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**Response of the Birmingham Law Society
Employment Committee to the Acas Consultation
on the Updated Draft Code of Practice on
Disciplinary and Grievance Procedures**

September 2026

About this response

This response is submitted on behalf of the Employment Committee of Birmingham Law Society. Birmingham Law Society is one of the largest regional law societies in England and Wales, representing the interests of lawyers and law firms across Birmingham and the West Midlands. The Employment Committee comprises practising employment lawyers drawn from across the region, with expertise spanning both contentious and non-contentious employment law, including advising employers, employees and trade unions on TUPE transfers and the associated consultation and due diligence processes.

The questions to which the Committee has chosen to respond are reproduced below, with the Committee's answers shown in yellow highlight.

Question 1

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?

- Strongly agree that the Code should encourage this
- Agree that the Code should encourage this
- Neither agree nor disagree
- Disagree that the Code should encourage this
- Strongly disagree that the Code should encourage this

Please explain the reasoning for your answer, including what you see as the benefits and risks.

There will be some types of misconduct that, if proved, are so likely to lead to formal disciplinary sanction or dismissal that a formal process will be needed from the outset. However, many aspects of misconduct and (even more so) unsatisfactory performance can and should be dealt with, initially at least, without recourse to formal procedures. Whilst the 'case' and need for informal resolution is even stronger in relation to the resolution of grievances; anything that can de-escalate situations and resolve matters without formality, including in the area of disciplinary/performance matters, should be encouraged.

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?

- Strongly agree that the draft Code takes the right approach
- Agree that the draft Code takes the right approach
- Neither agree nor disagree
- Disagree that the draft Code takes the right approach
- Strongly disagree that the draft Code takes the right approach

Please explain the reasoning for your answer.

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?

- Strongly agree that the Code should encourage this
- Agree that the Code should encourage this
- Neither agree nor disagree
- Disagree that the Code should encourage this
- Strongly disagree that the Code should encourage this

Please explain the reasoning for your answer, including what you see as the benefits and risks.

Experience shows that: the use of a formal grievance process often (perhaps invariably) 'ups the ante' because positions are quickly entrenched and the process becomes adversarial. Grievances are now launched and conducted with the use of AI or, for those with means, with the assistance of legal representation. This can lead to a proliferation of arguments and evidence. Employers, fearing adverse consequences and future claims, behave defensively and will often resort to external professional assistance. The process quickly becomes a complex, technical and time-consuming 'pre-litigation phase'. Not infrequently, the employee, at the outset, merely wants to be genuinely heard and have their concerns honestly and objectively addressed. The prospects of avoiding the need for a formal process and possibly litigation are greatly increased by spending greater time and money on an informal approach at the earliest possible stage – involving an independent third-

party mediator if necessary, but with the objective of finding solutions in an informal manner.

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?

- Strongly agree that the draft Code takes the right approach
- Agree that the draft Code takes the right approach
- Neither agree nor disagree
- Disagree that the draft Code takes the right approach
- Strongly disagree that the draft Code takes the right approach

Please explain the reasoning for your answer.

We do wonder whether it would be worth alluding to the principle that an informal approach to resolving disputes should not be expected, by the employer or employee, to be a uniform or 'one-size-fits all' approach. It would be inappropriate to stipulate with any real detail how such informal processes 'should' be managed because that will have the tendency to import process and thereby formality. It would also be worth highlighting how important it is to address matters via an informal process with expedition, given that if matters cannot be resolved by these means, then a more formal process will be required.

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
- No
- Don't know

Please explain the reasoning for your answer.

Question 4

Should the current title of the Code be retained?

- Yes - the existing title of the Code should be retained
- No - the title of the Code should be changed

- Don't know

Please explain the reasoning for your answer.

Culture change takes time. The first aim should be to encourage employers and employees to understand and then hopefully adopt the new approach and language. This aim could be frustrated if employers and employees fail to find this guidance as a result of not recognising the title. Retaining the familiar title should not dilute the benefits of the changed language in the document itself.

Question 4(b)

If you answered 'No' to Question 4, what should be the title of 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?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

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?

- Yes
- No
- Don't know

Please explain the reasoning for your answer including whether the example in paragraph 4 should be removed or changed or any other examples added.

Whilst covered elsewhere in the Code (particularly paragraphs 14-15), it might be worth expressly alluding in paragraph 4 to the fact that a legal duty may exist, pursuant to ss.20/21 Equality Act 2010 to make reasonable adjustments to the processes recommended by the Code if substantial disadvantage to a person with a disability might otherwise arise (and cross-referencing paragraphs 14-15).

Question 8

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Question 8(b)

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?

- Yes
- No
- Don't know

Please explain the reasoning for your answer, including whether any examples should be added, removed or changed.

Whilst the list of suggested adjustments is clearly intended to be non-exhaustive it might be worth enlarging it to include some of the most common adjustments such as scheduling breaks in meetings, considering options as to the best location/venue for in person meetings, considering whether a remote meeting might be preferable.

Question 8(c)

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
- No
- Don't know

Please explain the reasoning for your answer.

The employee is the person most acquainted with their own impairment/condition and needs and so best placed to comment on what would assist them. This point may be worth including in paragraph 15.

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
- No
- Don't know

Please explain the reasoning for your answer.

Informal resolution of concerns is more likely to be successful if those managing that process are skilled. Investment in this early form of dispute resolution has the potential to deliver significant savings by the avoidance of formal processes and potential litigation.

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
- No
- Don't know

Please explain the reasoning for your answer.

Paragraph 24 should state: "if it is not possible or appropriate to resolve a concern informally" in recognition of the fact that some matters are not suitable for informal resolution.

Question 11

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

This is helpful because in years gone by suspension was invariably imposed in cases of serious alleged misconduct without any real thought as to whether it is actually required.

Question 11(b)

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Recognising that there may be unusual circumstances and that the Code is guidance not law, it may be that paragraph 28 should say: "should typically only be considered if"

Question 12

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

Question 12(b)

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

- Yes
- No

- Don't know

Please explain the reasoning for your answer.

Question 13

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

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
- No
- Don't know

Please explain the reasoning for your answer.

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
- No
- Don't know

Please explain the reasoning for your answer.

This provision, and the guidance to explain why, if no informal steps have been taken, ensures that employers will need to be considered/deliberate in deciding what if any informal approaches should be adopted in the first instance. It will also be a clear signal in any subsequent employment tribunal proceedings.

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
- No
- Don't know

Please explain the reasoning for your answer.

We believe this would be a useful way for grievances to be focussed and clear in the outcomes they seek. Where an employer knows what the employee is seeking when a process is initiated, and if the employee has to articulate it, then both parties will be thinking forwards to what would resolve the complaint. We believe that would be a beneficial statement for the Code to include.

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)?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

As above (question 15), this requires employees to focus their minds on their own responsibility to consider informal resolution of concerns prior to launching into a formal process.

Question 18

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

- Yes
- No

- Don't know

Please explain the reasoning for your answer.

Just as with long narrative employment tribunal pleadings: a lack of a concise and targeted complaint is inimical to an employer's duty to try to resolve matters swiftly and informally.

Question 19

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

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
- No
- Don't know

Please explain the reasoning for your answer.

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
- No
- Don't know

Please explain the reasoning for your answer.

Question 22

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

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

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?

- Yes
- No
- Don't know

Please explain the reasoning for your answer.

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?

We consider that there are significant issues/concerns arising from the use of AI in this context. However, there are also some benefits. There is a concern that with a fast-developing picture (technologically) it may be difficult and even risky to attempt to provide significant guidance in this area. It may be that little more can be done other than to caution that the use of AI to generate documentation can carry risks as well as benefits and that employers and employees would be well advised to ensure that such tools are not used to produce unchecked and unnecessarily lengthy written contributions that might serve to inflame situations rather than encourage resolution.