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OUTLINE

This workshop will consider three aspects of the repeal of the Dispute Resolution legislation and the introduction of a general power for Tribunals to increase or reduce compensation by up to 25%.

- 1. The transitional arrangements – what we should be looking for and what steps to take to protect employees.*
- 2. The future impact of the new arrangements, with particular emphasis on the law of unfair dismissal, taking account of the new ACAS Code of Practice.*
- 3. Opportunities for conciliation and mediation – factors in assessing whether to recommend alternatives to a full Tribunal hearings.*

PART 1

Repeal of Statutory Procedures & Transitional Arrangements

With effect from 6 April 2009, statutory dispute resolution legislation and procedures are repealed and the Employment Tribunals are given a general power to increase or reduce compensation by up to 25% in certain cases.

The effect is that from that date, Employment Tribunal claims will not be barred on the ground that the employee failed to lodge a Step 1 grievance and wait 28 days. Nor will a dismissal be automatically unfair because the employer failed to observe the statutory Dismissal and Disputes Procedure.

In short, Tribunal claims will no longer be barred on account of the employee's failure to lodge a grievance. Nor will the employee secure an extension to the time limit for lodging a claim with an Employment Tribunal by raising a written grievance.

Statutory Dismissal and Disciplinary Procedure

*Where the DDP would apply, the test is whether, on or before **5 April 2009**, the employer actually:-*

- *'complied' with an amended Step 1 requirement or held the Step 2 meeting. To avoid an employer dodging the transitional provisions by simply breaching the DDP, partial compliance is caught, so the DDP continues to apply where:*
 - *the employer set out in writing the employee's alleged misconduct or characteristics or circumstances leading them to contemplate dismissing or taking disciplinary action against the employee and sent the statement or a copy of it to the employee (note the requirement to invite an employee to a meeting is suspended for these purposes); or*
 - *where the employee attends a meeting with the employer and the employee is informed that the employer is contemplating dismissing or taking disciplinary action against them - note that the employer is caught even if the disciplinary action takes place before the meeting; or if they have not informed the employee of the basis for the disciplinary charge; or if the employer has not given the employee a reasonable opportunity to consider his/her response to the information; or*
 - *where the modified DDP applies, the employer has given the employee a written statement of the alleged misconduct and the basis for it, even if the employer has not informed him/her of the right of appeal against dismissal.*

OR

- *dismissed the employee;*

OR

- *took relevant disciplinary action i.e. imposed a penalty above an oral/written warning on grounds of conduct or capability e.g. disciplinary suspension on less than full pay, demotion.*

If the employer took any of these actions on or before 5 April 2009, the DDP applies.

Where the old regime continues to apply so does all the rules and quirks of the DDP, including:

- *the **time limit extension** provided the test is met (i.e. at the expiry of the normal time limit, did the employee have reasonable grounds for believing that a dismissal or disciplinary procedure (statutory or otherwise) was being followed in respect of the grounds of complaint?);*
- *the **automatic unfair dismissal** for breach of the DDP; and*
- *the **adjustment** to the compensation of 10-50%*

If 6 April 2009 arrives without the employer having taken any of those actions, the DDP no longer applies and the usual tests of unfairness and Polkey are restored to unfair dismissal cases.

So during the transitional phase, for any case in which the disciplinary penalty was imposed on or after 6 April 2009, it is still important to carefully consider the history of the disciplinary proceedings to work out whether the DDP does, or does not apply.

Statutory Grievance Procedure

In a grievance context the test is whether the thing complained of takes place wholly on or after 6 April 2009. So, identify the date of the employer's act or omission about which the employee complains ("the trigger event").

The statutory grievance procedure will still apply

- *where the trigger event takes place wholly before 6 April 2009. or*
- *where the trigger event starts before, but continues on or after 6 April 2009, **AND** the employee submits a written grievance or lodges an ET1 on or before 4 July 2009 (3 month time limit cases) or 4 October 2009 (statutory redundancy payments claims; equal pay cases).*

Example

Where the action complained of starts in March and continues into May, the employee will have a choice. He/she can trigger the statutory grievance procedure by 4 July (4 October in equal pay and redundancy cases), wait 28 days and then lodge the ET1 within the appropriate time limit (which will be extended by 3 months under the statutory regime).

Alternatively, he/she can wait until after 4 July/October and then lodge an ET1 without having followed the old statutory regime and waited 28 days. This option should be chosen with care, since there will be no automatic extension of the time limit and the employee will in any event have to follow the new Code of Practice to avoid a cut in compensation should their case succeed.

Where the trigger event takes place on or after 6 April 2009, the statutory grievance procedure will not apply. Instead, the new regime will apply which means that the employee loses the:

- *automatic three month extension to limitation upon sending a grievance;*
- *the 10-50% adjustment to compensation;*

- the strait jackets of having to lodge a grievance and waiting 28 days to lodge an ET1

In practice, during the transition period, lodge a written grievance by Friday 3 July or Friday 2 October as appropriate and don't seek to rely on any extensions to the limitation unless you have to.

Danger Areas

It will not be enough to simply look at the date of dismissal to decide which regime applies. Also, it could potentially be several years before we can consign the transitional provisions to the dustbin. The following give some key areas where great care must be used.

'Last Straw' Constructive Dismissal Cases

In some constructive dismissal cases a lot of relatively minor events act cumulatively together to make the breach of contract necessary for a constructive dismissal claim. The final event, the one which prompts resignation, is known as the last straw. Under the SGP the employee must lodge a grievance about these events.

For the purposes of the transitional provisions, it is entirely possible that the 6th April 2009 will sit between some or all of these events and the resignation. If so the employee has a theoretical choice about whether to trigger the SGP by lodging a grievance after 4th July, or whether to wait. However in constructive dismissal cases a delay of that order may be fatal to the claim. It is likely then that the SGP would remain the applicable procedure unless the last straw falls on or around 5th July 2009.

The Validity Trap

When the transitional provisions talk about Step 1 letters under either the DDP or the SGP, they talk about the party having complied with the Step 1 provisions. However, the last 4½ years have been punctuated by claims which were defeated by a non-compliance at Step 1. This is particularly so in relation to grievances (e.g. Edebi v Canary Wharf and the Highland Council cases) and most recently in a DDP context (Zimmer).

Potentially therefore, if a Step 1 letter is not compliant it will not have been issued at all in a manner which triggers the transitional provisions

The Never-Ending Story

Sometimes you come across people who complain of their employer's behaviour stretching back years and who have years worth of grievances and written complaints. They frequently will tell you that it is all part of the same process. These cases need to be carefully considered under the transitional provisions since the trigger event will probably have started before 6th April 2009, may well continue after it, and there is a reasonably high probability that a grievance will have been lodged about those issues before 4th July.

The Long-Term Sick

A final danger area is the long term sick. An employer may start capability proceedings but then suspend them for some reason (e.g. a claim of disability discrimination has been raised) and then a lengthy period of sick leave accrues. If that capability process is renewed after the 4th July 2009 there is still a real risk that the DDP applies still since the original Step 1 letter will predate 6th April. A similar danger emerges where people are redeployed or seconded as an alternative to dismissal.

Where letting the long term sick stay 'on the books' is a cheaper alternative to redundancy this could be a time bomb for the future.

PART 2

The ACAS Code of Practice and the New Regime

Overview

Where the statutory dispute resolution procedures cease to apply, Tribunals look to see whether the jurisdiction is one to which the new regime applies - this is basically the same as the dispute resolution jurisdictions plus grievances about breach of contract.

The Tribunal will look to see whether the new ACAS Code of Practice applies to the case and will ask itself:

- 1. did the employer/employee fail to comply with that Code in relation to that matter and*
- 2. was that failure unreasonable?*

In the event that the Tribunal answers “yes” to both those questions, it,

“...may, if it considers it just and equitable in all the circumstances to do so, increase/reduce any award it makes to the employee by no more than 25%”.

The starting position is no adjustment, and so is unlike the pre-April 2009 regime. Any increase/reduction is made before any adjustment of two or four weeks’ pay for an employer’s failure to issue or update a written statement of particulars – a claim available to many but often overlooked.

False parity

The equality of arms envisaged by the new regime is illusory. We need to remember this when considering arguments about adjustments to compensation. We need to remember at all times that it is the employer who writes the disciplinary rules, and applies them. In doing so they frequently have advice and input from trained professionals such as solicitors and HR specialists at all stages. If that process falls short of industrial ideals an employee faces the dilemma of irking their employer by pointing this out, or taking the risk that everything will work out fine. For them, a failure to adhere to the employer’s procedure (however flawed) risks outright failure.

Also, for many employees this brush with their employer’s disciplinary or grievance procedures is likely to be their first, but for the employer it is merely the latest episode of a familiar continuum. The stakes too are very different: for an employer it is about eliminating undesirable conduct or behaviour, for an employee it represents a threat to their livelihood.

Overview of the ACAS Code of Practice

The Code has been reduced to a mere 8½ pages, of which just 4 pages cover disciplinary proceedings. The one it replaces, heavily criticised as watering down its own predecessor, was 43 pages, and the one before was 24. Despite that the TUC has expressed its approval for the new Code.

The details of fairness are not lost forever as they are contained in a comprehensive 88-page, non-binding, "Guide"¹.

THERE IS NO SUBSTITUTE FOR READING THE CODE AND THE GUIDE IN THEIR ENTIRETY.

Attached to these notes is a disciplinary proceedings checklist for anyone using the Code. This is reproduced at Appendix 6 (page 17) and is not intended to be comprehensive, but ought to be a useful tool for assessing unreasonable conduct. Where identified, unreasonable employer conduct should be listed in an ET1

A Weakened Regime

We are now in the position that there is no automatic unfair dismissal for a breach of procedure but an Employment Tribunal must still take note of breaches of the Code, and a failure to do so is an error of law (s.207 Employment Rights Act 1996). However, there is no obligation upon a tribunal to take note of a breach of any part of the Guide, so where does that leave us?

As far as unfair dismissal is concerned it returns us to s.98 Employment Rights Act 1996. An Employment Tribunal must still take account of all the circumstances of the case, including the employer's resources and the size of the undertaking. The points made on page 7 about false parity can be turned to our advantage using the checklist tool.

Obituary Column

Some useful elements in the previous Code have now been dropped from it. We therefore say goodbye to the following:

Protection lost	Code ref:-	
	Old	New
The application of the Code to the handling of collective grievances brought by a recognized trade union	76	45
The application of the Code to the handling of redundancies	Annex A	1
The application of the Code to the handling of non-renewal of fixed-term contacts	Annex A	1
The timing and location of the disciplinary or grievance hearing to be reasonable (now limited to disciplinary appeals)	14, 75	25, 40

¹ Download the Guide at <http://www.acas.co.uk/CHttpHandler.ashx?id=1043&p=0> and the Code at <http://www.acas.co.uk/CHttpHandler.ashx?id=1047&p=0>

<i>Protection lost</i>	Code ref:-	
	Old	New
<i>The requirement to keep written records (now reduced by a mention in the Foreword to being merely advisable)</i>	8, 22, 46, 49 & 87	-
<i>The need to tell the employee that an investigatory meeting is not a disciplinary meeting</i>	8	-
<i>Suspension to be imposed only after very careful consideration</i>	9, 35	-
<i>The need to consider the impact of the DDA on the disciplinary and grievance processes</i>	10, 75	-
<i>Extra explanatory steps to ensure that disadvantaged employees understand the process</i>	13, 75	-
<i>Disciplinary hearing to be in private and uninterrupted</i>	14	-
<i>The need to take account of the employee's disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and whether the intended disciplinary action is reasonable under the circumstances.</i>	17	-
<i>The expiry of warnings for disciplinary purposes</i>	22, 24	20
<i>Our ability to argue around an employer's deadline for appeal</i>	-	-
<i>Adjusting one's approach where there are capability issues</i>	37-40	-
<i>Making special arrangements for certain workers, e.g. nightshift, or the geographically remote</i>	41	-
<i>An injunction against dismissal purely because an employee is remanded in custody</i>	43	30
<i>The requirement that a more senior manager hear any appeal, now amended to one not previously involved</i>	46, 82	26, 41
<i>That the employer advise the employee of their right to be accompanied at a disciplinary appeal, or a grievance hearing</i>	47, 77	27, 34
<i>That grievances should be heard before employment ends, if possible</i>	72	-
<i>Special consideration for bullying, harassment or whistle blowing complaints</i>	85-86	-

Birth Announcements

Conversely, there are some new aspects:

<i>Protection gained</i>	Code ref:-	
	Old	New
<i>Employer should give advance notice of any witnesses it will call</i>	-	12
<i>The removal of the suggestion that a deadline for appeal be given (although this could be a double-edged sword)</i>	44	25

A quick tot-up on one's fingers suggests that the Code is much weakened from a claimant point of view.

PART 3

Mediation and Conciliation

The fixed conciliation periods are being abolished and ACAS is being given more power to conciliate disputes. Section 5 empowers them to conciliate unfair dismissal and other claims prior to an ET1 being lodged. ACAS have been running a Pre-ET1 Conciliation pilot at selected locations in England and this will form the basis of the scheme to be rolled out in April. Interestingly, the pilot scheme covered more than just unfair dismissal and ACAS remain happy for that to continue.

Some excellent results can be achieved during mediations and conciliations, and it is well worth considering this when approaching any given case. They are particularly well suited to:

- *Low value claims*
- *Straightforward claims like wrongful dismissal, or many unlawful deduction from wages claims;*
- *Claims where the member's main concern is not monetary e.g. they want an apology, an issue reopening, reinstatement;*
- *Where there is still an ongoing relationship between claimant and respondent;*
- *Where there is a good reason to keep the dispute private e.g. the facts are embarrassing to the employee.*

Experience suggests that the following are less suited to the process:

- *Complex cases, e.g. discrimination;*
- *Cases which require expert evidence;*
- *Cases where medicals are disputed;*
- *High value claims.*

APPENDIX 1

Which Statutory Procedure Applies?

A reminder of which of the statutory resolution procedures to use

- *Complaints unconnected to any form of disciplinary action: GP only*
- *Complaints arising from oral/written warnings or suspension on full pay: GP only. The number of meetings/hearings will depend on the stage at which employee raises a grievance and the procedure (if any) followed by the employer*
- *Constructive dismissal: GP only*
- *Direct dismissal or non-renewal of expired fixed-term contract: DDP only, regardless of the reason for dismissal*
- *Relevant Disciplinary Action short of dismissal (RDA): DDP but*
- *if employee complains that taking RDA is discriminatory or not based on conduct or capability, GP as well as DDP; but*
- *if statement of grievance lodged before DDP appeal hearing, deemed compliance with remainder of GP.*
- *NB. Follow the full DDP in all RDA cases.*
- *Complaints arising from operation of DDP [dismissal or RDA] but where 5. does not apply e.g. employee alleges a failure to make reasonable adjustment for disabled worker at a DDP meeting or complains of a discriminatory remark by management witness during hearing: GP in addition to DDP. Even if grievance raised before DDP appeal meeting, no deemed compliance with rest of GP.*

APPENDIX 2**Jurisdictions Covered By The Statutory Dispute Resolution Procedures****Equal Pay Act 1970**

Section 2 Equality clause

Sex Discrimination Act 1975

Section 63 Tribunal jurisdiction

Race Relations Act 1976

Section 54 Tribunal jurisdiction

TULR(C)A 1992

Section 145A Inducements relating to union membership or activities
 Section 145B Inducements relating to collective bargaining
 Section 146 Action short of dismissal, trade union grounds
 Para. 156, Sch A1 Detriment in relation to union recognition

Disability Discrimination Act 1995

Section 17A Tribunal complaints

Employment Rights Act 1996

Section 23 Deductions from wages
 Section 48 Detriment in employment
 Section 111 Unfair dismissal
 Section 163 Redundancy payments

National Minimum Wage Act 1998

Section 24 Detriment in relation to national minimum wage

The Employment Tribunal Extension of Jurisdiction (England and Wales) and (Scotland) Orders 1994

Breach of employment contract on termination of employment

Working Time Regulations 1998

Regulation 30 Breach of regulations

Transnational Information and Consultation of Employees Regulations 1999

Regulation 32 Detriment relating to European Works Councils

Employment Equality (Sexual Orientation) Regulations 2003

Regulation 28 Discrimination in the employment field

Employment Equality (Religion or Belief) Regulations 2003

Regulation 28 Discrimination in the employment field

European Public Limited-Liability Company Regulations 2004

Reg 45 Detriment in Employment

Information and Consultation of Employees Regulations 2004

Reg 33 Detriment in Employment

Occupational and Personal Pension Schemes (Consultation by Employers etc) Regs 2006

Reg 17 &
Sch para 8 *Detriment in Employment*

Employment Equality (Age) Regulations 2006

Regulation 36 *Discrimination in the employment field*

European Cooperative Society (Involvement of Employees) Regulations 2006

Regulation 34 *Detriment re involvement in European Cooperative Society*

Companies (Cross-Border Mergers) Regulations 2007

Regulation 51 *Detriment re special negotiating body/employee participation*

APPENDIX 3**Jurisdictions NOT Covered By The Statutory Dispute Resolution Procedures****TULR(C)A 1992**

Section 68A	Unauthorised check-off deduction
Section 137	Refusal of employment on TU (non) membership grounds
Sections 168-170	(Paid) time off for TU/Learning Rep duties/activities
Section 183	TU complaint of failure to disclose information for CB
Sections 189 & 192	Protective award & entitlement in collective redundancies

Pension Schemes Act 1993

Section 124	SoS failure to pay contributions to insolvent scheme
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Pensions Act 1995

Sections 62-64	Equality clause in pension schemes
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Employment Rights Act 1996

Section 11	Failure to provide accurate written statements (written particulars, changes or itemised pay)
Sections 34	Failure to pay guarantee payment
Sections 51	Time off for public duties
Sections 54	Paid TO to look for work during redundancy notice
Sections 57	Paid TO for ante-natal care
Sections 57B	Paid TO for dependants
Section 60	Paid TO for pension scheme trustees
Section 63	Paid TO for TU/Employee representatives
Section 63B	Paid TO for young person to study/train
Section 70	Remuneration if suspended on medical/maternity grounds
Section 80	Parental leave
Section 80H	Flexible working & detriment
Section 93	Failure to provide written reasons for dismissal
Section 188	SoS failure to make a payment on employer's insolvency

Employment Rights Act 1999

Section 11	Right to be accompanied
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Safety Reps etc Regs 1977

Reg 11	Paid TO for safety rep
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Health & Safety (Consultation etc) Regs 1996

Sch 2	Paid TO for training
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Transnational Information & Consultation Regs 1999

Reg 27	Paid TO
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Part-Time Workers etc Regs 2000

Reg 8	Less favourable treatment & detriment
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Fixed-Term Employees etc Regs 2002

Reg 7	Less favourable treatment & detriment
Reg 9	Declaration of permanent status

Flexible Working etc Regs 2002

Reg 15 *Right to be accompanied & postpone a meeting*

TUPE 2006

Reg 15 *Failure to inform/consult*

Employment Equality (Age) Regulations 2006

Sch 5 Para 5 *Void term of collective agreement or rule of undertaking*

Sch 6 Para 11 *Failure to inform employee re working beyond retirement*

Sch 6 Para 12 *Right to be accompanied*

APPENDIX 4

Disciplinary Checklist

If you can answer YES (☐) to any of the questions below then that may indicate a breach of the 2009 ACAS Code Of Practice On Disciplinary And Grievance Procedures. The way that the checklist is drafted allows the list of failures to be cut and pasted into an ET1 or further and better particulars.

NB : the code of practice does not apply to redundancy dismissals, failures to renew fixed term contracts or collective grievance situations where the grievance is lodged by the recognized union.

DISCIPLINARY PROCEDURES

GENERAL CONSIDERATIONS

	Y	N	
1.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The disciplinary procedure was not one which was established in consultation with the claimant and/or their trade union contrary to the 2009 ACAS code of practice paragraph 2;</i>
2.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The disciplinary procedure was not contained in a written document contrary to the 2009 ACAS code of practice paragraph 2;</i>
3.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The disciplinary procedure was not specific and clear contrary to the 2009 ACAS code of practice paragraph 2;</i>
4.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The version of the disciplinary procedure which was applied to the claimant was not adequately explained to them contrary to the 2009 ACAS code of practice paragraph 2;</i>
5.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The claimant was not made aware of where they could locate a copy of the disciplinary procedure which was applied them contrary to the 2009 ACAS code of practice paragraph 2;</i>
6.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>No, or inadequate guidance was given to the management who operated the disciplinary procedure contrary to the 2009 ACAS code of practice paragraph 2;</i>
7.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The disciplinary procedure which was applied to the claimant did not contain any examples of what would constitute gross misconduct contrary to the 2009 ACAS code of practice paragraph 23;</i>

8.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>Although the claimant raised a grievance about the disciplinary process, the respondent failed to suspend it pending resolution of that grievance contrary to the 2009 ACAS code of practice paragraph 44;</i>
9.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The claimant was a trade union representative and the respondent failed to consult the full-time officer at an early stage contrary to the 2009 ACAS code of practice paragraph 29;</i>
10	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The claimant was a trade union representative but their consent was not obtained before the respondent consulted their full-time officer contrary to the 2009 ACAS code of practice paragraph 29;</i>

INVESTIGATION STAGE

11	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent's decision investigate only the claimant was inconsistent contrary to the 2009 ACAS code of practice paragraph 4;</i>
12	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>There was unreasonable delay in starting the investigation contrary to the 2009 ACAS code of practice paragraph 4;</i>
13	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>There was unreasonable delay in concluding the investigation contrary to the 2009 ACAS code of practice paragraph 4;</i>
14	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The original complaint against the claimant was not raised promptly or without unreasonable delay contrary to the 2009 ACAS code of practice paragraph 4;</i>
15	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to hold an investigatory meeting with the claimant contrary to contrary to the 2009 ACAS code of practice paragraph 5;</i>
16	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent imposed disciplinary sanctions at the investigation meeting contrary to the 2009 ACAS code of practice paragraph 7;</i>
17	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent incorrectly chose to suspend the claimant and/or that suspension was excessively lengthy and not reviewed contrary to the 2009 ACAS code of practice paragraph 8;</i>
18	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to make it clear that the suspension was not a disciplinary action contrary to the 2009 ACAS code of practice paragraph 8;</i>
19	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to move to a disciplinary hearing was the subject of unreasonable delay contrary to the 2009 ACAS code of practice paragraph 4;</i>

20	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notification of disciplinary action was insufficiently detailed contrary to the 2009 ACAS code of practice paragraph 9;</i>
21	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notification of disciplinary action did not contain adequate information about the charges and their possible consequences to enable the claimant to properly prepared for the disciplinary hearing contrary to the 2009 ACAS code of practice paragraph 9;</i>
22	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notification of disciplinary action did not contain copies of the written evidence relied upon by the respondent contrary to the 2009 ACAS code of practice paragraph 9;</i>
23	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to supply witness statements contrary to the 2009 ACAS code of practice paragraph 9;</i>
24	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notification of disciplinary action did not include adequate details of the time and venue of the disciplinary hearing contrary to the 2009 ACAS code of practice paragraph 10;</i>
25	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notification of disciplinary action failed to advise the claimant of their right to be accompanied contrary to the 2009 ACAS code of practice paragraph 10;</i>
26	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to give advance warning of the witnesses it was to call contrary to the 2009 ACAS code of practice paragraph 12;</i>
27	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to take disciplinary action was taken after unreasonable delay contrary to the 2009 ACAS code of practice paragraph 4;</i>
28	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to take disciplinary action was not communicated to the claimant in writing contrary to the 2009 ACAS code of practice paragraph 17;</i>
29	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent unfairly took account of an earlier warning which did not comply with the requirements of paragraphs 18-20 of the 2009 ACAS code of practice;</i>
30	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent unfairly instituted disciplinary proceedings purely on the basis of the criminal proceedings contrary to the 2009 ACAS code of practice paragraph 30;</i>

THE DISCIPLINARY HEARING

31	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The (misconduct) disciplinary hearing was conducted by the same person who did the investigation contrary to the 2009 ACAS code of practice paragraph 6;</i>
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32	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The disciplinary hearing was not held without unreasonable delay contrary to the 2009 ACAS code of practice paragraph 11;</i>
33	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The timing of the disciplinary hearing did not allow the claimant reasonable time to prepare their case contrary to the 2009 ACAS code of practice paragraph 11;</i>
34	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The procedure followed at the disciplinary hearing did not accord with that set out in the 2009 ACAS code of practice paragraph 12;</i>
35	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>Even though the proper request was made the respondent failed to allow the claimant to exercise properly their right to be accompanied contrary to s.10 Employment Relations Act 1999 and paragraphs 13-16 of the 2009 ACAS code of practice;</i>
36	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to dismiss the claimant was taken after unreasonable delay contrary to the 2009 ACAS code of practice paragraph 4;</i>
37	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to dismiss the claimant was taken by someone lacking the proper authority contrary to the 2009 ACAS code of practice paragraph 21;</i>
38	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notice of dismissal failed to comply with the requirements of paragraph 21 of the 2009 ACAS code of practice in that it did not state the reasons for dismissal the effective date of termination; the proper period of notice; and/or that the claimant could appeal.</i>
39	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The notice of dismissal was sent to the claimant after unreasonable delay contrary to the 2009 ACAS code of practice paragraphs 4 and 21;</i>
40	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent unfairly continued the disciplinary process in the claimant's absence despite the claimant having good cause for it contrary to the 2009 ACAS code of practice paragraph 24;</i>
41	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to dismiss was inconsistent contrary to the 2009 ACAS code of practice paragraph 4;</i>
APPEAL STAGE			
42	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to provide the claimant with an opportunity to appeal contrary to the 2009 ACAS code of practice paragraphs 4 and 25;</i>

43	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to process the appeal without unreasonable delay contrary to the 2009 ACAS code of practice paragraphs 4 and 25;</i>
44	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The respondent failed to hear the appeal without unreasonable delay contrary to the 2009 ACAS code of practice paragraphs 4 and 25;</i>
45	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The appeal was not held at an agreed time AND PLACE contrary to the 2009 ACAS code of practice paragraph 25;</i>
46	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The was not dealt with impartially contrary to the 2009 ACAS code of practice paragraph 26;</i>
47	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The manager hearing the appeal had previous involvement in the case contrary to the 2009 ACAS code of practice paragraph 26;</i>
48	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The claimant was not afforded their statutory right to be accompanied at the appeal contrary to the 2009 ACAS code of practice paragraph 26;</i>
49	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The decision to dismiss the appeal was inconsistent contrary to the 2009 ACAS code of practice paragraph 4;</i>
50	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The appeal decision was subject to unreasonable delay contrary to the 2009 ACAS code of practice paragraph 4;</i>
51	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The appeal decision was not communicated to the claimant in writing contrary to the 2009 ACAS code of practice paragraph 26;</i>
52	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<i>The appeal decision was communicated to the claimant only after unreasonable delay contrary to the 2009 ACAS code of practice paragraphs 4 and 28;</i>