



The Bar Council

Bar Council response to the Acas consultation on the updated draft Code of Practice on disciplinary and grievance procedures

23 September 2026

About us

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar

- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Advisory, Conciliation and Arbitration Service (Acas) consultation on the draft Code of Practice on disciplinary and grievance procedures.¹

References

¹ [Consultation on the draft Code of Practice on disciplinary and grievance procedures](#)

Specific Questions

Question 1

To what extent to you agree or disagree that the code should encourage the informal resolution of employer concerns about worker misconduct or unsatisfactory performance?

We agree that the code should encourage informal resolution. It is generally preferable for some situations to be resolved informally within the workplace.

Do paragraphs 16 to 23 of the draft code take the right approach to providing guidance on addressing employers' concerns informally?

We strongly disagree that the draft code takes the right approach.

Paragraph 16 of the draft Code of Practice states: "Concerns about misconduct or unsatisfactory performance are usually best dealt with informally." We consider that "usually" is too strong a word. We consider that "sometimes" is preferable. There are a wide range of conduct related situations that need to be dealt with formally.

Some employees already pursue Employment Tribunal claims on the basis that they should not have been dismissed and that the employer should instead have taken an informal approach. The tribunal will determine such cases in accordance with the applicable law. We are concerned, however, that the word 'usually' may encourage greater reliance on this argument without proper regard being paid to the overall merits of the case.

We also consider that there is a significant risk of satellite litigation or at the very least additional cross examination occurring as the parties debate what is informal, what should be resolved informally, the decision making process as to why it was said not to be informal.

Furthermore, paragraph 23 of the draft code is at risk of creating significant problems. It uses gross misconduct or other serious issues as an example of when informality is not appropriate, but this is too restrictive. What amounts to 'misconduct' will in many cases need to be resolved formally. This is also occurring in the context of paragraph 21 of the draft code requiring that there is an obligation to hold a disciplinary meeting in relation to every single "disciplinary action." We suggest that dealing with misconduct would likely be more problematic as a result of this draft code.

Whilst we have expertise across employment law generally, we are able to provide a particular insight into the use of the Acas code within Employment Tribunal hearings. We consider that the current draft if enacted would lead to significant practical difficulty.

We would urge Acas to significantly rewrite the wording or to consult with key stakeholders further.

Question 2

To what extent do you agree or disagree that the code should encourage the informal resolution of concerns that workers raise with their employers?

We agree that the code should encourage informal resolution. We consider that there are a number of complaints that could be dealt with informally before a grievance is raised.

Do paragraphs 53 to 61 of the draft code take the right approach to providing guidance on raising and handling workers' concerns informally?

We disagree that the draft code takes the right approach.

Paragraph 53 uses the word "usually" and then goes on to say "many" in the following sentence. We consider that "usually" and the wording of paragraph 54 risks creating too high a hurdle for someone who has a genuine concern, for example

in relation to harassment. We note what paragraph 61 states but suggest that the emphasis should be altered.

We also consider that the code should explain more explicitly how a matter may progress from informal to formal resolution and when it may be appropriate for an employee to escalate it. Clear guidance would help both parties and would also reduce the risk of employees misunderstanding the effect of an internal process on statutory time limits. Although an ongoing internal process may be relevant in some circumstances, attempting informal resolution or delaying the presentation of a grievance does not, of itself, stop time running.

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. Some elements of language used can be modified.

Question 4

Should the current title of the code be retained

Yes, the current title of the code should be retained. The existence of the code is known and we consider that the title is accurate.

Question 5

Do the principles in paragraphs 7 to 9 of the draft code set out reasonable expectations for all users of the code?

Yes. We consider that these principles are sensible.

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?

Yes. It is right that this is acknowledged in this way towards the start of the code. It is important context.

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 draft code uses the UK Market Abuse Regulation as a specific example, but the more important point at this stage is that other legislation, most notably the Equality Act 2010, may create legal obligations that affect the operation of the code. We acknowledge that equality is addressed elsewhere, but this opening paragraph deals specifically with other legal sources and potential conflicts. The Equality Act 2010 is particularly significant. For example, the duty to make reasonable adjustments may require an employer to take steps beyond those expressly identified in the code or may affect how a particular provision should be applied.

Question 8

Is the code clear about the need to avoid unlawful discrimination when resolving concerns at work?

Yes. Discrimination law is a wide-ranging and legally complex subject. It is not possible to distill the necessary information into this code. Any attempt to do so would be counterproductive.

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. We consider it would be sensible for the code to signpost to other sources of information. For example, the Equality and Human Rights Commission (EHRC) Code of Practice. The examples given in the consultation are limited. The code cannot cover equality law adequately, but good signposting at this stage could be of practical value.

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. It is generally better for adjustments to be discussed sooner rather than later.

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. Employers should be encouraged to give such training.

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?

No. We consider that paragraph 24 would benefit from minor clarification.

Paragraph 21 of the draft states: "Any decision about formal disciplinary action should only be taken following a formal disciplinary meeting..." Paragraph 24 states: "If it is not possible to resolve a concern informally, the employer may consider it appropriate to hold a formal disciplinary meeting."

We understand the point that the draft is seeking to convey and the underlying purpose of the code. However, paragraph 24 should instead state: 'The employer may consider whether it is appropriate to begin a disciplinary process.' This preserves the possibility that an unsuccessful informal process will not automatically

lead to disciplinary action, while avoiding any conflation between the disciplinary process and the disciplinary meeting.

Question 11

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

Yes. It is appropriate to include suspension within the code.

Is the guidance at paragraph 28 clear?

Yes. We agree that draft paragraph 28 is clear.

Question 12

Should the code (paragraph 30) include good practice guidance on communicating a decision to suspend a worker?

Yes. The need to explain suspension should be included within the code.

Is the guidance at paragraph 30 clear?

Yes. Paragraph 30 is clear.

Question 13

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

Yes. Paragraph 31 of the draft code is right and employers should pause and think about next steps in this way.

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. This should be included within the code.

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)?

No. We consider that this proposal is wrong and will lead to problems. We would urge Acas to reconsider this point.

The Acas code should be restrained in creating positive obligations. Where a requirement is created, whether that requirement has been complied with becomes a bone of contention.

It is not currently a legal principle that an employer must explain to an employee in writing the steps that were taken to resolve something informally. This is creating a new obligation through the Acas code.

We also consider that the proposal risks creating additional procedural hurdles that distract from the principal issues in unfair dismissal law: the reasonableness of the investigation, whether the employer had a reasonable basis for its belief, and whether dismissal fell within the range of reasonable responses. Employers and employees should remain focused on those issues.

When the statutory dispute resolution procedures were created it was said that those obligations meant that employers would improve their processes. That did not happen. Instead, the focus turned to technical points rather than the substance of the allegations against an employee. Whilst this is a code and not mandatory statutory procedures, we consider that this creates additional risk in the same vein.

We also consider that attempted compliance with this part of the code may risk particular problems. If for example an employer says why something is not suitable for informal resolution then depending on what the employer says, it is possible to

imagine new lines of cross-examination in tribunal as to whether the employer has pre-judged the situation.

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. We consider it to be sensible to encourage employees to set out how they want a concern to be resolved. We consider the phrase 'if possible' to be important as it does not create an obligation and a barrier to raising a grievance.

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)?

We don't know. We consider that due to the nature of grievances and the range of matters that an employee may be dissatisfied with, there is a stronger case for some grievances to be dealt with informally than in contrast to disciplinary matters generally. However, we are concerned that this is stated as something that 'should' be set out in a grievance.

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)?

No. We understand the mischief that Acas is seeking to avoid, which is to ensure that long, rambling grievances are not submitted and we understand this. However, we consider that the Acas code should recommend that the employee submit a "A short, clear written concern." We consider the reference to more information later if needed risks supporting or encouraging the known mischief of never-ending

correspondence in which new points, additional attachments are added continuously rather than a structured grievance investigation or process.

We consider that the code would benefit from being amended so as to discourage repeated grievances regarding the same subject matter. The code should expressly provide that an employer is not required to undertake a grievance process regarding a matter that has already been the subject of a previous grievance and there is no material change in circumstances.

Question 19

Is the draft code's guidance on the statutory right of accompaniment sufficiently clear?

We don't know. We consider that the code would benefit from setting out how an employee who has been told not to contact work colleagues by their employer is able to go about arranging a fellow worker to accompany them and to provide the level of assistance that is permitted within the Employment Relations Act 1999.

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. We consider it appropriate for the code to reflect the decision in *Talon Engineering v Smith*.

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?

We don't know. We consider that there is risk with this. We recognise that it may be a reasonable adjustment in some limited circumstances to allow other persons to

accompany an individual. However, a wider possibility, not supported by legislation risks placing too great an onus on an employer to allow an undefined scope of people into such meetings. There is a cohort of people whose attendance at grievance or disciplinary meetings is unlikely to be of assistance.

Question 22

Should the code include guidance on mediation and facilitated conversations (paragraphs 90 to 95)?

Yes. We consider the examples at paragraph 94 to be particularly important.

Question 23

Should the code use the term 'worker' unless the status of 'employee' is specifically intended?

No. We consider the code should use the term employee save where referring to the right to be accompanied.

The use of worker is most problematic in relation to disciplinary matters. The right not to be unfairly dismissed requires the status of employee. The code risks suggesting that all the procedural safeguards in the code are applicable to a worker who does not have a right to complain about a breach of them. We recognise that s.207A TULR(C)A 1992 nonetheless applies to workers, but we consider that it is undesirable for the code to effectively risk the suggestion that the right not to be unfairly dismissed is wider than it is.

Question 24

Are there issues arising from the use of Artificial Intelligence (AI) in disciplinary and grievance processes that Acas should address in the code or associated non-statutory guidance?

We consider that whilst the code cannot comprehensively deal with AI, there are three simple points that could be made.

- AI is a tool. The effective use of AI is dependent on the prompts and the information provided.
- If AI is used, the user retains responsibility for the contents and the accuracy of the document.
- Simply because AI suggests something does not mean that it is a good idea.

Question 25

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

Yes. We would welcome the opportunity to engage further.

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Contact

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