

## GRIEVANCES RAISED DURING THE DISCIPLINARY PROCESS

The Employment Act 2008 requires employers and employees to follow the ACAS Code of Practice concerning disciplinarys and grievances. It also attempts to deal with the question of grievances arising during the disciplinary process.

The Code of Practice provides the following guidance

### “Overlapping Grievance and Disciplinary Cases”

44. *Where an employee raises a grievance during the disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Although the grievance disciplinary cases are related it may be appropriate to deal with both issues concurrently.*

The ACAS guide provides examples of incidences where an employer may consider suspending a disciplinary procedure:

- 53 *“Where an employee raises a grievance during the meeting it may sometimes be appropriate to consider stopping the meeting and suspending the disciplinary procedure – for example when*

- *The grievance relates to a conflict of interest that the manager holding the disciplinary hearing is alleged to have.*
- *Bias is alleged in the conduct of the disciplinary meeting*
- *Management have been selective with the evidence they have supplied to the manager holding the meeting*
- *There is possible discrimination*

- 54 *It would not be appropriate to suspend the meeting where the employee makes an invalid point. For example, if they mistakenly claim they have the right to be legally represented or that a collectively agreed and amicable procedure does not apply to them because they are not a union member”*

The TUC guide to the procedure comments as follows:

*“The wording of this part of the Code is far from clear. There is some uncertainty as to when a disciplinary procedure should be suspended which could result in inconsistent practices in work places.*

*Union Reps should seek to negotiate any necessary changes to workplace procedures to clarify that where an employee raises a genuine grievance during the disciplinary process the procedure should be suspended while the grievance is investigated and resolved”*

These provisions, in line with much of the ACAS Code of Practice, are open to wide interpretation. However the clear indication is that where a grievance is raised during the course of the disciplinary procedure which potentially impacts on that procedure e.g. conflict of interest, bias or withholding evidence, the disciplinary procedure should be suspended. The grievance should then be resolved before the disciplinary procedure can continue. This interpretation enables any actual or potential injustices in the disciplinary procedure to be dealt with. Following the resolution of the grievance, the procedure can either be continued, abandoned or perhaps re-started depending upon the outcome of the grievance.

Employers will no doubt try to argue that genuine grievances raised during the course of a disciplinary hearing are “invalid” or contain an “invalid point”. Neither the legislation nor procedure contains a mechanism for resolving this particular issue urgently. We may well require guidance from case law before being able to establish clear ground rules as to when the disciplinary procedure should be suspended.