THE INVESTMENT ASSOCIATION

IA Response to the Acas Consultation on the Draft Code of Practice on Disciplinary and Grievance Procedures

About the Investment Association

The Investment Association (IA) champions the UK's world-leading investment management industry, which helps millions of households save for the future while supporting businesses and economic growth throughout the UK. Our 250 members range from small, specialist UK firms to European and global investment managers with a UK presence. Collectively, they manage £11.1 trillion on behalf of savers and institutions in the UK and beyond. The UK investment management industry is the largest in Europe and the second largest globally.

Introduction

The IA welcomes the opportunity to respond to the Acas consultation on the draft Code of Practice on disciplinary and grievance procedures. We support the objective of encouraging earlier resolution of workplace concerns while maintaining fair, proportionate and effective disciplinary and grievance processes for both employers and workers. Overall, the draft Code strikes an appropriate balance between promoting informal resolution and preserving established disciplinary and grievance procedures. However, several areas would benefit from further clarification to support consistent and effective implementation in practice, while avoiding unnecessary administrative burden for firms.

Our response is structured around six overarching themes arising from the proposals. Under each theme we outline the practical implications and set out recommendations to support a proportionate and effective approach.

1. Early and Informal Resolution

We support the draft Code's emphasis on early and informal resolution as an important means of preventing workplace concerns from escalating into formal grievances. Many member firms already seek to address issues informally where appropriate, recognising the benefits of resolving concerns at an early stage before positions become entrenched. Informal approaches can be particularly effective in addressing concerns relating to performance, workplace relationships and communication.

While we support the principle of resolving issues at the earliest possible stage, informal resolution should not become a quasi-mandatory preliminary step that employers are expected to exhaust before commencing a formal process. Employers must retain the discretion to proceed directly to a formal investigation where circumstances require objective fact-finding or where the nature of the allegations makes informal intervention inappropriate. This is particularly important in cases involving misconduct, behaviour that may

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expose an employer to legal (in particular criminal) or regulatory risk, whistleblowing or other matters that require formal investigation from the outset.

An overly prescriptive approach to informal resolution may also create duplication where concerns are initially discussed informally before progressing to a formal grievance or disciplinary process. In these cases, employers may be required to revisit substantially the same issues multiple times, increasing administrative burden, prolonging resolution timelines and potentially causing frustration for both employers and workers.

Recommendation: We recommend that the Code provide greater clarity on the circumstances in which employers may reasonably bypass informal resolution and proceed directly to a formal process. To avoid unnecessary duplication, it should also make clear that, where appropriate, employers may rely on information obtained through informal discussions during any subsequent formal process, provided workers are given a reasonable opportunity to comment on that information before it is relied upon in reaching any formal outcome.

2. Interaction with Regulatory Obligations

The IA supports the principle that employers should follow the Code wherever reasonably practicable. However, where other legal, regulatory or governance obligations apply, employers must retain sufficient flexibility to adapt their approach where necessary to meet these obligations. While the draft Code recognises this in relation to the UK Market Abuse Regulation, this example is too narrow and does not fully reflect the wider regulatory and governance environment in which investment management firms operate.

For regulated firms, these obligations can influence whether informal resolution is appropriate, how investigations are conducted, and the additional assessments and decisions that may need to be made following an investigation. In some circumstances, particularly those involving senior executives, employers may also need to balance the procedural expectations of the Code against wider governance, remuneration, disclosure and accountability considerations. We therefore believe the Code should provide clearer guidance on how its provisions should operate alongside these wider obligations.

Regulatory requirements may necessitate formal investigation:

For investment managers, formal processes are directly shaped by the Senior Managers and Certification Regime, the FCA Code of Conduct, Fit and Proper assessments and mandatory notifications under SUP 15. In particular, with the increased regulatory focus on non-financial misconduct, such as workplace bullying and sexual harassment, firms are under greater regulatory obligations to conduct robust and formal investigations. These cases are often significantly more complex than standard disciplinary or grievance matters and may require employers to proceed directly to a formal investigation, regardless of whether informal resolution would otherwise be appropriate. This is relevant to the draft Code's emphasis on informal resolution, as firms must retain discretion to move directly to a formal process where required by their regulatory obligations. We believe the draft Code should recognise these wider regulatory requirements and provide clearer guidance on how they interact with its provisions.

Regulatory consequences arising from investigations:

In addition to shaping the investigation itself, these regulatory obligations may require firms to make consequential regulatory assessments arising from the same underlying facts. Employers may need to determine whether an individual remains fit and proper, whether certification can be maintained, whether a regulatory reference should be updated, or whether a matter is notifiable to the FCA. These considerations may necessitate a more formal evidential process than would otherwise be adopted in a standard employment context and can influence how investigations are structured and conducted.

Applying the Code in senior executive cases:

While paragraph 4 recognises that other legal requirements may need to be applied alongside the Code, it does not fully address situations where decisions relating to a senior executive could have significant impact on the employer including the company's reputation and market value if the company is listed. Decisions

relating to conduct, capability and performance management may have implications for market disclosure to shareholders and other stakeholders, having a direct impact on market confidence. This will put pressure on boards to decide if an informal process is appropriate and in the interests of the company and its shareholders, meaning that the processes and outcomes appropriate for more junior employees are not always suitable in senior executive cases.

This is particularly important in the context of the removal of the cap on compensation for unfair dismissal claims. Employers may seek to resolve disputes involving senior executives through an agreed exit given the reputation and impact on value of the company that public disclosure could cause, but the increased potential value of unfair dismissal claims with the lifting of the compensation cap, may make such disputes more costly and difficult to resolve.

Employers therefore need to balance these competing considerations when determining both the process to follow and the appropriate outcome. Clearer guidance from Acas on the application of the Code in these circumstances would help employers navigate these competing considerations while maintaining the protections provided by the Code.

Recommendation: We recommend that the Code be amended to recognise more clearly that, in some circumstances, legal, regulatory, governance and market obligations may require employers to adapt or depart from the Code's approach, including proceeding directly to a formal process where necessary to meet those obligations.

3. Investigations and Witness Evidence

The draft Code's emphasis on objective, proportionate and reasonable fact-finding is a sensible addition. The principle that investigations should focus on establishing the relevant facts and identifying appropriate resolution options before proceeding to formal outcomes is a logical step in the process.

The Code would benefit from additional clarification regarding information-sharing and the handling of witness evidence. In practice, employers often need to balance procedural fairness with obligations to maintain confidentiality and protect individuals involved in an investigation.

A degree of flexibility is therefore important. There may be circumstances where witness evidence needs to be summarised, anonymised or redacted to protect confidentiality, encourage participation in investigations or reduce the risk of witness retaliation. At the same time, individuals must be provided with sufficient information to understand and respond to the allegations against them.

Recommendation: The IA therefore recommends that the Code expressly recognises this balancing exercise and preserves employers' discretion to determine how witness evidence is shared with the subjects of investigations and grievance and disciplinary processes (including that in certain cases, it will be appropriate to provide summarised, anonymised or redacted documents), provided that parties are given sufficient information to ensure a fair process.

4. Mediation and Facilitated Conversations

The inclusion of mediation and facilitated conversations within the Code is a welcome addition to support the early and constructive resolution of workplace disputes. These approaches can provide a valuable mechanism for resolving workplace disputes and restoring working relationships without the need for formal procedures. Mediation can be particularly effective in cases involving communication breakdowns and working relationship challenges, where parties remain willing to engage constructively.

It is important to note that mediation is most effective when introduced early and is not suitable in all circumstances. In particular, employers may need to proceed with a formal process where serious allegations have been raised, where allegations of misconduct or harassment have been raised, where significant power imbalances exist, where legal or regulatory obligations require a formal investigation, or where behaviour might expose an employer to legal (in particular criminal) or regulatory risk.

Recommendation: We recommend that the Code more clearly recognise that mediation and facilitated conversations are tools available to support resolution, rather than an expected step in every case. Employers should retain discretion to determine when mediation is appropriate, taking account of the nature of the concerns raised, any power imbalances between the parties, and whether legal, regulatory or safeguarding considerations require a formal process.

5. Artificial Intelligence (AI)

The increasing use of AI is one of the most significant emerging issues within disciplinary and grievance processes, and we welcome Acas seeking views on this topic.

The growing use of AI by both employers and workers is creating new challenges in the management of workplace disputes. While AI can help individuals articulate concerns and may support administrative efficiencies, member firms report receiving significantly longer and more complex grievance submissions. This can make it more difficult to identify the core issues requiring investigation, increase the time needed to assess complaints and prolong resolution.

Members have also noted instances where AI-generated content appears disproportionate to the underlying workplace concern, contains legal assertions that may be inaccurate, or lacks a clear connection to the facts of the case. These challenges can make it more difficult for employers to identify the matters that genuinely require investigation and resolution.

Recommendation: Practical, balanced guidance on the use of AI would be a welcome addition to the Code. Such guidance should recognise both the opportunities and risks associated with AI-assisted submissions and encourage complaints to be concise, relevant and focused on the issues in dispute. The Code should also emphasise the importance of human oversight and make clear that AI-generated outputs should not be treated as authoritative or as a substitute for legal or professional advice. The Code should make clear that those using AI remain responsible for the accuracy of its output.

The IA further recommends that the guidance recognise the value of early scoping discussions and permit employers to request a concise timebound summary of the key issues requiring investigation where submissions become excessively lengthy, complex or unfocused. This would help ensure that investigations remain proportionate and focused on resolving the underlying workplace concern.

6. Covert Recordings

Although not addressed directly within the draft Code, covert recordings are becoming an increasingly common issue in workplace investigations and grievances.

Many employers' policies stipulate that disciplinary and grievance meetings should only be recorded with the knowledge and agreement of all parties. The prospect of covert recordings of disciplinary or grievance proceedings can undermine trust, inhibit open dialogue and raise confidentiality concerns. It may also place the individual making the recording at an advantage, as they can choose their words carefully while others remain unaware that their comments are being recorded. We note that the making of covert recordings is generally discouraged by courts and tribunals.

It is recognised, however, that covert recordings may in some circumstances provide relevant evidence of the underlying conduct that is the subject of a grievance or disciplinary process, particularly where allegations relate to discrimination, harassment or other serious misconduct. This separate question of whether individuals may covertly record such conduct falls outside the scope of the Code and we are not seeking Acas to take a position on that issue.

Recommendation: We recommend that the Code should make clear that covert recordings of disciplinary and grievance proceedings are not appropriate and should be prohibited.

Conclusion

The IA supports the overall direction of the draft Code and welcomes its emphasis on early resolution, proportionality and fairness. The proposed changes have the potential to support more constructive workplace relationships and improve the handling of disciplinary and grievance issues.

However, further clarification would be beneficial in several areas, including the operation of informal resolution, the interaction between the Code and regulatory obligations, the management of witness evidence, the role of mediation, the use of artificial intelligence and the treatment of covert recordings. Addressing these issues would provide greater clarity for both employers and workers and help ensure that the Code remains practical, proportionate and effective across a range of workplace contexts, including highly regulated sectors.