

Acas Code of Practice on Disciplinary & Grievance Procedures

TUC consultation response

Introduction

The TUC is the voice of Britain at work. We represent more than 5.3 million working people in 47 unions across the economy. We support unions to grow and thrive, and we stand up for everyone who works for a living.

The TUC welcomes the opportunity to respond to Acas's consultation on the draft Code of Practice on disciplinary and grievance procedures. We support the overarching objective of improving workplace relations through the earlier resolution of concerns, promoting fair treatment, and reducing the personal and organisational costs associated with unresolved workplace conflict. The recognition in the draft Code that constructive employment relations are fundamental to both worker wellbeing and organisational effectiveness is a positive starting point for this review.

Trade unions, their officials and union workplace representatives have extensive experience of representing members and helping them to resolve workplace disputes. The TUC believes that it is in the interests of all parties to resolve workplace disputes as swiftly as possible before they escalate. Where it is not possible to do this by using workplace procedures, unions will seek to defend their members' interests by supporting meritorious claims to an employment tribunal. Trade unions have considerable experience of representing members at employment tribunals in both individual and multiple cases. The latter may involve small groups of employees or many thousands of workers.

Much of the day-to-day representation of union members is undertaken not by paid union officials, but by workplace representatives who are themselves workers, and colleagues of the workers they represent. These representatives undertake their union role alongside their substantive job and are often the first point of support when a workplace concern arises. They can help members understand procedures, articulate concerns and find solutions with managers before problems escalate, and bring with them a thorough shopfloor understanding of the organisation and feelings of staff across the workforce which helps parties navigate and resolve issues. Paid union officials provide expertise and support to workplace representatives and may become directly involved where cases are particularly serious or complex, but they do not ordinarily substitute for the workplace-level role of union reps. This embedded model of representation is one reason union representatives can make such an important contribution to early and informal dispute resolution through their understanding of the workplace, its practices and relationships, and can help address problems before positions become entrenched.

This experience means we understand just how important it is for workers to have a range of methods of redress, accessed with the support of a union.

In March 2023, Health Education and Improvement Wales (HEIW) developed a programme of work to support NHS Wales organisations improve the delivery of their disciplinary

policies.¹ This example demonstrates the benefits that can come from well-designed approaches to disciplinary and grievance procedures that encourage early, informal resolution. The Health Board had identified a challenge whereby line managers did not feel empowered to take proportionate actions in relation to their staff without informing human resources and going through a formalised process. This led to high levels of undue stress on the workforce due to a growing blame culture that resulted from this approach. Some work was undertaken to understand the harm this causes to the workforce, including management and HR professionals. Members of the workforce were stressed about the original process, and were sometimes suspended for long periods of time, and isolated from their colleagues, for circumstances that should not have warranted such actions and could have been handled appropriately locally. There were growing examples of workers leaving their jobs because of the impact. The new process was developed in social partnership with trade unions. Further steps are being taken towards agreeing the new process as an all-Wales model through the Wales NHS Partnership Forum which includes unions, government and employers. There is also a working group, with trade union involvement, that is tasked with considering whether it can be adapted and applied more widely in the public sector.

This example demonstrates the benefits early resolution can have for workers and employers and the importance of ensuring workers benefit from union representation during early resolution processes. The involvement of a trade union representative in an informal discussion can evidently complement efforts to move away from adversarial or formal processes.

However, the TUC is concerned that the draft Code underplays the reality of workplace power imbalances. Employers control access to work and pay, determine many of the rules and procedures that apply in the workplace, and generally have greater access to information, expertise and organisational resources. Individual workers may have much less knowledge of workplace procedures and their employment rights, and may be understandably concerned about the consequences for their job, income or future treatment at work if they raise concerns or challenge decisions. These inequalities can become particularly acute during disciplinary and grievance processes, where a worker may be required to navigate an unfamiliar procedure while the employer controls the process and may have access to dedicated HR or legal support.

It is against this background that the Code should do more to recognise the positive role that workforce representation can play in successful informal resolution. Workplace representatives can help workers understand what is happening, articulate their concerns clearly and identify possible solutions. As reps are often workers with knowledge of the workplace, its procedures and relationships, reps can also help communication between workers and managers, provide reassurance and ensure that issues are addressed

¹ Health Education & Improvement Wales. (2024). 'Reducing avoidable employee harm by improving the application of the disciplinary policy and process' Available at: <https://heiw.nhs.wales/updates/news/reducing-avoidable-employee-harm-by-improving-the-application-of-the-disciplinary-policy-and-process/>. Accessed 4 September 2026.

constructively before positions become entrenched. Importantly, having rep accompaniment can help to build worker trust and buy-in in the process and outcome, and guard against informal processes slipping towards formal without the worker being notified. The Code should do more to explain that the presence of a trade union representative is not inherently adversarial, and to assure workers who read the Code of the importance and legitimacy of trade union accompaniment.

Experienced representatives help workers understand processes, communicate concerns effectively, engage constructively with management, and reach earlier resolutions. Crucially, they can increase confidence in workplace procedures and improve trust in outcomes. If Acas wishes to encourage the successful informal resolution of concerns, it should explicitly recognise the contribution that representatives can make to achieving that objective. This would both recognise existing good practice, where employers already support and recognise the benefits of accompaniment, and encourage others, who may be reluctant, worried about, or actively obstructive to the possibility of trade union accompaniment.

The Code should also be explicit on the benefits of accompaniment and trade union representation beyond the circumstances where a statutory right exists. The Code should also be explicit that workers have the ability to request accompaniment, and that granting this is good practice, in areas where the statutory right doesn't extend, such as during mediation. Trade union representation remains the most effective way to address the imbalance of power and knowledge in the workplace and facilitate informal resolution of disputes. Analysis of the now discontinued Workplace Employment Relations Survey found that union density was significantly associated with lower rates of disciplinary sanctions and dismissals,² while workplaces providing accompaniment at grievance hearings experienced lower rates of Employment Tribunal applications.³

The value of accompaniment has been highlighted in the reported comments of coroner Anna Crawford following the inquest into the death of Treasury official Chloe Moffat which involved an informal meeting.⁴ The coroner identified concerns arising from the process including the refusal of third-party support. The report reportedly concluded that there was a risk of similar harm occurring in future cases, demonstrating the real need to strengthen references to accompaniment beyond the existing statutory right.

² Antcliff, V. and Saundry R. (2009) 'Accompaniment, Workplace Representation and Disciplinary Outcomes in British Workplaces – Just a Formality?', *British Journal of Industrial Relations*, 47:1, 100-121.

³ Saundry, R. and Antcliff, V. (2006), 'Employee Representation in Grievance and Disciplinary Matters: Making a Difference?', Employment Relations Research Series No. 69. *Department of Trade and Industry*.

⁴ Horton, H. (2026). 'Treasury 'materially contributed' to suicide of personal assistant, coroner finds'. *The Guardian*. Available at: <https://www.theguardian.com/politics/2026/aug/10/treasury-materially-contributed-to-suicide-of-personal-assistant-chloe-moffat-coroner-finds>. Accessed 21 September 2026.

The greater use of informal mechanisms does however bring with it the risk that systemic issues in an organisation remain hidden. To manage this risk, the Code should make it clear that organisations should record the use of informal resolution and the issues that were raised and that it is good practice to regularly review this with recognised trade unions.

More broadly, the TUC urges the government to explore, at the earliest opportunity, how to extend the statutory right to be accompanied to informal meetings.

Question 1 (a) - To what extent do you agree or disagree that the Code should encourage the informal resolution of employer concerns about worker misconduct or unsatisfactory performance?

Agree that the Code should encourage this.

We welcome the greater emphasis placed on informal resolution, provided that such approaches remain genuinely voluntary, are underpinned by principles of fairness and equality, and do not diminish workers' rights to formal procedures, representation, or legal redress where necessary.

Increasingly, there has been a disproportionate reliance on HR-centred approaches to employment disputes. This has coincided with low private sector union representation, meaning that many workers have no trade union support when they have a problem at work, including assistance with resolving an issue informally at an early stage. This can lead to parties adopting entrenched and defensive positions that are not conducive to early resolution. Effective informal resolution can enable employers and workers to identify practical solutions quickly, preserve workplace relationships and avoid unnecessary escalation into formal disciplinary, grievance or litigation processes. It can also create space for constructive dialogue that can sometimes be limited once formal procedures begin.

At the same time, it is important not to overlook the valuable functions that formal processes perform. Formal grievances, for example, provide a mechanism for workers to place concerns on record and ensure that serious issues cannot simply be ignored. Formal procedures can also provide important safeguards, transparency and accountability, particularly where allegations are serious or where there are significant power imbalances between the parties.

In addition, a formal disciplinary or grievance process is often the point at which a worker first seeks support from their trade union. Trade union representatives can play a critical role in helping workers understand procedures, articulate concerns and engage constructively with employers. As Acas seeks to promote greater use of informal resolution, the Code should therefore emphasise the positive contribution that trade union representatives can make at all stages of the process. Workers should be encouraged to seek support and advice at an early stage, including where concerns are being addressed informally, so that the benefits of representation are not lost as employers and workers seek to resolve more issues outside formal procedures. Enabling workers to access representation at this stage can also make informal processes more effective. A worker who

understands the purpose of the process, feels confident to participate and is supported to communicate their perspective is more likely to engage constructively in seeking a resolution. Conversely, where workers are uncertain about the process, do not understand what is expected of them or lack confidence in raising their concerns, there is a greater risk of misunderstandings, disengagement or positions becoming entrenched. This may result in matters escalating unnecessarily into formal procedures which might otherwise have been resolved at an earlier stage. Far from making informal processes more adversarial or formal, trade union representation can help create the conditions in which informal resolution is more likely to succeed.

Significant concerns have also been raised in the education sector that informal mechanisms such as support plans are being used by employers to bring about 'resignation under duress, often accompanied by a settlement, an agreed reference, and a non-disclosure agreement'. Older workers are at a particular risk of such capability procedures, demonstrating often discriminatory practice.⁵ Informal processes must not be used as a vehicle to bypass the procedural safeguards associated with formal disciplinary or capability processes. This further highlights the importance of the right of accompaniment in informal processes to counteract the risk of undue pressure, ensure workers are properly supported and put processes in place to manage the boundary between informal and formal processes effectively.

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

Agree that the draft Code takes the right approach.

The TUC agrees that paragraphs 16 to 23 generally take the right overall approach by encouraging employers to address concerns about conduct or performance informally where appropriate. We support the recognition that many issues can be resolved through early conversations, clarification of expectations, training, support, reasonable adjustments and other non-disciplinary interventions. This reflects the principle that concerns should, wherever possible, be addressed at an early stage before they escalate into formal disputes.

However, we believe the drafting could be strengthened in several important respects.

First, the Code should acknowledge the inherent imbalance of power in the employment relationship. Workers may be unfamiliar with workplace procedures, unaware of their rights, or reluctant to challenge managers and raise concerns about how a process is being conducted. As a result, some workers may not feel confident to participate in informal discussions. This is particularly the case where those discussions

⁵ Dunwood, S. & Smart, N. (2025). 'Silenced By Support: the misuse of support plans and capability procedures in UK schools'. Available at: <https://silencedbysupport5.wordpress.com/>. Accessed 16 September 2026.

may not have clear processes or safeguards but could nevertheless lead to formal disciplinary action.

For this reason, the Code should place greater emphasis on the positive role that trade union representatives and companions can play during informal resolution. While paragraph 22 accurately states that there is no statutory right to accompaniment during informal conversations, the Code should also make clear that it is good practice to allow accompaniment, particularly as this could support meaningful participation, improve understanding of the issues being discussed, build confidence in the process, and assist in reaching an effective resolution. Trade union representatives can play a valuable role in helping workers communicate effectively, understand expectations, and engage constructively with management.

Secondly, the Code would benefit from a clearer statement that the objective of addressing employer concerns should be to support improvement wherever possible. Disciplinary procedures should not be viewed primarily as punitive processes. In many cases, concerns about conduct or performance can be addressed through support, training, clearer communication, workplace adjustments or other interventions that enable a worker to meet the required standards. The Code should therefore emphasise that the purpose of early intervention is, wherever practicable, to help workers improve performance or conduct and remain in employment, rather than simply to identify misconduct and progress towards disciplinary sanctions.

Finally, informal meetings should not result in formal disciplinary outcomes. We therefore welcome the statement in paragraph 21 that an informal conversation should never by itself result in a formal disciplinary warning. This is an important safeguard and helps maintain a clear distinction between informal resolution and formal disciplinary action. The Code should also provide clearer guidance on when an employer should conclude that an informal process has not resolved the issue and move to a formal procedure. It is not always clear when an issue should move from an informal discussion into a formal disciplinary or grievance process, what factors should trigger that transition, or what procedural protections should apply at different stages. This risks creating uncertainty for workers and employers alike. In particular, workers may find it difficult to understand when they should seek representation, whether records are being kept, whether information disclosed in an informal process may later be relied upon in a formal procedure, and when rights associated with formal processes become relevant. This points to the importance of the Code actively encouraging employers to proactively offer accompaniment in informal meetings, and outlining the benefits of accompaniment.

Overall, we support the direction of paragraphs 16 to 23, but believe they would be strengthened by greater recognition of workplace power imbalances, a more positive approach to trade union accompaniment, and a clearer emphasis on improvement and support as the primary goals of early intervention.

Question 2(a) - To what extent do you agree or disagree that the Code should encourage the informal resolution of concerns that workers raise with their employers?

Agree that the Code should encourage this.

While we support a greater emphasis on informal resolution, the draft Code should place more emphasis on addressing the inherent power imbalance in employment relationships. Workers do not enter disciplinary and grievance processes on a level-playing field. Indeed, labour law arose because the employment relationship is characterised by an inherent imbalance of power between workers and employers, requiring legal protections and collective voice to secure fair treatment.

Additionally, employers may use disciplinary and grievance meetings as a way to individualise issues at work and treat a systemic and structural issue that requires a collective response as one of interpersonal conflict. Trade union representation is even more crucial to counteract such approaches, and ensure that an individual meeting (whether informal or formal) remains tethered to workers' collective rights, through their trade union.

As such, the Code should place frequent and strong emphasis on encouraging trade union accompaniment. Accompaniment does more than provide reassurance and support to workers who may otherwise feel vulnerable or intimidated. It helps to rebalance the relationship between the parties, enabling workers to participate more effectively in discussions and ensuring that concerns can be raised and addressed on a more equal footing. This, in turn, increases the likelihood that the underlying issue is properly understood and resolved, helping to facilitate genuine and lasting resolution rather than simply bringing a process to a close. It would also help normalise the right to accompaniment among employers who may be unfamiliar with trade union involvement. Far from being adversarial, representation can facilitate meaningful, constructive dialogue and increase the likelihood of concerns being resolved at an early stage.

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

The Code should place stronger and more consistent emphasis on encouraging trade union accompaniment and support. In particular, wherever the Code notes that there is no statutory right to accompaniment, it should also explain the benefits that accompaniment can bring in supporting meaningful participation, improving understanding of workplace procedures, addressing power imbalances and helping parties reach effective resolution. This would not only support better outcomes for workers and employers, but would also help normalise and legitimise the role of trade union representatives in workplaces where employers may be unfamiliar with, or resistant to, trade union involvement.

We welcome the language in paragraph 23 of the Code that informal resolution is not appropriate in every case. Informal approaches should never become a barrier to workers accessing formal processes where these are necessary. Informal approaches should complement, rather than entirely replace, robust procedural protections and the right to be represented.

Overall, we support encouraging informal resolution, but believe the draft Code must do more to recognise workplace power imbalances and the positive role that trade union representatives can play in ensuring that informal processes are fair, effective and accessible to all workers.

Language & tone of the Code

Question 3 - Does the language used in the draft Code strike the right tone to encourage the early resolution of employer and worker concerns?

Yes.

The TUC welcomes the efforts made to make the Code more accessible and less legalistic. Using clearer and less adversarial language can help workers and employers engage with workplace processes more confidently and may encourage concerns to be raised and addressed at an earlier stage. Accessible language is particularly important given that many workers will engage with the Code directly without access to legal advice. The Code should be written in a way that enables workers and managers alike to understand their rights, responsibilities and options for resolving concerns.

The inclusion of a short glossary of key terms could further support this objective. This could provide straightforward explanations of commonly used concepts and processes, helping workers and employers navigate the Code while ensuring that efforts to simplify language do not result in ambiguity or uncertainty about the meaning of important terms.

However, the move towards clearer language should not inadvertently make it harder for workers to recognise when they may need support or representation. In practice, many workers first turn to their trade union once a matter becomes formalised and its potential consequences are clear, for example when they are invited to a disciplinary meeting or are considering raising a formal grievance. If the Code relies too heavily on informal language, some workers may be less likely to recognise the seriousness of the situation or realise that they would benefit from seeking advice, support and representation at an early stage.

For that reason, the Code should place greater emphasis throughout on the availability and benefits of trade union support. References to trade union representatives should be more prominent and more consistently framed as a positive means of facilitating early resolution. Trade union representatives often help workers understand processes, articulate concerns effectively, identify solutions and engage constructively with employers. Their involvement

can increase confidence in workplace procedures and make informal resolution more likely to succeed.

We therefore support the overall tone of the draft Code, but believe the importance and benefits of representation should be highlighted more clearly. This would help ensure that the move towards more accessible and informal language does not unintentionally prevent workers from seeking support at an early stage or create uncertainty about when trade union involvement may be appropriate.

Question 4 - Should the current title of the Code be retained?

Yes – the existing title of the Code should be retained.

Most workplaces have policies which explicitly use the terms 'disciplinary' and 'grievance'. Workers and employers who are seeking information or support are therefore likely to look for guidance using these terms. Retaining the existing title would make it easier for workers, managers, trade union representatives and employers to identify the Code as the relevant source of guidance and understand its relationship to existing workplace procedures. If there is a decision to change the title, it should still retain the terms 'disciplinary' and 'grievance' in the title for this reason.

If, notwithstanding the TUC's preference, there is a decision to change the title, the terms 'disciplinary' and 'grievance' should still feature prominently in the title or subtitle so that the Code remains readily identifiable and searchable. This is particularly important given that employers are unlikely to immediately change the terminology used across existing workplace policies and supporting materials.

While the draft Code appropriately seeks to adopt clearer and less adversarial language throughout its substantive provisions, changing the title risks creating unnecessary confusion. Workers may be less likely to recognise that a Code with a different title applies to disciplinary and grievance situations, particularly where workplace policies continue to use those established terms. This could reduce accessibility rather than improve it.

The TUC therefore believes that, on balance, the benefits of retaining a familiar and widely recognised title outweigh any advantages of adopting new terminology. The objective of encouraging early resolution and more constructive workplace dialogue can be achieved through the language and content of the Code itself, without changing the title. Retaining the existing title promotes consistency between the Code and the policies and procedures that workers are most likely to encounter in practice.

Principles of fairness

Question 5 - Do the principles in paragraphs 7 to 9 of the draft Code set out reasonable expectations for all users of the Code?

No.

We welcome the revised principles in paragraphs 7 to 9 and the expectation that employers and workers should seek to resolve concerns early and avoid unnecessary escalation.

However, it is important that the principles section addresses the unequal nature of the employment relationship. Paragraph 8 should contain an obligation on employers to inform workers of their right to trade union accompaniment and facilitate trade union accompaniment. The Code should not place the burden entirely on workers to request support. It is therefore important that employers proactively inform workers of accompaniment options and consider how meaningful participation can be facilitated throughout the process. As recognised by Acas, for informal meetings “it’s a good idea to allow the person to be accompanied. That can make it easier for them to talk about the issue.”⁶ Paragraphs 7 to 9 should encourage accompaniment even where the statutory right does not apply.

Fundamentally, many workers will feel unable to raise an issue informally, due to the power imbalance in a workplace. Therefore, to achieve the aim of the updated Code to increase informal resolution, it is important to centre the importance of trade union representation. This is an opportunity to emphasise that bringing a trade union representative into the process, at whatever stage, can give workers more confidence to raise concerns informally, and can also make informal approaches more likely to be effective.

The 2015 Code identifies six principles for dealing with a disciplinary or grievance meeting in a fair way. Within this list at paragraph 4, the Code states: *Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.* We strongly believe that this language should be incorporated into the new Code’s principles, and that an additional obligation to inform the worker of the option, benefits and importance of accompaniment should be added.

Reasonable adaptations to the principles and steps in the Code

Question 6 - Does paragraph 3 of the draft Code get the balance right in recognising that employment tribunals will take the size and resources of an employer into account and that it may sometimes not be practicable for all employers to take all of the steps set out in the Code?

No.

The TUC does not believe paragraph 3 strikes the right balance.

⁶ Acas. (2026). ‘Handling bullying and discrimination: Approaching a complaint.’ Available at: <https://www.acas.org.uk/handling-a-bullying-discrimination-complaint>. Accessed 4 September 2026.

We recognise that employment tribunals can take account of the size and resources of an employer when considering whether actions were reasonable in the circumstances. However, the current drafting risks giving the impression that smaller employers are exempt from the Code. Workers employed in small businesses should not enjoy fewer protections than those employed by larger organisations. The Code should make clear that there is no general exemption based on employer size and that the core principles of fairness apply equally to all employers, regardless of their resources.

We therefore recommend amending paragraph 3 to clarify that, while tribunals may take account of size and resources when assessing how an employer implemented the Code, all employers are expected to follow its core principles and take steps to the fullest possible extent to comply with its provisions.

The Code should therefore place greater emphasis on the universality of principles rather than flexibility of application. That would provide clearer guidance to employers while ensuring that workers do not receive a reduced standard of procedural fairness simply because of the size of their employer.

Question 7 - Does paragraph 4 of the draft Code get the balance right in stating that where other legal requirements need to be applied alongside the Code, the Code should always be followed to the extent that is reasonably possible?

No.

The TUC does not believe paragraph 4 currently strikes the right balance.

We recognise that employers may, in some circumstances, need to comply with other legal or regulatory obligations *alongside* the Code. It is therefore sensible for the Code to acknowledge that disciplinary and grievance procedures do not operate in isolation and that there may be situations where additional legal requirements are relevant.

However, the current drafting risks creating the impression that employers can depart from the Code *whenever* another legal or professional obligation applies. The reference to 'other legal requirements' is far too broad and could be interpreted as giving employers significant discretion to limit procedural safeguards that would otherwise be expected under the Code.

The Code should make clear that there is no general exemption from its provisions because other legal requirements apply. Rather, employers should be expected to make every effort to comply with both the Code and any other relevant obligations. Where there is a genuine conflict, employers should be required to follow the Code to the fullest extent possible and to provide clear reasons for any departure.

We therefore recommend strengthening the wording so that it emphasises that the principles of fairness, transparency and meaningful participation contained within the Code remain applicable even where additional legal requirements arise. The focus should be on ensuring that workers continue to benefit from procedural safeguards to the fullest extent possible.

Avoiding unlawful discrimination

Question 8 - Is the Code clear about the need to avoid unlawful discrimination when resolving concerns at work?

Yes.

The TUC has adopted the social model of disability. The social model of disability focuses on the ways in which society is organised, and the social and institutional barriers which restrict disabled people's opportunities. As such, we believe that the language should be changed from "workers with a disability" to "disabled workers" to better accommodate the understanding that people are disabled by barriers in society, rather than by their impairment or condition itself.

Question 8 (b) - If you answered 'Yes' to Question 8, do the examples in paragraph 14 of the draft Code provide clear guidance about the kinds of actions employers may need to take to avoid unlawful discrimination when resolving concerns at work?

No.

A fuller list of examples could be provided. The current list of examples does not capture reasonable adjustments that relate more to procedural flexibility. As such, the following list could be incorporated into the provided examples in paragraph 14.

- adjust timescales or deadlines;
- provide additional breaks during meetings;
- allow written submissions instead of requiring verbal participation;
- adapt communication methods;
- alter meeting formats or locations;
- accommodate fluctuating health conditions;
- schedule meetings at times that take account of caring responsibilities, religious observance or disability-related needs.

Question 8 (c) - If you answered 'Yes' to Question 8, should the Code (paragraph 15) encourage workers to discuss with their employer as early as possible any adjustments to processes they wish to request?

Yes.

Whilst we agree that workers should discuss any adjustments to the processes as early as possible, the Code should require that employers proactively and meaningfully highlight the ability to request reasonable adjustments. This should be raised by employers as early as possible in an accessible manner. Paragraph 14 places an onus on the worker to flag their need for a reasonable adjustment. Due to a lack of familiarity with their rights, or to hesitancy or fear resulting from the power imbalance, there is a considerable risk that workers are not able (or do not feel able) to make such a request. This would entrench the risk that workers would not be afforded the protections that they require.

Additionally, paragraph 14 should make clear that allowing a worker to be accompanied by a support worker with knowledge of their disability, or by an interpreter, is not a substitute for the right to accompaniment. These roles perform distinct functions. Support workers and interpreters help facilitate participation and communication, whereas a trade union representative or workplace companion provides advice, support and representation. A worker may reasonably require both forms of assistance. The Code should explicitly clarify that the attendance of an interpreter or translator does not supplant the right to accompaniment.

Training

Question 9 - Should the Code state that it is good practice to provide training and support to help managers, workers and representatives build skills and confidence to resolve concerns early and effectively?

Yes.

It is a central aspect of management that should be expected across all workplaces and has a significant bearing on workers' wellbeing. We welcome the inclusion of language on support for representatives to build the skills and confidence needed to resolve concerns early and effectively.

However, the language should be revised so that it does not imply that training for trade union reps should be provided by the employer. This risks creating pressure for reps to act according to their employers' preferences over the interests of the worker they are accompanying. Instead, paragraph 13 should include reference to providing sufficient facilities time and reasonable paid time off for trade union representatives and workplace companions to be able to properly carry out their role and receive support from their trade union.

Formal disciplinary procedures

Question 10 - Is the draft Code's guidance (paragraphs 24 to 26) on fact-finding helpful to avoid unnecessary escalation of concerns into formal disciplinary procedures?

Yes.

Suspensions during disciplinary investigations are sometimes used as a matter of course rather than as a last resort. Such an approach can have substantial negative consequences for the worker concerned, their colleagues, prove costly for the employer and heighten tension between employer and worker.

The existing Code implies suspension should only be used where necessary but does not provide further guidance on this. The draft Code provides additional guidance on suspensions to make it clear they should only be used in limited circumstances (paragraph 28) and provides good practice guidance on informing a worker that they are to be suspended (paragraph 30).

The language in paragraph 27 should be amended to instead highlight that it is good practice to offer and allow accompaniment at an investigatory meeting. It is important that employers do not stray into deciding on disciplinary action during an investigatory meeting. If a worker admits misconduct or if it is deemed that sufficient evidence has been gathered at any point during an investigatory meeting where the worker is unaccompanied, the employer should adjourn the meeting so that it can be reconvened at a point where the worker can exercise the right to be accompanied. Any sanction imposed by an employer during an investigatory meeting, including a warning that is retained and may lead to subsequent action, will generally mean that the meeting is a disciplinary meeting, activating a worker's right to be accompanied. This demonstrates the importance of encouraging accompaniment to guard against informal processes slipping into formal procedures. Ensuring that workers are accompanied at all stages, whether formal or informal, helps to mitigate against the risk of a worker not being accompanied when the process has veered into a meeting that should entail a statutory right to accompaniment.

Workers who are the subject of a complaint should be provided, at the earliest opportunity and before any investigatory meeting, with the substance of the complaint being considered. Wherever possible this should involve disclosure of the complaint, subject to any necessary redactions or anonymisation to protect other individuals. Employers should avoid relying solely on broad summaries or characterisations of allegations. Workers should also receive information about the process being followed, the possible outcomes, and the fact that the allegations may ultimately be found to be unsubstantiated.

The Code should provide stronger expectations regarding timely progression of disciplinary and grievance procedures. Trade unions frequently see significant delays arising from difficulties appointing investigators or decisionmakers, long gaps between stages, and failures to keep parties informed. Such delays can themselves cause substantial harm, particularly where allegations are ultimately found to be unfounded. The Code should therefore encourage employers to establish and communicate clear timescales, keep progress under regular review, and provide updates where delays cannot be avoided.

The Code should also encourage employers to provide interview notes to interviewees for review and comment before they are relied upon in investigation reports or decision-making. This can help prevent misunderstandings, improve accuracy and increase confidence in the fairness of the process.

The Code should encourage employers to explain at the outset how information will be handled throughout the process. Complainants, subjects of complaints and witnesses should be informed what information will be shared, with whom, and at what stage. This should include clarity regarding access to investigation reports, witness statements, interview notes and outcome letters. Clear expectations about information sharing help build confidence in the process and reduce uncertainty and misunderstanding.

Question 11 (a) - Should the Code (paragraph 28) include guidance on the limited circumstances in which it may be appropriate to suspend a worker?

Yes.

The TUC supports the inclusion of guidance on the limited circumstances in which suspension may be appropriate. Suspension can have a profound impact on a worker's wellbeing, reputation, mental health, and relationships at work, even where it is made clear that it is a neutral act and not disciplinary action. It is therefore important that the Code clearly establishes that suspension should only be used where it is genuinely necessary and proportionate.

We welcome the recognition in paragraph 30 that employers should make clear that suspension is not disciplinary action. This is an important safeguard. However, experience shows that workers often experience suspension as punitive regardless of how it is described, particularly where the process is lengthy, poorly communicated or lacking in support.

Question 11 (b) - If you answered 'Yes' to Question 11, is the guidance at paragraph 28 clear?

No.

Paragraph 28 could be strengthened in several respects. First, employers should be encouraged to consider alternatives to suspension before deciding that it is necessary. Depending on the circumstances, temporary changes to duties, reporting arrangements, working location or access to particular systems may be sufficient to address any risks while avoiding the significant personal and professional consequences of suspension. However, the Code should also recognise that in some cases, particularly those involving allegations of bullying, harassment or other serious interpersonal misconduct, alternatives to suspension may not be appropriate. Employers should consider not only the integrity of the investigation, but also the wellbeing of those involved. Where there is a risk that workers may continue to come into contact with one another, employers should be satisfied that any alternative arrangements adequately protect colleagues from further distress and ensure that a safe working environment is maintained.

Case study: One Prospect member suffered verbal abuse on three occasions from one of his direct reports. The second incident resulted in the member suffering from a serious health emergency shortly afterwards as a result of the stress. Management sought to address the matter informally, inviting the member to a facilitated conversation, though the member declined. It was his desire that he and his colleague work separately in the office, but this was not agreed. After the third incident, the member suffered a further serious health emergency from the stress. Management advised him that steps would be taken to separate the workers during working hours, but that there was no guarantee they would not come across each other in communal areas. Prospect's union officer argued that suspension would be more appropriate in these circumstances, given the prior incidents and the fact that management could not guarantee the member's wellbeing could be protected. The colleague was then suspended as a result. The above case demonstrates that, in cases where a dispute or incident involves two colleagues, it might be necessary to determine what action is in the best interests of the worker who raised the concern in terms of their personal wellbeing and safety in the office.

Secondly, suspension decisions should be confirmed in writing. Workers should be informed of the reasons for the suspension, the basis on which the decision has been made, the expected next steps, any review arrangements, and a point of contact for questions or support. During a fact-finding investigation, workers should also be notified in writing of the allegations being considered and provided with information about the potential consequences should those allegations be substantiated. Additionally, they should be informed of their ability to seek support and representation from a trade union representative or workplace companion.

Thirdly, the Code should encourage regular review of suspension decisions. Suspension should only last for as long as it remains necessary and employers should actively

consider whether the reasons for suspension continue to exist as an investigation progresses.

Finally, the Code should place greater emphasis on welfare support during suspension. Workers who are suspended often experience significant stress, anxiety and isolation. This issue has received growing attention following several high-profile cases in which concerns were raised about the impact that workplace processes can have on worker wellbeing. In particular, the tragic death of civil servant Chloe Moffat recently highlighted the potentially severe effects that workplace investigations and disciplinary processes can have on individuals, and the importance of employers treating such processes with care, sensitivity and appropriate welfare support. Employers should therefore be encouraged to maintain appropriate contact with suspended workers, signpost available wellbeing support and ensure that suspension processes are handled with dignity and compassion.

Question 12 (a) - Should the Code (paragraph 30) include good practice guidance on communicating a decision to suspend a worker?

Yes.

The way in which a suspension decision is communicated is an important aspect of procedural fairness. It is important for employers to convey the decision in writing, and to highlight that the worker may wish to contact a trade union as part of the third bullet point regarding communicating available support.

Question 12 (b) - If you answered 'Yes' to Question 12, is the guidance at paragraph 30 clear?

No.

As noted above, suspension decisions should be confirmed in writing in a timely manner. Workers should receive clear information about the reasons for the suspension, the basis for the decision, the anticipated next steps, arrangements for reviewing the suspension, and a named contact for any questions or support. Where a fact-finding investigation is being undertaken, workers should also be provided with written details of the allegations under consideration and the potential consequences if those allegations are upheld. In addition, employers should inform workers of their right to seek support and representation from a trade union representative or workplace companion throughout the process.

Question 13 - Should the Code prompt employers to consider a range of appropriate next steps after establishing the facts (paragraph 31)?

Yes.

Paragraph 31 should provide more examples of outcomes from evidence gathering, beyond 'to take no further action or to proceed to a formal disciplinary meeting'. For example, this could include an option for 'clarification of guidelines'.

It is important for employers to have an understanding of the range of appropriate next steps. This helps to provide workers with an understanding of the sorts of outcome they could expect, and therefore be able to communicate the potential consequences of that stage of the process to workers. However, the employer should not adopt a rigid approach. Having identified the possible options available, employers should actively seek and consider the views of the worker concerned before deciding on next steps. Workers are often best placed to explain the causes of performance or conduct issues and to identify the forms of support, adjustment or resolution that are most likely to be effective.

This is particularly important where issues may be connected to workplace factors such as excessive workloads, inadequate training, poor management practices, disability, caring responsibilities, or other circumstances that may not be immediately apparent to the employer. A genuine dialogue with the worker can help identify solutions that might otherwise be overlooked.

As highlighted above, the Code should emphasise that the primary approach should be to help workers improve performance or conduct and remain in employment where possible, rather than simply to identify misconduct and progress towards disciplinary sanctions.

Question 14 - Should the Code prompt employers to consider other next steps after a formal disciplinary meeting in addition to considering formal disciplinary action (paragraph 42)?

Yes.

Disciplinary action should not be seen as an automatic outcome of a formal disciplinary meeting. Indeed, information may come out during the meeting that has a bearing on the direction of the process and whether there will be formal disciplinary action. Employers should consider a range of appropriate responses in light of the evidence and representations made during the meeting. We therefore welcome the inclusion of alternative steps, such as a facilitated conversation, may help where misconduct or unsatisfactory performance is linked to a working relationship issue. However, we reiterate the need for employers to proactively highlight the opportunity and right to accompaniment, and facilitate such accompaniment, so that workers can make informed decisions, and be supported before and throughout any next steps.

Question 15 - Should the Code expect employers to state what steps have been taken to resolve the issue informally when notifying a worker of a formal disciplinary meeting (paragraph 32)?

Yes.

The TUC supports the inclusion of this expectation. Requiring employers to state what steps have been taken to resolve the issue informally, or explain why no such steps were taken, promotes transparency, accountability and fairness. It also reinforces the Code's objective of encouraging concerns to be addressed at the earliest appropriate stage before progressing to formal disciplinary procedures. Moreover, as the primary purpose of disciplinary procedures is to provide workers with the opportunity to improve their performance, with the provision of training where appropriate, encouraging employers to document what informal steps they've taken to address issues (where appropriate) would help to centre this purpose within employer responses, over a punitive approach.

Employers typically have the resources, authority and opportunities to explore informal resolution before commencing formal action. It is therefore reasonable to expect employers to demonstrate that they have considered whether an informal approach may have been appropriate and, where it was not pursued, to explain the reasons why. This encourages careful decision-making and helps ensure that formal disciplinary procedures are not used prematurely.

Providing this information also assists workers in understanding how the matter has progressed and why the employer has concluded that a formal disciplinary meeting is necessary. This can improve confidence in the process and help workers prepare an informed response.

Requiring employers to explain what efforts have been made to resolve a matter informally provides accountability and creates an incentive to give genuine consideration to early resolution where appropriate.

We therefore support paragraph 32. Requiring employers to explain what informal steps have been taken, or why none were appropriate, is a proportionate measure that can encourage meaningful engagement with informal resolution while improving transparency and procedural fairness.

Formal grievance procedures

Question 16 - Should the Code state that, if possible, workers should set out in their grievance how they would like their concern to be resolved (paragraph 63)?

Yes.

The TUC supports the inclusion of guidance encouraging workers, where possible, to set out how they would like their concern to be resolved when raising a formal grievance. This approach also reflects the principle that workers should have a meaningful voice in decisions that affect them and an opportunity to shape the resolution of concerns they have raised.

Doing so can help focus attention on resolving the underlying issue rather than a reactive approach to an individual problem. It can encourage constructive dialogue between workers and employers at an early stage, assist employers in understanding the worker's concerns and objectives, and increase the likelihood of reaching a satisfactory resolution. In some cases, a worker may be seeking a practical workplace adjustment, an apology, training, a change to working arrangements, or another specific outcome that can be addressed more effectively where it is identified from the outset.

Importantly, however, this should remain an encouragement rather than a requirement. Workers should not be expected to identify the precise solution to a workplace problem before accessing the grievance procedure. In many cases, workers may not know what an appropriate resolution would be until they have received advice, discussed the issue with a trade union representative, or had an opportunity to hear the employer's response. This may be particularly true in cases involving discrimination, bullying, harassment, victimisation or other complex workplace concerns.

The Code should therefore make clear that workers are encouraged, where possible, to indicate what outcome they are seeking, but that a grievance should not be rejected, delayed or treated less seriously where a worker is unable to do so. The primary requirement should remain that workers provide a clear explanation of their concern.

The TUC also believes that trade union representatives can play an important role in helping workers identify potential resolutions and articulate these clearly within the grievance process. Encouraging workers to think about desired outcomes should therefore go hand in hand with ensuring that workers are aware of, and able to access, appropriate representation and support.

Question 17 - Should the Code expect workers when raising a formal grievance to state what steps have been taken to resolve the issue informally (paragraph 63)?

No.

The TUC does not support an expectation that workers raising a formal grievance should state what steps they have taken to resolve the issue informally.

While informal resolution can often be beneficial and should be encouraged where appropriate, there is a meaningful difference between expecting employers and workers to demonstrate prior informal efforts. Employers generally possess significantly greater authority, resources and power within the employment relationship. By contrast, workers may be constrained by the inherent power imbalance that exists at work, may fear retaliation, or may feel unable to raise concerns informally with the individuals involved.

For example, a worker who has experienced sexual harassment, racist behaviour, bullying by a manager, victimisation following union activity, or detriment after raising health and safety concerns may have entirely legitimate reasons for not attempting informal resolution before submitting a formal grievance. In such circumstances, requiring workers to explain what informal steps they have taken could create an unintended perception that they ought to have attempted informal resolution first, even where doing so would have been inappropriate or put them at undue risk.

Employment law already recognises that workers may face barriers to raising concerns. Protections relating to whistleblowing, victimisation and discrimination exist in part because workers can face adverse treatment when they report issues that employers or managers may prefer not to hear. The Code should therefore avoid creating additional expectations that could discourage workers from escalating concerns where formal intervention is necessary.

We are concerned that including such an expectation could have a chilling effect on grievance raising. Some workers may delay bringing forward serious concerns because they believe they are expected to pursue informal discussions first. Others may feel pressured into conversations that they are uncomfortable having, particularly where allegations involve a manager, a colleague in a position of influence, or conduct of a serious nature.

We therefore recommend removing the expectation in paragraph 63, or amending it to clarify that workers may, if they wish, explain any informal steps taken, but that there is no expectation that concerns must first have been raised or pursued informally before a formal grievance is submitted.

Question 18 - Should the Code state that a short, clear written explanation of a concern will often be enough information to provide when initially raising a formal grievance (paragraph 64)?

Yes.

The TUC agrees that a short, clear written explanation will often be sufficient when initially raising a formal grievance.

However, it is essential that the Code makes equally clear that workers will have further opportunities to provide information, evidence and context as the grievance process progresses. Many workplace concerns are complex and it may not be possible or reasonable for a worker to set out all relevant details at the outset. In some cases, workers may only fully understand the significance of certain facts after receiving advice from a trade union representative or after discussing the matter with their employer during the grievance process.

A short, written explanation should be sufficient to start the process, but workers must retain adequate opportunities to provide further information and evidence as the grievance is considered. This will help ensure that formal grievance procedures remain accessible while continuing to deliver fair and effective outcomes.

Accompaniment at informal and formal meetings

Question 19 - Is the draft Code's guidance on the statutory right of accompaniment sufficiently clear?

No.

The TUC is concerned that the current reference to accompaniment is too limited to where there is a statutory right to accompaniment in formal disciplinary and grievance meetings, with repeated reference to situations where there is no right to accompaniment. In doing so, it does not sufficiently flag the benefits of trade union accompaniment to resolving workplace disputes, or to achieving the general aim of encouraging early and effective resolution of workplace challenges. This risks giving employers the impression that accompaniment is generally unnecessary or undesirable outside situations where the law explicitly requires it. It also fails to recognise the wider benefits that accompaniment can have for supporting informal resolution.

Instead, the Code should make reference to the fact that accompaniment can make an important contribution to achieving the stated aims of the revised Code, and should be facilitated as far as possible. In this sense, employers should always allow accompaniment as the default arrangement, unless there is an active reason not to allow such accompaniment.

The Code should also give greater consideration to the practical factors that determine whether the right to accompaniment can be exercised effectively in practice. In particular, Acas should highlight the importance of facilities time and reasonable paid time off for trade union representatives and workplace companions. The ability of a worker to secure representation is dependent not only on the right or ability to be accompanied, but also on the companion having sufficient time to prepare for

meetings, review relevant documentation, consult with the worker and attend the meeting itself.

The TUC is concerned that an overly narrow focus on the statutory right risks overlooking these practical realities. Effective accompaniment is not achieved simply by permitting a representative to be present in the room. Representatives require reasonable time and facilities to fulfil their role properly, especially in complex disciplinary or grievance cases. This is particularly important where the stated objective of the revised Code is to promote early and effective resolution of workplace concerns. Trade union representatives frequently play a key role in resolving issues before they escalate, helping workers understand procedures, identify solutions, and engage constructively with management.

We therefore encourage Acas to make clear that employers should facilitate accompaniment in practice, including by allowing reasonable time off for companions and representatives to prepare for and attend meetings. Doing so would support the effective exercise of accompaniment rights and contribute to the wider aims of fairness, meaningful participation and early dispute resolution that underpin the revised Code.

There will not always be a clear distinction between informal conversations and investigatory meetings. Trade unions encounter situations where important evidence is discussed, admissions are obtained, or key decisions are effectively shaped during investigatory meetings, despite workers having no statutory right to accompaniment at that stage. Equally, the nature of a meeting may change as the discussion develops, including where information emerges that leads an employer to consider formal action. Workers may therefore find themselves discussing matters with potentially significant consequences without having anticipated the need for support or representation.

This is why consistent access to accompaniment is so important. Ensuring that workers are able to be accompanied across both informal and formal stages provides support where the status or potential consequences of a meeting may not be clear at the outset. The importance and benefits of accompaniment should therefore be highlighted in the Code, and employers should be encouraged to proactively offer the option of accompaniment and facilitate requests to be accompanied.

Question 20 - Should the Code (paragraph 86) include guidance on when it may be reasonable to postpone a formal disciplinary meeting for more than 5 working days where a companion is unavailable?

Yes.

The TUC supports the inclusion of guidance on circumstances in which it may be reasonable to postpone a formal disciplinary meeting for more than five working days where a companion is unavailable.

The statutory right to accompaniment provides an important minimum protection for workers. However, the purpose of accompaniment is not merely to ensure that a representative is physically present at a meeting. Effective accompaniment requires workers to have access to the support, advice and representation of a companion who is able to attend, has sufficient time to prepare, and can participate meaningfully in the process. In some circumstances, strictly adhering to the five working days statutory minimum may undermine these objectives.

We therefore welcome the inclusion of guidance reflecting the principles set out in *Talon Engineering Ltd v Smith*, namely that it may be unreasonable in some cases to refuse a longer postponement where a worker's chosen companion is unavailable. The Code should make clear that employers should consider the specific circumstances of the case rather than treating five working days as a maximum limit. Factors such as annual leave, sickness, caring responsibilities, shift patterns, the complexity of the case, the volume of documentation involved, or the availability of a trade union representative may easily justify a longer postponement.

This is particularly important where dismissal or another serious sanction is a potential outcome. Ensuring that workers have a genuine opportunity to be accompanied by their chosen representative promotes procedural fairness, confidence in the process and better decision-making. A short delay to facilitate effective representation will often be preferable to proceeding in a way that risks unfairness, avoidable disputes or subsequent litigation.

The Code should therefore strengthen its emphasis on the fact that five working days is a statutory minimum entitlement, not a benchmark beyond which postponements will rarely be justified. Employers should be encouraged to adopt a flexible and reasonable approach where a longer postponement would allow effective accompaniment and contribute to a fairer process.

Question 21 - Should the Code (paragraphs 10 and 81) state that it is good practice for employers to consider allowing accompaniment if this is requested where the statutory right does not apply?

Yes.

The TUC strongly agrees that the Code should state that it is good practice for employers to consider allowing accompaniment where this is requested and the statutory right does not apply.

As set out elsewhere in our response, the benefits of accompaniment are not confined to formal disciplinary and grievance meetings. Trade union representatives and other companions can play an important role in helping workers understand procedures, communicate effectively, build confidence in the process and engage constructively

with employers. Their involvement can support the early resolution of concerns and improve trust in workplace procedures.

We therefore welcome the inclusion of wording that recognises accompaniment outside situations where there is a statutory entitlement. In our view, this is particularly important given the draft Code's emphasis on informal resolution. Many workers will feel more able to raise concerns or participate meaningfully in discussions if they have access to support and representation. This can help address the inherent imbalance of power within employment relationships and contribute to fairer and more effective outcomes.

However, paragraphs 10 and 81 should go further. As currently drafted, the wording focuses on employers "considering" requests for accompaniment. While this is preferable to remaining silent on the issue, the Code should place greater emphasis on the benefits that accompaniment can bring and require employers to proactively notify workers of the option to request accompaniment, as well as its benefits.

We therefore recommend that Acas strengthen the accompanying guidance to make clear that allowing accompaniment outside the statutory framework will often be conducive to the effective resolution of concerns. This would be consistent with the wider objectives of the Code and help challenge the misconception that the presence of a trade union representative is inherently adversarial. In practice, representatives frequently play an important role in facilitating constructive dialogue and helping parties reach an early resolution.

The TUC therefore supports the inclusion of the good practice guidance in paragraphs 10 and 81 and encourages Acas to strengthen the accompanying narrative to reflect more fully the positive contribution that accompaniment can make to fair and effective workplace relations.

Mediation and facilitated conversations

Question 22 (a) - Should the Code include guidance on mediation and facilitated conversations (paragraphs 90 to 95)?

Yes.

Mediation and facilitated conversations are commonly used practices, and therefore guidance should be included within the Code to mitigate against poor policy and practice.

Question 22 (b) - If you answered 'Yes' to Question 22, do paragraphs 90 to 95 and the signposts to these throughout the Code provide sufficiently clear guidance on these processes?

No.

The Code would benefit from greater clarity about the circumstances in which mediation is, and is not, appropriate.

First, the Code should make clearer that mediation is not a suitable response to all workplace concerns. While mediation may be effective in resolving relationship breakdowns, communication difficulties and some interpersonal disputes, it will often be inappropriate where there are allegations of discrimination, harassment, victimisation, serious bullying, safeguarding concerns, or serious misconduct, for instance. In such cases, workers may require a formal investigation and adjudication of the issues rather than a facilitated discussion between the parties.

Secondly, participation in mediation must be genuinely voluntary and based on informed consent. Workers should not feel pressured into mediation as an alternative to raising a formal grievance or pursuing other workplace procedures. In practice, workers may feel under pressure to accept mediation proposed by their employer, particularly where they are unfamiliar with the process or unaware of alternative options. The Code should therefore emphasise that individuals should be given sufficient information to make an informed decision about whether mediation is appropriate in their circumstances.

The Code should also make clear that mediation should not become a barrier to or delay the resolution of workplace concerns. While mediation can be a constructive option in appropriate cases, employers should not regard the mere offer of mediation as sufficient to discharge their responsibility to address an issue. Where mediation is declined, proves unsuitable, or does not result in a resolution, employers should take timely steps through alternative approaches, including progressing matters through relevant formal procedures where appropriate. Workers should not be placed in a position where concerns remain unaddressed simply because a proposed mediation process has not proceeded or has been unsuccessful.

The Code should recognise the important role that trade unions can play in this process. Workers should be encouraged to seek advice from their trade union representative before agreeing to mediation or a facilitated conversation. Representatives can help workers understand the implications of participation, assess whether mediation is appropriate, and make an informed choice about how best to proceed.

Mediation should be carried out by external mediators. We are concerned that paragraph 91 places too much emphasis on the use of trained individuals within the organisation. The TUC has concerns about the independence and perceived impartiality of internal mediators, for instance the use of HR staff as mediators, particularly where the dispute involves management decisions or allegations against senior staff. The Code should therefore provide clearer guidance regarding independence, impartiality and the competencies expected of mediators. Where internal mediation arrangements are used, employers should be able to demonstrate that mediators are appropriately trained, independent from the matter in dispute and trusted by the parties involved. However, the Code should make it clear that best practice is the use of mediators from outside the organisation.

Relatedly, mediation schemes should ideally be developed in consultation with recognised trade unions. Union involvement in the design and operation of mediation arrangements can help ensure that workers have confidence in the process and that appropriate safeguards are in place.

Finally, the Code should provide more practical guidance on what mediation and facilitated conversations involve in practice, who may conduct them, and what standards should apply. Given that mediation remains relatively uncommon in many workplaces, greater clarity would help employers and workers understand when it may be a useful option and when formal procedures are likely to be more appropriate.

Employee/worker terminology

Question 23 - Should the Code use the term 'worker' unless the status of 'employee' is specifically intended?

Yes - the Code should say 'worker' unless the status of 'employee' is specifically intended.

We strongly support the draft Code's use of the broader concept of "worker" and agree that the Code should use the term "worker" unless the status of "employee" is specifically intended.

The Code should apply as broadly as possible. Significant numbers of individuals in the labour market work under arrangements that do not clearly fall within employee status, including many limb (b) workers. Given the well-established difficulties workers face in enforcing employment status rights, the Code should avoid language that could inadvertently suggest that its protections and standards apply only to employees. Using the broader concept of 'worker' will help ensure that the principles of fair disciplinary and grievance procedures are understood to apply across the widest possible range of employment relationships.

Clear use of the term "worker" can encourage employers to extend good practice protections to all those who work for them, including those in more insecure or atypical forms of work.

Artificial Intelligence (AI)

Question 24 - Are there issues arising from the use of AI in disciplinary and grievance processes that Acas should address in the Code or associated non-statutory guidance?

Acas should make clear that employers remain responsible for ensuring that decisions are made by appropriately trained individuals and are based on a full and fair consideration of the evidence. AI-generated outputs should not be treated as inherently accurate or objective. Summaries, recommendations or analyses produced using AI systems may contain factual inaccuracies, omit important context or reproduce existing biases. Any use of AI should therefore be subject to meaningful human review and oversight prior to being considered as part of the disciplinary process.

Employers must comply with the General Data Protection Regulation rights to be informed, object, and access information about data that is used in a disciplinary or grievance procedure, whether formal or informal. Information that is disclosed to the worker or their rep or worker companion as part of this process should:

- be readily understandable,
- address how the data collection has affected the worker personally,
- be in writing in a readily accessible format, and
- be free of charge.

Any information collected, including through workplace monitoring technologies, should be disclosed as part of the disciplinary or grievance process, and the 'lawful basis' and 'purpose' that the employer is relying upon for having collected/processed personal information should be disclosed to the worker in a timely manner prior to any meeting.

Unions have reported to the TUC instances of employers questioning the legitimacy of grievances drafted with the assistance of AI tools. We are concerned that such an approach may create unnecessary barriers to workers raising workplace concerns and could have a disproportionate impact on some groups of workers. Many workers use AI tools not to generate substantive content on their behalf, but to help structure their thoughts, improve clarity or communicate concerns more effectively. This may be particularly important for workers with lower levels of confidence in written communication, those with literacy difficulties, and workers who may use such tools to articulate complex concerns in a way that they feel will be understood and taken

seriously. Employers should therefore focus on the substance of the concern being raised, rather than the means by which a worker has chosen to express it. Employers must not adopt policies of blanket refusal for grievances from workers who have used AI tools to assist. The language in paragraph 64 of the Code is helpful to clarify that workers are not expected to prepare lengthy or highly detailed written submissions in order to access workplace procedures, though it should highlight that workers should have further opportunities to provide information, evidence and context as the grievance process progresses.

Contacting you

Question 25 - Do you give your permission for Acas to contact you regarding your response to this consultation?

Yes.