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# Understanding grievances and disciplinarys



TUC 

# Introduction

Whatever job you do, you can run into problems at work. Sometimes these can be sorted out quickly by informal discussions with your manager. However, if the problem is serious an informal chat is unlikely to help you resolve it and either side may wish to make a formal complaint. Whenever a formal process is used to deal with problems at work it is important that you understand and then follow the *Acas Code of Practice for Disciplinary and Grievance Procedures* (this can be found at [www.acas.org.uk](http://www.acas.org.uk)). It helps to know what to expect and what you need to do. This booklet guides you through the complaint procedures, making reference to the Acas code.

A failure to follow the code is not illegal, but if you ignore it or refuse to comply with it, you could lose out by up to 25 per cent in compensation if you make a successful tribunal claim. Equally, if you follow the steps set out in the code and your employer doesn't, a tribunal can increase the compensation paid to you for a successful claim. It makes sense to comply with the code and protect your right to full compensation.

# Having problems at work?

## A complaint against you

This may be because your employer is unhappy about the way you've been working, with the way you behave toward others or because they think you have broken some rules. They might start a formal disciplinary process against you – see below.

## A complaint you want to make

Perhaps you feel your employer or a work colleague is in the wrong, because they have failed to meet their responsibilities toward you or because they have treated you unfairly. You can make a formal complaint using the organisation's grievance procedure.

There will be details of the grievance and disciplinary procedures in your employee handbook but if not, ask for a copy from your personnel manager or human resources department, if you have one.

## Getting advice about a work-related problem

Union reps have lots of experience in resolving workplace disputes so if you are not already a union member you might want to join. It is important that you join before any problem arises as the union may not be able to help if you were not a member when the problem first occurred. If you are not a union member you can get information and advice outside the workplace to help you deal with a problem that has arisen at work. For details on where to get outside advice see page 17 of this leaflet.

# Disciplinary procedures

Disciplinary problems are usually concerns that your employer has about your behaviour at work, the way in which you do your job or about absence from work. Minor problems can be sorted out quickly by informal discussions. For instance, if your manager considers that the standard of your work has fallen, a private and confidential discussion might identify a need for more training or equipment to be provided.

If, having discussed it with you, your employer thinks that your performance hasn't improved they might consider starting a formal disciplinary process.

Larger workplaces typically have their own written rules for dealing with disciplinary problems. Your organisation's disciplinary rules may allow you and your employer to use additional steps to those set out in the Acas code. For example, they may allow for a union rep to accompany members to investigation meetings, sometimes called 'fact-finding' meetings.

Provided that your employer's disciplinary rules do not involve taking fewer steps than those set out in the code then you and your employer should follow the organisation's rules.



# What to expect from your employer

## Investigating the problem

As soon as your employer becomes aware of a problem and is thinking about the possibility of disciplinary action they should conduct a full investigation.

This could mean holding an investigatory meeting with you (and perhaps your co-workers) in order to gather the facts. If, for example, your employer receives a report that you were seen leaving work during your shift without permission, an important first step would be to meet you to establish your whereabouts at the relevant time.

- You should receive advance notice of the meeting and time to prepare.
- An investigatory meeting should, wherever possible, be conducted by a more senior member of staff or management than you, e.g. your line manager or someone from HR, and should not by itself result in any disciplinary action, even if during the meeting you admit the allegations made.
- A formal disciplinary meeting will still be required before your employer decides what action to take.

- Your employer should not decide from the outset that you are guilty of the offence and then set about gathering only evidence to support that view.

## Can I take someone with me to an investigatory meeting?

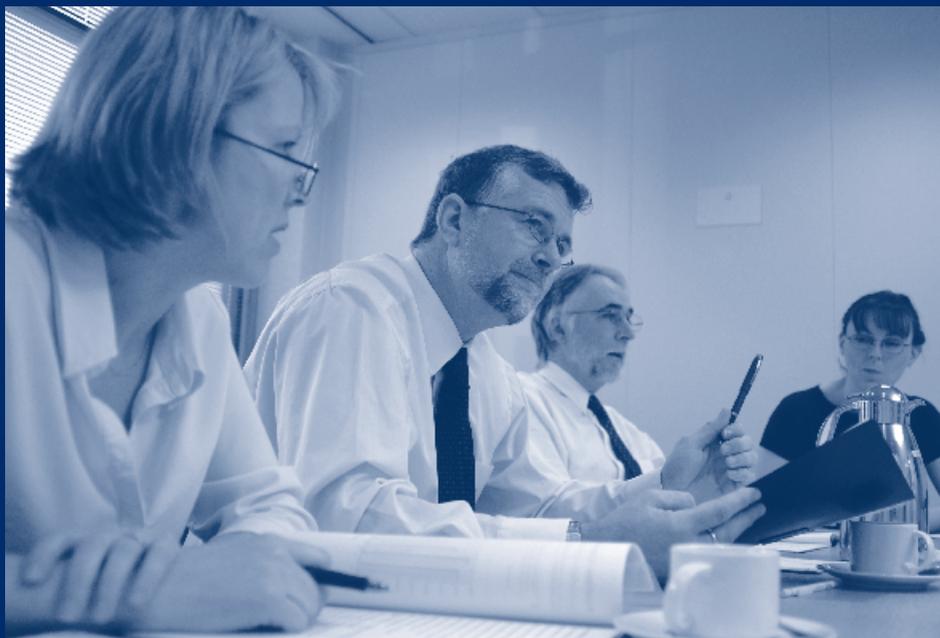
- You do not have a legal right to be accompanied to an investigatory or 'fact-finding' meeting but the union may have reached an agreement with your employer that allows you to take someone with you to any meeting to discuss a problem at work.
- It is also worth checking whether the organisation's own rules allow you to take someone along to an investigation meeting.
- If you think you might have difficulty understanding what is being said during the meeting, perhaps because English is not your first language or because of a medical condition, you might want to tell your employer beforehand so that arrangements can be made to ensure that you can fully participate in the meeting, e.g. through an interpreter.

*There is no harm in seeking your employer's permission to take someone with you into a 'fact-finding' meeting, either your union rep if you have one, or a colleague. You should keep a written note of any request you make and whether it was agreed or refused [see pages 9-11 for more on the right to be accompanied]*

## **What if I am suspended during the investigatory meeting?**

If your employer has good reason to believe that evidence has been or may be tampered with or destroyed, or witnesses put under pressure before a disciplinary meeting is held, they may decide to suspend you on full pay while the investigation is being carried out. If this happens you should inform your union representative, if you have one, without delay.

The Acas code says that "the suspension period should be as brief as possible and kept under review". You should also be told that being suspended with pay does not mean you are assumed to be guilty of the offence.



# Disciplinary action what now?

## You must be informed in writing

If, following a full investigation your employer decides to take disciplinary action, they should tell you this in writing.

Their letter should:

- confirm whether the action relates to misconduct, poor performance or your absence from work (sometimes referred to as 'lack of capability')
- provide enough information so that you can prepare your response and answer questions at a formal meeting with your employer
- tell you if they would do something like dismissing you – for example, when the allegations made involve serious misconduct such as theft from the workplace, their letter might inform you that you could lose your job.

The Acas code says that the letter from your employer should also confirm the following:

- the date, time and venue for the formal meeting
- the procedure to be followed at the meeting
- your right to be accompanied at the meeting.

## How do I prepare for the formal meeting when my employer has all the paperwork?

- Before the meeting your employer has to give you a copy of all the evidence they will refer to in the meeting. This might include letters and copies of reports, witness statements, notes and minutes of meetings and copies of the employer's rules and procedures.
- You should receive the documents well in advance of the meeting with enough time to read and fully understand the documents, to discuss them with your union representative or co-worker and to prepare a written response, if you wish.

## The formal meeting with your employer

Your employer should arrange the meeting without unreasonable delay while allowing reasonable time for you to prepare properly. Unlike for the investigatory meeting, you do have a legal right to be accompanied at this formal meeting by a union rep or workplace companion. See pages 14 – 15 for more about this right.

The Acas code requires that you and your companion “make every effort to attend the meeting”, but if there are good reasons why you cannot attend, e.g. illness or family emergency, you should immediately ask for it to be postponed. If your chosen union rep or companion cannot attend, ask for the meeting to be postponed and offer an alternative time within five days of the original date. During the meeting:

- Your employer should explain the complaint against you and go through the evidence that has been gathered.
- You should be allowed to respond to the complaint; ask questions on anything that arises in the evidence; and state your own case.
- Your employer should allow colleagues who want to give evidence in support of your case to speak and you can ask questions of anyone who gives evidence for your employer.
- If, during the meeting, you come across documents that weren't provided to you before the meeting, either you or your companion can ask for the meeting to be adjourned so that you can consider and respond to them.

## The employer tells you their decision

After the meeting your employer should decide on the appropriate action to take, if any. What is considered appropriate will depend on the nature and severity of the complaint. If, for instance, your employer decides to take action because of your misconduct or poor performance, it would be usual to receive a written warning. If your behaviour involved serious misconduct, such as using violence at work, harassing a co-worker or stealing from your workplace, your employer may decide to dismiss you, either with or without notice.

*To complement the code, Acas has also published a ‘good practice’ guide on grievance and disciplinary procedures, which recommends that an employer adjourn the meeting before any decision is taken about whether to impose a disciplinary penalty (such as a written warning, or dismissal) as this allows time for proper consideration of the evidence and to reflect on the impact of the decision on the individual concerned. The Acas code requires an employer to act fairly and to ensure that any penalty imposed is both appropriate and reasonable.*

Your employer should tell you in writing what they have decided and what action, if any, they will take.

If your employer's decision is that you should be dismissed, they should write to you setting out the reasons for your dismissal, the date on which your employment will end and whether you will receive notice pay. Some types of behaviour, often called “gross misconduct” may be considered

so serious that your employer dismisses you without paying you or requiring you to work through your notice period. This is known as “summary dismissal”. If you are summarily dismissed and you think you ought to have received notice pay you may want to get some advice.

### The opportunity to appeal

If you are unhappy with your employer’s decision or with the action they have taken, you should tell them in writing that you want to appeal and state your reasons.

Your employer must look again at their decision and arrange a meeting to discuss this with you (called the ‘appeal meeting’).

- Appeal meetings should be arranged as soon as possible and take place at an agreed time and place.
- You have a right to be accompanied at an appeal meeting [see pages 14-15 for more on the right to be accompanied].
- Whenever possible, your appeal should be heard by someone more senior than you who has not previously been involved in your case, although this is not always possible in small workplaces.
- After your appeal your employer should tell you their final decision in writing.

### I can’t see my employer changing their mind – should I still appeal?

- Yes. If you believe that your employer’s mind is made up, but remain unhappy with the decision, you should appeal.
- An appeal allows both you and your employer to look at everything again, including any new evidence that may have come to light, and to reconsider whether the penalty imposed is justified.
- Appealing against your employer’s decision can, in itself, be useful to any tribunal claim you may decide to pursue because it demonstrates that you disagreed with your employer’s decision or the action they took.



Monkey Business Images

# Grievance procedures

If you have a problem, concern or complaint at work, you might want to bring it to your employer's attention. This is known as 'raising a grievance'. You might be unhappy:

- with the things you are being asked to do in your job
- because your employer isn't keeping to the terms and conditions of your contract or your statutory rights
- with the way you are being treated by a manager or co-worker, including unlawful treatment such as discrimination or victimisation.

Depending on the nature of your complaint it may be possible to resolve it simply by talking with your manager or with someone else in authority. If you think it can be sorted out informally you should ask for a meeting with your employer to explain your concerns and perhaps suggest a way to resolve the matter.

If you are a union member, talk to your union rep as soon as the issue arises. Explaining your concerns to your union rep can help you decide on the best way to approach your employer. If, for instance, you feel bullied by

your manager, approaching the manager directly may not be appropriate and you may want to take out a formal grievance. Your union rep can advise and assist you with this. If other workers share your complaint, the problem might be more appropriately raised by the union on behalf of everyone affected, i.e. using the employer's collective grievance procedure, if one exists.

If you decide to make a formal complaint it is important that you understand and then follow the rules set out in the *Acas Code of Practice for Disciplinary and Grievance Procedures*. This can be found at **[www.acas.org.uk](http://www.acas.org.uk)**

Larger employers may have their own procedure for dealing with grievances. Provided that your employer's procedure complies with the Acas code, you should follow your employer's procedure. Details can usually be found in the company handbook, HR or personnel manual, on your HR intranet site or in your contract of employment.

Unions often reach agreements with employers on how workplace complaints should be handled so, if you are a union member, ask your union rep for a copy of the agreed procedure.

*Remember that if you ignore or refuse to follow the steps set out in the Acas code, you could lose out on compensation that you would otherwise be entitled to receive for a successful tribunal claim. Equally, if you follow the steps in the code and your employer doesn't, a tribunal can increase the compensation paid to you for a successful claim. The amount could be raised or lowered by up to 25 per cent so it makes sense to comply with the Acas code and protect your right to full compensation.*

## Tell your employer about the problem in writing

Having decided to take out a formal complaint, the next thing to do is to give your employer details of the complaint in writing. Remember to date your letter and keep a copy.

*Your letter should state clearly what your complaint is about. If your complaint concerns the way you've been treated by your employer you will probably be feeling angry and upset but you should avoid using offensive or abusive language in your letter. If you haven't already done so, you might find it helpful to tell your employer any suggestions you have for resolving the complaint.*

## Meet your employer to discuss the problem

Your employer should arrange a meeting at a reasonable time and place to discuss your grievance and inform you of this in writing.

You have a right to ask either your trade union rep or a colleague to go along to the meeting with you. See pages 14-15 for more on the right to be accompanied.

The Acas code requires that you and your companion "make every effort to attend the meeting", but if there are good reasons why you cannot attend the meeting, e.g. illness or family emergency, you should immediately ask for it to be postponed. If your companion cannot attend, ask for the meeting to be postponed and offer an alternative time within five days of the original date.

The meeting should be held in private where there will not be any interruptions. You should be given the opportunity to explain your grievance and any suggestions you may have for resolving it.

Should something arise during the meeting that might need to be investigated, your employer should consider adjourning the meeting. This might be appropriate where, for example, you've complained that your wages are wrong and, on going through the records at the meeting, it appears that your manager made an error when recording your working hours. A separate investigation involving your manager may be required before a decision on your grievance can be made.

## Consider the decision

After the meeting, your employer should write to you, telling you what they have decided to do about your grievance. The letter should inform you of your right to appeal.

## My grievance was not upheld – should I appeal?

Yes. If you don't agree with your employer's decision on your grievance or with the action taken you should appeal. To appeal you simply write a letter to your employer saying that you are appealing against their decision, and explain why you don't agree with it.

*Even where it appears to you that your employer's mind is made up, if you remain unhappy with decision on your grievance, you should appeal. An appeal provides a further opportunity for your employer to revisit your grievance and to take account of any further evidence that may have come to light.*

Your employer should arrange a further meeting to discuss your appeal. The meeting should be conducted by a different person who is more senior than the person who conducted your disciplinary hearing, for example, a company director or group manager. This may not be possible in smaller workplaces where there may be only one owner-manager.

The Acas code requires that appeals be handled “impartially” so whoever deals with your appeal should approach it with an open mind, review the available evidence and take account of any new information before reaching a final decision.

The TUC advises that you exercise your right to be accompanied to the appeal meeting and that you keep a full record of the meeting. Your notes are likely to be useful if the matter cannot be resolved and you later pursue a claim to an employment tribunal.

After the appeal meeting, your employer should write and inform you of their final decision. If you're still not happy with your employer's decision, you may want to think about other ways of sorting out your problems with your employer.



# Other ways to sort out problems at work

## Employment tribunals

If you have exhausted your employer's formal proceedings but remain unhappy with the decision or action taken, you may wish to pursue a claim in an employment tribunal.

Not every unresolved grievance or disciplinary problem will lead to a tribunal claim so it is important that you act quickly to obtain advice. There are very strict time limits for tribunal claims: most claims must be received within three months. In dismissal cases the three months begins from the date your employment ended. For claims about discrimination, wages or holidays, the three months runs from the date when the thing you are complaining about happened. If you are a union member you should contact your union rep or the branch office, without delay. If you are not in a union, you may wish to contact one of the organisations listed on page 17.

## Mediation

Where a grievance or disciplinary problem remains unresolved, your employer might offer to try and settle it through mediation – or perhaps there is a mediation scheme operating in your workplace.

Mediation is a voluntary process that involves an independent person meeting with you and your employer to try and reach an agreement to resolve the problem.

Mediation can be useful when, for instance, the disciplinary procedure has concluded but workplace relationships remain strained, e.g. between you and your manager.

*It is important to remember that mediation should always be voluntary and therefore your employer should not put you under pressure to participate in mediation. For certain disputes, mediation will not be appropriate and is unlikely to work, e.g. when it is used by managers to avoid their responsibilities or when your complaint relates to bullying or harassment that is also discrimination and you want to pursue a tribunal claim.*

If your employer suggests resolving your grievance using mediation you may want to take advice from your union rep, if you have one, or from one of the organisations listed on page 17, before committing yourself. Your rep may be able to reach an agreement to resolve a problem which is acceptable to both you and your employer without resorting to mediation.

Remember that union reps are experienced negotiators who are accustomed to resolving issues in the workplace before they escalate into tribunal claims.



# The right to be accompanied

All workers have the right to be accompanied at certain disciplinary and grievance meetings by either a union rep or official or a fellow worker. The right comes from law made by Parliament and set out in an Act – such rights are known as ‘statutory rights’.

## To what kind of meetings does the right apply?

The statutory right to be accompanied applies to all formal disciplinary and grievance meetings and to all appeal meetings. If your employer has a separate procedure for dealing with absence from work (sometimes called a ‘capability’ procedure) the right to be accompanied applies to formal meetings under that procedure as well.

## I’m not a union member – can I still ask a union rep to accompany me?

One of the reasons for joining a union is that you stand to benefit from the reps’ experience of handling workplace disputes and their support during formal disciplinary or grievance proceedings. As workers themselves, union reps will understand how the organisation operates and are likely to be familiar with what the rules say about how things should be done. Unions have always recognised the importance of reaching agreements with employers on the procedures to be followed should grievance and disciplinary problems arise at work, so it is possible that the procedures that apply in your organisation were agreed between union reps and your employer.

Your union rep may therefore be best placed, not only to advise and assist you to resolve an individual issue, but also to ensure that your employer complies with the agreed procedures when handling your problem. If you are not a union member you can still ask a union rep to accompany you but if you want the security of being able to call on a union rep, whenever a problem at work comes up, you should join the union.

*You should note that your union rep need not agree to accompany you at a meeting and ought not to be put under pressure to do so. If your request is refused you may of course ask someone else to be your companion. It is also important that your employer in no way disadvantages you because you exercised your right to be accompanied; that would be unlawful and could entitle you to pursue a claim in the employment tribunal.*

### **When does the right apply in disciplinary procedures?**

The right to be accompanied will apply to any disciplinary meeting which could result in you being issued with a formal warning or some other disciplinary action being taken, e.g. when your employer is considering demotion or dismissal. The right also applies to disciplinary appeal meetings.

### **When does the right apply in grievance procedures?**

The right applies whenever there is a complaint made about a legal duty owed by the employer to the worker. This means any duty that an employer has toward a worker whether it comes from laws made by Parliament (legislation), or from the worker's contract of employment (contractual duties).

*The right to be accompanied will apply to a meeting with your employer to discuss a complaint about having been paid incorrectly because your employer will be under a duty to pay you in accordance with the terms of your contract of employment (even if you have no written contract). On the other hand, the right to be accompanied is unlikely to apply to a meeting to discuss a complaint that your employer has failed to increase your wages in circumstances where you are entitled only to a salary review.*



## What must I do to take up the right?

If you want to take someone with you to a formal disciplinary or grievance meeting you'll need to exercise your right to be accompanied by first making a "reasonable request". What is considered reasonable will depend on the particular circumstances, for example, a request to be accompanied by a union rep or colleague who is willing to accompany you and who works at the same site is likely to be reasonable. On the other hand a request to be accompanied by someone who is based at a location some distance from where the meeting will be held may not be a reasonable request, particularly where either a union rep or colleague who works alongside you would be available and willing to attend.

## What can my companion do and say during the meeting?

Your companion should be allowed to address the meeting to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during the meeting. However, your companion cannot answer questions on your behalf, or address the meeting if you don't want them to, nor can they stop your employer from explaining their case.

Even if you're a union member and your employer doesn't recognise the union, you have the right to be accompanied by a union representative.

## What if my union rep can't attend the meeting?

If your union rep cannot attend the meeting arranged by your employer, you should inform your employer as soon as possible and ask them to fix another date. It's always a good idea, when notifying your employer, to suggest some alternative dates (within five working days) when both you and your rep can attend.

*You and your companion should make every effort to attend meetings with your employer. Failing, without good reason, to attend a meeting may lead to a decision being taken in your absence and potentially a reduction in the compensation awarded to you for any successful tribunal claim.*

# Useful contacts

- If you are involved in an employment dispute or seek information on employment rights and rules – contact the **Acas Helpline** on **08457 47 47 47**
- To check what the Acas code of practice and the Acas guide say go to **www.acas.org.uk** Breaches of the code will be relevant evidence at a tribunal so an employer's failure to follow it could mean increased compensation for the worker (or a reduction in compensation where the worker fails to follow the code). The guide simply sets out good practice tips for workers and employers about grievance and disciplinary procedures.
- Further information on your rights at work can be found at: **www.worksmart.org.uk**
- The Law Centres Federation **www.lawcentres.org.uk**
- Citizens Advice **www.citizensadvice.org.uk**

# Unions today – your friend at work

If you are a union member, contact your union representative or the local branch office of your union.

For advice about the best union to join based on the job you do, visit **[www.worksmart.org.uk/unionfinder](http://www.worksmart.org.uk/unionfinder)**.

Everyone has the right to join and your employer doesn't need to know that you have. The average cost is about £3 per week for full timers, less for part timers.

## **[www.worksmart.org.uk](http://www.worksmart.org.uk)**

This website provides a range of information about working life and your rights at work – whether you are a union member or not. You can find the full text of this leaflet on the site, plus the whole range of rights materials.



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