may be possible for an employee to have legal representation in the disciplinary hearing. At the moment this tends to involve public sector employers as it is only public sector workers who can invoke claims (a breach of Article 6, “the right to a fair hearing”) under the European Convention of Human Rights. This is an area of employment law that is constantly evolving and professional legal advice should be sought in the event that such an issue arises.

Appendix 1

Disciplinary rules for small organisations

As a minimum rules should:

- be simple, clear and in writing;
- be displayed prominently 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);
- indicate examples of the type of conduct which will normally lead to disciplinary action other than dismissal –for instance lateness or unauthorised absence;
- indicate examples of the type of conduct which will normally lead to dismissal without notice – examples may include working dangerously, stealing or fighting – although much 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 2(a), 2(b), 3 and 4 and letters [appendix 5] for use in handling discipline and grievance matters should be tailored to suit the needs of each organisation and the wording must reflect current contractual arrangements. Any errors or omissions cannot be held to be the responsibility of the Agency. It is also important to review and maintain your document to ensure compliance with changes in statutory obligations.

If you need more help, you can contact us by telephone on 028 9032 1442.

Appendix 2 (a)

Disciplinary Rules and Procedures for Misconduct

The aim of this procedure is to give employees the opportunity to improve their conduct or performance.

It identifies who has authority to take disciplinary action. It also outlines the type of offence which would result in disciplinary action being taken, what that action would be and what further action would result if there is no improvement or a recurrence takes place.

Adherence to this procedure will help to ensure that employees are protected against unjustifiable or inconsistent disciplinary action.

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 encouragement with the employee in order to improve an employee's conduct or performance. This informal approach may be used in dealing with problems quickly and confidentially. There will, however be situations where matters are more serious or where this informal approach has been tried but is not working. In these circumstances, the employer will use the formal procedure.

General Principles for the Formal Disciplinary Procedures

1. No disciplinary action shall be taken until there has been a full investigation into any alleged incident.
2. The employee has the right to receive, prior to disciplinary hearings,
 - A written statement of the alleged misconduct, and
 - Particulars on the basis for the allegation
3. The employee has the right to reasonable opportunity, prior to disciplinary hearings, to consider their responses relating to the information provided on the allegation.
4. The employee will be entitled (where reasonably requested) to be accompanied at any disciplinary or appeal hearing by a fellow worker or Trade Union Official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).

5. The employee must take all reasonable steps to attend the disciplinary and appeal hearings.
6. The employer will ensure that the disciplinary rules and procedures are applied fairly and consistently.
7. The employer will ensure that:-
 - All steps under the procedure are taken without unreasonable delay;
 - The timing and location of all hearings are reasonable;
 - Hearings are conducted in a manner which enables employees to explain their cases;
 - Disciplinary appeal hearings will be conducted, as far as is reasonably practicable, by a more senior manager than the manager who took the disciplinary action being appealed. This does not apply where the most senior manager attended the disciplinary hearing at which the decision was taken to take the disciplinary action being appealed.
8. Once warnings have expired they will be erased from the employee's personal record.
9. The employer will keep written records during the disciplinary process. These will include the complaint against the employee, notes taken during the hearings and appeals, findings and actions taken, details of the appeal and any other information relevant to the process.
10. The employer will take all reasonable steps to ensure that confidentiality is maintained throughout the process.
11. All warnings will clearly state the misconduct concerned and clearly indicate what the eventual outcome will be if there is no improvement on the employee's part or a recurrence takes place. Warnings normally relate to the same or similar misconduct and are not generally transferable between different types of misconduct. However, where a number of warnings are called for in respect of different types of misconduct this will entitle management to review the employee's overall suitability for continued employment and if necessary to issue a final general warning irrespective of the offence.
12. **Precautionary Suspension:** In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration will be given to a brief period of suspension with **full** pay

whilst unhindered investigation is conducted. The employer will also consider alternative actions which would be more acceptable to the employee yet serve the same purpose as a suspension e.g. agreeing to 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 will be reviewed to ensure it is not unnecessarily protracted. It will be made clear that any action taken is not considered a disciplinary action.

Types of misconduct

The following list shows examples of the type of rules/offences which the employer has categorised for each level of misconduct. This is not an exhaustive list and management reserves the right to decide how any other misconduct shall be categorised: ***(The following examples are provided for guidance purposes only and should be amended to suit your organisation. You should therefore delete any which are not applicable to your organisation).***

A MINOR MISCONDUCT

- Absenteeism
- Lateness
- Failure to comply with Absence Notification and Certification Procedure
- Careless work and poor effort at work
- Minor breach of safety/hygiene/security rules
- Extended tea and meal breaks
- Failure to maintain a tidy and safe working environment
- Misuse of telephone
- Excessive time away from the job
- Failure to wear any protective clothing/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 Employer's, customer's or other employee's property/ equipment/tools
- Serious neglect of safety/hygiene/security rules
- Smoking in the workplace
- Consuming intoxicants during working hours or bringing intoxicants into the premises without permission
- Entry into any unauthorised areas
- Wilful or excessive wastage of material

- Unsatisfactory attitude to customers
- Use of foul language
- Gambling on the premises
- Insubordination

C GROSS MISCONDUCT

- Theft or fraud
- Physically violent behaviour
- Leaving the premises or site without permission
- Refusal to carry out a reasonable work instruction
- Gross insubordination
- Serious breach of confidence
- Deliberately ignoring safety/hygiene/security rules and thereby endangering one's own or another's physical well-being or safety
- Obscene behaviour
- Intoxication induced by alcohol or drugs
- Disclosing confidential business information to a third party
- Deliberate and serious damage to or gross negligence of Employer's, customer's or other employee's property/equipment/tools
- Gross misuse of the employer's property or name
- Bringing the organisation into disrepute
- Serious cases of unlawful discrimination, harassment or bullying
- Undertaking work in competition with own employer
- Falsification of records
- Unauthorised use of Employer vehicle
- Clocking offences
- Gross misuse of Company's Internet /e mail system, including, deliberately accessing internet sites containing pornographic, offensive or obscene material

NOTE: -

Any allegation of bullying in the workplace or any allegation of discrimination, victimisation or harassment linked to anti-discrimination legislation including gender, gender reassignment, sexual orientation, marriage, civil partnership, disability, race, age, religious beliefs or political opinions will be thoroughly investigated and where appropriate will be dealt with under the disciplinary procedure. The disciplinary response will depend upon the nature and seriousness of the incident; and in extreme cases will result in summary dismissal.

Formal Procedure

When taking formal disciplinary action, the employer will comply with the statutory dismissal and disciplinary procedures by ensuring that the following steps are taken at all stages of the formal disciplinary process.

Step 1 Statement of grounds for action and invitation to meeting

The employer will provide to the employee a written statement of the alleged misconduct which has led to the consideration of formal disciplinary action or dismissal. The employer will invite the employee to a hearing to discuss the issue.

Step 2 Meeting

Prior to the hearing the employer will supply the basis of the allegation. After the meeting the employer will inform the employee of the decision and offer the right to appeal.

Step 3 Appeal

If the employee wishes to appeal he or she will inform the employer within 5 working days. The employer will invite the employee to a further hearing to discuss the appeal. The final decision will be communicated to the employee.

Minor Misconduct

If the alleged breach falls within the minor misconduct category the employer will follow the formal procedure outlined above and the following action will be taken if the employer is satisfied that an offence has occurred:

Stage 1 You will be given a **verbal warning**. It will be recorded and retained on file for a period of 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 retained on file for a period of 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 a repeat of the offence within 12 months will result in dismissal.

Stage 4 If the same or similar offence is repeated within 12 months you will be **dismissed**.

Major Misconduct

If the alleged breach falls within the major misconduct category the employer will follow the formal procedure as outlined on the previous page. If the employer is satisfied that an offence has occurred you will receive a **final written warning** which will contain clear notice that a repeat of the offence within 12 months will result in dismissal.

Gross Misconduct

If the alleged breach falls within the gross misconduct category the employer will follow the formal procedure as outlined on the previous page. If the employer is satisfied that an offence has occurred the employee will be **dismissed** summarily: i.e. without notice and without wages in lieu of notice.

Appeals

Where an employee feels that action taken **at any stage** under this procedure is unjustified or unfair, there shall be the right of appeal. All appeals must be made in writing to **(insert job title)** within 5 working days of being informed of the disciplinary sanction. Appeal hearings will be held within 5 working days of receiving the notification of appeal. The employee has the right to be accompanied at the appeal hearing.

The result of the appeal hearing will be notified to the employee within 5 working days in writing.

Disciplinary Authority

In the event of a breach of employer rules disciplinary hearings and appeals will be conducted by the appropriate disciplinary authority as follows: -

Stage	Disciplinary Hearing	Appeal
Stage 1 (Recorded Verbal)	(insert job title)	(insert job title)
Stage 2 (First written)	(insert job title)	(insert job title)
Stage 3 (Final written)	(insert job title)	(insert job title)
Stage 4 (Dismissal)	(insert job title)	(insert job title)

Appendix 2 (b)

Modified Dismissal And Disciplinary Procedure

There may be **some limited and very exceptional situations** involving alleged acts of gross misconduct where some of the general principles of the Disciplinary Rules and Procedures for Misconduct will not apply. These situations will be where:

- dismissal is without notice and occurs at the time when the employer became aware of the misconduct or immediately thereafter;
- the employer is entitled, in the circumstances, to dismiss by reason of the misconduct without notice and without pay in lieu of notice; and
- the employer believed that it was reasonable, in the circumstances, to dismiss before enquiring into the circumstances in which the misconduct took place.

In these **very exceptional situations** the following **modified procedure** will apply:-

Step 1 Statement of grounds for action

The employer will provide the dismissed employee with:-

- a written statement of the alleged misconduct which led to the dismissal; and
- written particulars on the employer's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct; and
- a written confirmation of his/her right of appeal against the dismissal.

Step 2 Appeal

- If the employee wishes to appeal he/she must inform the employer within 5 working days.
- All appeal requests must be made to **(insert job title)**
- Appeal hearing shall be heard within 5 working days of receipt of the request.

- The employee must take all reasonable steps to attend the hearing.
- The employee has the right to be accompanied at the appeal hearing.
- The result of the appeal hearing shall be notified to the employee within 5 working days of the appeal hearing.

Appendix 3

The procedure below **only** outlines the minimum steps which must be followed to ensure compliance with the statutory dismissal and disciplinary procedure. Following this procedure in a dismissal situation does not guarantee that an Industrial Tribunal will find the dismissal 'fair'. The employer, in addition to these steps should act fairly and reasonably in arriving at any decision to dismiss an employee. This will include for example, consultation with the employee, offering suitable alternative work, where appropriate etc.

Dismissal Procedure – General

This procedure applies where the employer is contemplating dismissing an employee. **It does not apply in cases of misconduct for which there is a separate procedure. It will apply, for example, in cases of dismissal related to capability, redundancy, expiry/non renewal of a fixed term contract.**

General Principles

- The employer will ensure that:-
 - Each step and action under the procedure is taken without unreasonable delay;
 - Timing and locations of hearings are reasonable;
 - Hearings are conducted in a manner that enables an employee to explain his/her case;
 - Dismissal appeal hearings will be conducted as far as reasonably practicable by a more senior manager than the manager who took the action being appealed unless the most senior manager attended the hearing.
- The employee must take all reasonable steps to attend the hearings.
- At dismissal and appeal hearings the employee may, where reasonably requested, be accompanied by a fellow worker from the employer or a trade union official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her

union as having experience of, or as having received training in, acting as a worker's companion).

Procedure

Step 1 Statement of grounds for action and invitation to meeting

The **(insert job title)** will provide the employee with a written statement outlining why their dismissal (or action short of dismissal) is being considered and invite the employee to a hearing to discuss this.

Step 2 Meeting

Prior to the hearing the employee will be provided with any relevant information that the employer will use when considering the dismissal. The employee will be given reasonable opportunity to consider his/her response to that information before any hearing takes place. The hearing will be conducted by **(insert job title)**. No action (other than suspension on full pay) will be taken before the hearing takes place. After the hearing the employee will be informed in writing of the decision and of his/her right of appeal against this if he/she is not satisfied with it.

Step 3 Appeal

If an employee wishes to appeal he/she must inform the employer within 5 working days. Where an appeal is requested, the employee will be invited to an appeal hearing. The Appeal hearing will be conducted by **(insert job title)** and shall be held within 5 working days of the request for an appeal. The employer may implement any decision taken at the first hearing before the appeal hearing is held. After the appeal hearing the employee will be informed in writing of the employer's final decision within 5 working days.

Appendix 4

Individual Grievance Procedure

The aim of this procedure is to give an employee an opportunity to raise a grievance either informally and/or formally and to discuss this with their employer with a view to having it resolved.

General Principles

- Grievances should be raised as soon as possible, to allow issues to be resolved quickly.
- Employees should be given the opportunity to explain their grievance and how they think it should be resolved.
- If the employee's grievance is against their line manager they may raise the matter with another manager in the organisation, where possible.
- The employer will ensure that the timing and location of all meetings under this procedure are reasonable.
- As far as is reasonably practicable, appeal hearings will be conducted by a more senior manager than the manager who took the decision which is being appealed. This does not apply where the most senior manager attended the hearing at which the decision being appealed was taken.
- Employees will be entitled (where reasonably requested) to be accompanied to any grievance or appeal hearing by a fellow worker or Trade Union Official (who may be either a full-time official employed by a union or a lay union official who has been reasonably certified in writing by his/her union as having experience of, or as having received training in, acting as a worker's companion).
- Employers, employees and their companions should take reasonable steps to attend grievance and appeal meetings.
- Records shall be kept detailing the nature of the grievance raised, the employer's response, any action taken, the reasons for it and other information relevant to the process. These records shall be kept confidential.

- There may be circumstances where the employer and employee feel it would be beneficial to involve a third party to help in resolving the issue, through for example a process of mediation. In this instance the grievance procedure may be temporarily set aside.

Mediation is a process whereby an independent third party intervenes in a workplace dispute to assist the parties to reach a satisfactory outcome. The Labour Relations Agency can provide a mediation service to assist the parties. Further information on mediation is available on the Agency's website www.lra.org.uk or by telephoning 028 9032 1442.

Dealing with grievances informally

If an employee has a grievance or complaint to do with their work they should, in the first instance and, wherever possible, discuss it with their line manager. They may be able to agree a solution informally.

Formal grievance

If it is not possible to resolve a grievance informally, or the employee does not feel it is appropriate to do so, they should raise the matter formally in writing to **(insert job title)**. The written grievance should contain details of the nature of the grievance and how they feel it might be resolved.

Grievance hearing

The **(insert job title)** will call the employee to a meeting to discuss their grievance. This will normally be held within 5 working days from receipt of the complaint in writing. Employees should be allowed to explain their grievance and how they think it might be resolved.

The employee will be entitled to be accompanied at this meeting.

Following the meeting the employer (within 5 working days) **(insert job title)** will advise the employee in writing what, if any action they have decided to take along with a full explanation of how the decision was reached. The employee

should be informed that they can appeal (and to whom the appeal should be made) if they feel that the grievance has not been satisfactorily resolved.

Appeal

If the employee wishes to appeal they should let **(insert job title)** know in writing stating their reason(s) for appeal. This should be done within 5 working days of the grievance hearing decision being communicated in writing to them.

Within 5 working days of receipt of the appeal an appeal meeting will take place. The appeal will be conducted by **(insert job title)**. The employee will be entitled to be accompanied at this meeting.

Following the meeting **(insert job title)** will advise the employee in writing of the outcome of the appeal, no later than 5 working days from the appeal being heard. This decision is final.

The appeal will be heard by **(insert job title)**. The employee will be entitled to be accompanied at this meeting.

Following the meeting (insert job title) will advise the employee in writing of the outcome of the appeal, no later than 5 working days from the appeal being heard. This decision is final.

Appendix 5

Sample Letters

Contents

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. Letter of enquiry about the likely cause of an absence, addressed to a worker's general practitioner
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 are required to attend a disciplinary meeting on/...../..... at.....am/pm which is to be held in.....

At this meeting the question of disciplinary action against you, in accordance with the organisation's disciplinary procedure will be considered with regard to:

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

I enclose the following documents*

The possible consequences arising from this meeting might be:

You are entitled, if you wish, to be accompanied by another work colleague or a trade-union representative.

Yours sincerely

Signed Manager.....

Note

*Delete if not applicable

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

Date

Dear.....

You attended a disciplinary hearing onI am writing to inform you of the decision made that you will receive a recorded oral warning*, first written warning* or final written warning* in accordance with the organisation's disciplinary procedure.

This warning will be placed in your personal file but will not be considered for disciplinary purposes aftermonths, provided your conduct improves/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 is required is:
- d. The likely consequence of further misconduct or insufficient improvement is a first written warning** a final written warning** dismissal**

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

Yours sincerely

Signed Manager

Note:*the wording should be amended as appropriate** Delete as appropriate

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 there is no further right of review.

Yours sincerely

Signed Manager.....

Note

*the wording should be amended as appropriate

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 awarning in accordance with 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, namely that the decision to still applies* / the decision to be revoked* [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

Signed Manager.....

Note

*the wording should be amended as appropriate

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 with regard to the following circumstances.

You are invited to attend a disciplinary meeting on.....at....am/pm, which is to be held in where this will be discussed.

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

Yours sincerely

Signed Manager.....

Note

*Action other than a warning such as transfer or demotion (if allowed for in the employee's contract or with the employee's agreement).

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

Date

Dear.....

On you were informed 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

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

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

*no further action would be taken against you.

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

The reasons for your dismissal are.....

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

You have the right to appeal against this decision. Please write to withindays of receiving this disciplinary decision.

Yours sincerely

Signed Manager.....

Note

*the wording should be amended as appropriate

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

Date

Dear.....

You have appealed against your dismissal/disciplinary action* [delete as appropriate] on, which was confirmed to you in writing on.....

Your appeal will be heard byinon.....
at.....

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

The decision of this appeal meeting is final and there is no further right of review.

Yours sincerely

Signed Manager.....

Note

*Action other than a warning such as transfer or demotion (if allowed for in the employee's contract or with the employee's agreement).

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

Date

Dear.....

You appealed against the decision of the disciplinary hearing that you should be dismissed or subject to disciplinary action* [delete as appropriate]

The appeal meeting was held on.....

I am now writing to inform you of the decision taken by.....

[Insert the name of the manager] who conducted the appeal meeting, namely that the decision to still applies/ decision to will be revoked [say if no disciplinary action is being taken or what the new disciplinary action is].

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

Yours sincerely

Signed Manager.....

Note

*Action other than a warning such as transfer or demotion (if allowed for in the employee's contract or with the employee's agreement).

9. Letter of enquiry regarding likely cause of absence addressed to a worker's general practitioner

Date.

Doctor's name.

Address.
.....
.....

PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER IF THERE IS LIKELY TO BE ANY DELAY IN REPLYING

Re.

Name.

Address.
.....
.....

To administer 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 medical report on your patient, who works for our organisation.

His/her work as a.....has the following major features:

- Management responsibility for
- Seated/standing/mobile
- Light/medium/heavy effort required
- Day/shift/night work
- Clerical/secretarial duties
- Group I (private)/Group II (professional) driver
- Other

The absence record for the past year is summarised as:

- Total days lost
- This month
- Previous months

Attached is your patient's permission to enquire. He/she wishes/does not wish to have access to the report under the Part III of the Access to Personal Files and Medical Reports (NI) Order 1991:

What is the likely date of 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 to accommodate the disability?

Is there any underlying medical reason for this attendance record?

Is he/she likely to be able to render regular and efficient service in the future?

Is there any specific recommendation you wish to make about him/her which would help in finding him/her an alternative job, if that is necessary, and if there is an opportunity for redeployment (for instance no climbing ladders, no driving).

I would be grateful for an early reply and enclose a stamped addressed envelope. Please attach your account to the report (following the BMA guidance on fees).

Yours sincerely

Signed Name (BLOCK LETTERS).

Job title

Note

Please amend/delete where necessary

10. Employee raising a grievance under the formal grievance procedure

Date

Dear

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

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

I am requesting a hearing to discuss this matter. I am also entitled in this instance to be accompanied by a work colleague or my trade union representative.

Please reply within 5 days of the date of this letter.

Yours sincerely

Employee

11. Employee's request for an appeal hearing under the formal grievance procedure.

Date

Dear

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

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

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

Please reply within five days from the date of this letter.

Yours sincerely

Employee

Appendix 6

Dealing with absence

This appendix considers how to handle problems of absence and gives guidance about unauthorised short-term and long-term absences, and the failure to return from extended leave. **More extensive advice on attendance management is available in the Agency's advisory guide - 'Advice on managing absence from work' available to download on the Agency website www.lra.org.uk.**

A distinction should be made between absence on grounds of illness or injury and absence for no good reason which may call for disciplinary action. Where disciplinary action is called for, the normal disciplinary procedure should be used.

Where the employee is absent because of illness or injury, the guidance in this section of the booklet should be followed. The organisation should be aware of the requirements of the Disability Discrimination Act 1995 (**See Appendix 7**) when making any decisions that affect someone who may be disabled as defined by the Act.

Records showing lateness and the duration of and reasons for all spells of absence should be kept to help monitor absence levels. These enable management to check levels of absence or lateness so that problems can be spotted and addressed at an early stage (***The Information Commissioner has produced a Code of Practice on employment records. Contact details are on page 94***).

How should frequent and persistent short-term absence be handled?

- unexpected absences should be investigated promptly and the employee asked for an explanation at a return-to-work interview;
- if there are no acceptable reasons then the employer may wish to treat the matter as a conduct issue and deal with it under the disciplinary procedure;
- where there is no medical certificate to support frequent short-term, self-certified, absences then the employee should be asked to see a doctor to establish whether treatment is necessary and whether the underlying reason for the absence is work-related. If no medical support is forthcoming the employer should consider whether to take action under the disciplinary procedure;

- if the absence could be disability related the employer should consider what reasonable adjustments could be made in the workplace to help the employee (this might be something as simple as an adequate, ergonomic chair, or a power-assisted piece of equipment. Reasonable adjustment also means redeployment to a different type of work if necessary;
- if the absence is because of temporary problems relating to dependants, the employee may be entitled to have time off under the provisions of the Employment Rights (Northern Ireland) Order 1996 relating to time off for dependants;
- if the absence is because the employee has difficulty managing both work and home responsibilities then the employer should give serious consideration to more flexible ways of working. Employees who are parents of children aged 16 and under (disabled children under 18) and carers of adults have the right to request flexible working arrangements – including job-sharing, part-time working, flexi-time, working from home/teleworking and school time contracts – and employers must have a good business reason for rejecting any application. In all cases the employee should be told what improvement in attendance is expected and warned of the likely consequences if this does not happen;
- if there is no improvement, the employee's length of service, performance, the likelihood of a change in attendance, the availability of suitable alternative work where appropriate, and the effect of past and future absences on the organisation should all be taken into account in deciding appropriate action.

In order to show both the employee concerned, and other employees, that absence is regarded as a serious matter and may result in dismissal, it is very important that persistent absence is dealt with promptly, firmly and consistently.

An examination of records will identify those employees who are frequently absent and may show an absence pattern.

How should longer-term absence through ill health be handled?

Where absence is due to medically certificated illness, the issue becomes one of capability rather than conduct. Employers need to take a more sympathetic and considerate approach, particularly if the employee is disabled and where reasonable adjustments at the workplace might enable them to return to work.

There are certain steps an employer should take when considering the problem of long-term absence:

- employee and employer should keep in regular contact with each other;
- the employee must be kept fully informed if there is any risk to employment;
- if the employer wishes to contact the employee's doctor, he or she must notify the employee in writing that they
 - (a) intend to make such an application and
 - (b) must secure the employee's consent in writing.

The employer must inform the individual that he or she has:

- the right to withhold consent to the application being made;
 - the right to state that he or she wishes to have access to the report. (Part III of the Access to Personal Files and Medical Reports (Northern Ireland) Order 1991. also gives the individual the right to have access to the medical practitioner's report for up to six months after it was supplied);
 - rights concerning access to the report before (and/or after) it is supplied;
 - the right to withhold consent to the report being supplied to the employer;
 - the right to request amendments to the report.
-
- where the employee states that he or she wishes to have access to the report, the employer must let the GP know this when making the application and at the same time let the employee know that the report has been requested;
 - the letter of enquiry reproduced in **Appendix 6 – Sample letters (see page 85)** and approved by the British Medical Association, may be used. The employee's permission to the enquiry should be attached to the letter;
 - the employee must contact the GP within 21 days of the date of application to make arrangement to see the report. Otherwise the rights under the 1991 Order will be lost;
 - if the employee considers the report to be incorrect or misleading, the employee may make a written request to the GP to make appropriate amendments;

- if the GP refuses, the employee has the right to ask the GP to attach a statement to the report reflecting the employee's view on any matters of disagreement;
- the employee may withhold consent to the report being supplied to the employer;
- on the basis of the GP's report the employer should consider whether alternative work is available;
- the employer is not expected to create a special job for the employee concerned, nor to be a medical expert, but to take action on the basis of the medical evidence;
- where there is a reasonable doubt about the nature of the illness or injury, the employee should be asked if he or she would agree to be examined by a doctor to be appointed by the organisation;
- where an employee refuses to cooperate in providing medical evidence, or to undergo an independent medical examination, the employee should be told in writing that a decision will be taken on the basis of the information available and that it could result in dismissal;
- where the employee is allergic to a product used in the workplace the employer should consider remedial action or a transfer to alternative work where the employee's job can no longer be held open, and no suitable alternative work is available, the employee should be informed of the likelihood of dismissal;
- where dismissal action is taken the employee should be given the period of notice (**see note 6 on page 97**) to which he or she is entitled by statute or contract and informed of any right of appeal.

Where an employee has been on long-term sick absence and there is little likelihood of he or she becoming fit enough to return, it may be argued that the contract of employment has been terminated through 'frustration'. However, the doctrine of frustration should not be relied on since the courts are generally reluctant to apply it where a procedure exists for termination of the contract. It is therefore better for the employer to take dismissal action after following proper procedures.

Specific health problems

Consideration should be given to introducing measures to help employees, regardless of status or seniority, who are suffering from alcohol or drug abuse, or from stress. The aim should be to identify employees affected and encourage them to seek help and treatment.

Employers should consider whether it is appropriate to treat the problem as a medical rather than a disciplinary matter.

There is sometimes workforce pressure to dismiss an employee because of a medical condition, or even threats of industrial action. If such an employee is dismissed, then he or she may be able to claim unfair dismissal before an industrial tribunal, or breach of contract. Also, the Disability Discrimination Act 1995 makes it unlawful for an employer of any size to treat a disabled person less favourably for a reason relating to their disability, without a justifiable reason. Employers are required to make a reasonable adjustment to working conditions or the workplace where that would help to accommodate a particular disabled person.

Appendix 7

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

Data Protection Act 1998

The Data Protection Act gives individuals the right to know what information is held about them. It provides a framework to ensure that personal information is handled properly.

The Act works in two ways. Firstly, it states that anyone who processes personal information must comply with eight principles, which make sure that personal information is:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate and up to date;
- not kept for longer than is necessary;
- processed in line with your rights;
- secure;
- not transferred to other countries without adequate protection.

The second area covered by the Act provides individuals with rights, including the right to find out what personal information is held on computer and most paper records.

Should an individual or organisation feel they're being denied access to personal information they're entitled to, or feel their information has not been handled according to the eight principles, they can contact the Information Commissioner's Office for help. Complaints are usually dealt with informally, but if this isn't possible, enforcement action can be taken.

Full details are available from
The Information Commissioner's Office – Northern Ireland
51 Adelaide Street
Belfast
BT2 8FE

Telephone: 028 9026 9380

Fax: 028 9026 9388

Email: ni@ico.gsi.gov.uk

The website, www.ico.gov.uk provides comprehensive advice including details of the Code of Practice on the Use of Personal Data in Employer/Employee Relationships and other Codes of Practice on recruitment and selection, employment records, monitoring at work and medical information.

Disability Discrimination Act 1995 (DDA)

The DDA gives disabled people rights in employment. 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 or health questionnaire purely on the basis of the disability may be unlawful discrimination.

Discrimination means treating someone less favourably without any justification and the Act requires that employers make reasonable adjustments if that will then remove the reason for the unfavourable treatment. An example of a reasonable adjustment could be the provision of a suitable computer keyboard to an operator who had difficulty through disability in using a conventional keyboard.

In relation to discipline and grievance procedures, employers must clearly ensure 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. This is particularly relevant to the absence handling section of this handbook. 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 made less than substantial by any reasonable adjustment.

The Equality Commission for Northern Ireland (phone 028 9050 0600 and their 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 publication er 13, 'Unfairly dismissed?'
<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er13.htm>
2. You can get more advice and Codes of Practice from the Equality Commission for Northern Ireland (phone 028 9050 0600).
3. 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.
4. 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.
5. 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*'. <http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er3.htm>
6. 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.

7. There is more guidance on employees' rights to notice in the DEL publication er15, '*Rights to notice and reasons for dismissal*'
<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er15.htm>

8. There are more details about employees' rights to receive written reasons for dismissal in the DEL publication er 15 *Rights to notice and reasons for dismissal*'
<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er15.htm>

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