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Code of Practice 1

Disciplinary and grievance procedures

Click here for the disciplinary and grievance procedures folder which contains six easy to follow charts to guide you through the disciplinary and grievance process

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This Code of Practice provides practical guidance to employers, workers and their representatives on:

- The statutory requirements relating to disciplinary and grievance issues;
- What constitutes reasonable behaviour when dealing with disciplinary and grievance issues;
- Producing and using disciplinary and grievance procedures; and
- A worker's right to bring a companion to grievance and disciplinary hearings.

The statutory dismissal, disciplinary and grievance procedures, as set out in the Employment Act 2002, apply only to employees as defined in the 2002 Act and this term is used throughout sections 1 and 2 of the Code. However, it is good practice to allow all workers access to disciplinary and grievance procedures. The right to be accompanied applies to all workers (which includes employees) and this term is used in section 3 of the Code.

A failure to follow any part of this Code does not, in itself, make a person or organisation liable to proceedings. However, employment tribunals will take the Code into account when considering relevant cases. Similarly, arbitrators appointed by Acas to determine relevant cases under the Acas Arbitration Scheme will take the Code into account.

A failure to follow the statutory disciplinary and grievance procedures where they apply may have a number of legal implications which are described in the Code.

The Code (from page 2 to page 36) is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on 17 June 2004. The Code comes into effect by order of the Secretary of State on 1 October 2004.

More comprehensive, practical, advice and guidance on disciplinary and grievance procedures is contained in the Acas Handbook *"Discipline and grievances at work"* which also includes information on the Disability Discrimination Act 1995 and the Data Protection Act 1998. The Handbook can be obtained from the Acas website at **www.acas.org.uk**. Further information on the detailed provisions of the statutory disciplinary and grievance procedures can be found on the Department of Trade and Industry's website at **www.dti.gov.uk/er**.

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Section 1
Disciplinary rules and procedures

At a glance

Drawing up disciplinary rules and procedures

- Involve management, employees and their representatives where appropriate (Paragraph 52).
- Make rules clear and brief and explain their purpose (Paragraph 53).
- Explain rules and procedures to employees and make sure they have a copy or ready access to a copy of them (Paragraph 55).

Operating disciplinary procedures

- Establish facts before taking action (Paragraph 8).
- Deal with cases of minor misconduct or unsatisfactory performance informally (Paragraphs 11-12).
- For more serious cases, follow formal procedures, including informing the employee of the alleged misconduct or unsatisfactory performance (Paragraph 13).
- Invite the employee to a meeting and inform them of the right to be accompanied (Paragraph 14-16).
- Where performance is unsatisfactory explain to the employee the improvement required, the support that will be given and when and how performance will be reviewed (Paragraphs 19-20).
- If giving a warning, tell the employee why and how they need to change, the consequences of failing to improve and that they have a right to appeal (Paragraphs 21-22).
- If dismissing an employee, tell them why, when their contract will end and that they can appeal (Paragraph 25).
- Before dismissing or taking disciplinary action other than issuing a warning, always follow the statutory dismissal and disciplinary procedure (Paragraphs 26-32).
- When dealing with absences from work, find out the reasons for the absence before deciding on what action to take. (Paragraph 37).

Holding appeals

- If the employee wishes to appeal invite them to a meeting and inform the employee of their right to be accompanied (Paragraphs 44-48).
- Where possible, arrange for the appeal to be dealt with by a more senior manager not involved with the earlier decision (Paragraph 46).
- Inform the employee about the appeal decision and the reasons for it (Paragraph 48).

Records

- Keep written records for future reference (Paragraph 49).

Guidance

Why have disciplinary rules and procedures?

1. Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals. Disciplinary procedures are also a legal requirement in certain circumstances (see paragraph 6).

2. Disciplinary rules tell employees what behaviour employers expect from them. If an employee breaks specific rules about behaviour, this is often called misconduct. Employers use disciplinary procedures and actions to deal with situations where employees allegedly break disciplinary rules. Disciplinary procedures may also be used where employees don't meet their employer's expectations in the way they do their job. These cases, often known as unsatisfactory performance (or capability), may require different treatment from misconduct, and disciplinary procedures should allow for this.

3. Guidance on how to draw up disciplinary rules and procedures is contained in paragraphs 52-62.

4. When dealing with disciplinary cases, employers need to be aware both of the law on unfair dismissal and the statutory minimum procedure contained in the Employment Act 2002 for dismissing or taking disciplinary action against an employee. Employers must also be careful not to discriminate on the grounds of gender, race (including colour, nationality and ethnic or national origins), disability, age, sexual orientation or religion.

The law on unfair dismissal

5. The law on unfair dismissal requires employers to act reasonably when dealing with disciplinary issues. What is classed as reasonable behaviour will depend on the circumstances of each case, and is ultimately a matter for employment tribunals to decide. However, the core principles employers should work to are set out in the box overleaf. Drawing up and referring to a procedure can help employers deal with disciplinary issues in a fair and consistent manner.

Core principles of reasonable behaviour

- Use procedures primarily to help and encourage employees to improve rather than just as a way of imposing a punishment.
- Inform the employee of the complaint against them, and provide them with an opportunity to state their case before decisions are reached.
- Allow employees to be accompanied at disciplinary meetings.
- Make sure that disciplinary action is not taken until the facts of the case have been established and that the action is reasonable in the circumstances.
- Never dismiss an employee for a first disciplinary offence, unless it is a case of gross misconduct.
- Give the employee a written explanation for any disciplinary action taken and make sure they know what improvement is expected.
- Give the employee an opportunity to appeal.
- Deal with issues as thoroughly and promptly as possible.
- Act consistently.

The statutory minimum procedure

6. Employers are also required to follow a specific statutory minimum procedure if they are contemplating dismissing an employee or imposing some other disciplinary penalty that is not suspension on full pay or a warning. Guidance on this statutory procedure is provided in paragraphs 26-32. If an employee is dismissed without the employer following this statutory procedure, and makes a claim to an employment tribunal, providing they have the necessary qualifying service and providing they are not prevented from claiming unfair dismissal by virtue of their age, the dismissal will automatically be ruled unfair. The statutory procedure is a minimum requirement and even where the relevant procedure is followed the dismissal may still be unfair if the employer has not acted reasonably in all the circumstances.

What about small businesses?

7. In small organisations it may not be practicable to adopt all the detailed good practice guidance set out in this Code. Employment tribunals will take account of an employer's size and administrative resources when deciding if it acted reasonably. However, all organisations regardless of size must follow the minimum statutory dismissal and disciplinary procedures.

Dealing with disciplinary issues in the workplace

8. When a potential disciplinary matter arises, the employer should make necessary investigations to establish the facts promptly before memories of events fade. It is important to keep a written record for later reference. Having established the facts, the employer should decide whether to drop the matter, deal with it informally or arrange for it to be handled formally. Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary meeting.

9. In certain cases, for example in cases involving gross misconduct, where relationships have broken down or there are risks to an employer's property or responsibilities to other parties, consideration should be given to a brief period of suspension with full pay whilst unhindered investigation is conducted. Such a suspension should only be imposed after careful consideration and should be reviewed to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary action.

10. When dealing with disciplinary issues in the workplace employers should bear in mind that they are required under the Disability Discrimination Act 1995 to make reasonable adjustments to cater for employees who have a disability, for example providing for wheelchair access if necessary.

Informal action

11. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct or performance. The informal approach may be particularly helpful in small firms, where problems can be dealt with quickly and confidentially. There will, however, be situations where matters are more serious or where an informal approach has been tried but is not working.

12. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

Formal action

Inform the employee of the problem

13. The first step in any formal process is to let the employee know in writing what it is they are alleged to have done wrong. The letter or note should contain enough information for the individual to be able to understand both what it is they are alleged to have done wrong and the reasons why this is not acceptable. If the employee has difficulty reading, or if English is not their first language, the employer should explain the content of the letter or note to them orally.
The letter or note should also invite the individual to a meeting at which the problem can be discussed, and it should inform the individual of their right to be accompanied at the meeting (see section 3). The employee should be given copies of any documents that will be produced at the meeting.

Hold a meeting to discuss the problem

14. Where possible, the timing and location of the meeting should be agreed with the employee. The length of time between the written notification and the meeting should be long enough to allow the employee to prepare but not so long that memories fade.
The employer should hold the meeting in a private location and ensure there will be no interruptions.

15. At the meeting, the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

16. An employee who cannot attend a meeting should inform the employer in advance whenever possible. If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (eg illness) the employer should arrange another meeting. A decision may be taken in the employee's absence if they fail to attend the re-arranged meeting without good reason. If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer. This five day time limit may be extended by mutual agreement.

Decide on outcome and action

17. Following the meeting the employer must decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee should be informed. Where it is decided that disciplinary action is justified the employer will need to consider what form this should take. Before making any decision the employer should 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 – most important of all – whether the intended disciplinary action is reasonable under the circumstances.

18. Examples of actions the employer might choose to take are set out in paragraphs 19-25. It is normally good practice to give employees at least one chance to improve their conduct or performance before they are issued with a final written warning. However, if an employee's misconduct or unsatisfactory performance – or its continuance – is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, the employer may decide to dismiss even though the employee has not previously received a warning for misconduct. (Further guidance on dealing with gross misconduct is set out at paragraphs 35-36.)

First formal action – unsatisfactory performance

19. Following the meeting, an employee who is found to be performing unsatisfactorily should be given a written note setting out:
    - the performance problem;
    - the improvement that is required;
    - the timescale for achieving this improvement;
    - a review date; and
    - any support the employer will provide to assist the employee.
20. The employee should be informed that the note represents the first stage of a formal procedure and that failure to improve could lead to a final written warning and, ultimately, dismissal. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period (eg six months).

First formal action – misconduct

21. Where, following a disciplinary meeting, an employee is found guilty of misconduct, the usual first step would be to give them a written warning setting out the nature of the misconduct and the change in behaviour required.

22. The employee should be informed that the warning is part of the formal disciplinary process and what the consequences will be of a failure to change behaviour. The consequences could be a final written warning and ultimately, dismissal. The employee should also be informed that they may appeal against the decision. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period (eg six months).

23. Guidance on dealing with cases of gross misconduct is provided in paragraphs 35-36.

Final written warning

24. Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is sufficiently serious, the employee should normally be issued with a final written warning – but only after they have been given a chance to present their case at a meeting. The final written warning should give details of, and grounds for, the complaint. It should warn the employee that failure to improve or modify behaviour may lead to dismissal or to some other penalty, and refer to the right of appeal. The final written warning should normally be disregarded for disciplinary purposes after a specified period (for example 12 months).

Dismissal or other penalty

25. If the employee's conduct or performance still fails to improve, the final stage in the disciplinary process might be dismissal or (if the employee's contract allows it or it is mutually agreed) some other penalty such as demotion, disciplinary transfer, or loss of seniority/pay. A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.

26. It is important for employers to bear in mind that before they dismiss an employee or impose a sanction such as demotion, loss of seniority or loss of pay, they must as a minimum have followed the statutory dismissal and disciplinary procedures. The standard statutory procedure to be used in almost all cases requires the employer to:

Step 1

Write to the employee notifying them of the allegations against them and the basis of the allegations and invite them to a meeting to discuss the matter.

Step 2

Hold a meeting to discuss the allegations – at which the employee has the right to be accompanied – and notify the employee of the decision.

Step 3

If the employee wishes to appeal, hold an appeal meeting at which the employee has the right to be accompanied – and inform the employee of the final decision.

27. More detail on the statutory standard procedure is set out at Annex A. There is a modified two-step procedure for use in special circumstances involving gross misconduct and details of this are set out at Annex B. Guidance on the modified procedure is contained in paragraph 36. There are a number of situations in which it is not necessary for employers to use the statutory procedures or where they will have been deemed to be completed and these are described in Annex E.

28. If the employer fails to follow this statutory procedure (where it applies), and an employee who is qualified to do so makes a claim for unfair dismissal, the employment tribunal will automatically find the dismissal unfair. The tribunal will normally increase the compensation awarded by 10 per cent, or, where it feels it is just and equitable to do so, up to 50 per cent. Equally, if the employment tribunal finds that an employee has been dismissed unfairly but has failed to follow the procedure (for instance they have failed to attend the disciplinary meeting without good cause), compensation will be reduced by, normally, 10 per cent, or, if the tribunal considers it just and equitable to do so, up to 50 per cent.

29. If the tribunal considers there are exceptional circumstances, compensation may be adjusted (up or down) by less than 10 per cent or not at all.

30. Employers and employees will normally be expected to go through the statutory dismissal and disciplinary procedure unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour, or they will be harassed. There will always be a certain amount of stress and anxiety for both parties when dealing with any disciplinary case, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.

31. Equally, the statutory procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but, in the case of employers, wherever possible they should consider appointing another manager to deal with the procedure.

32. Where an employee fails to attend a meeting held as part of the statutory discipline procedure without good reason the statutory procedure comes to an end. In those circumstances the employee's compensation may be reduced if they bring a successful complaint before an employment tribunal. If the employee does have a good reason for non-attendance, the employer must re-arrange the meeting. If the employee does not attend the second meeting for good reason the employer need not arrange a third meeting but there will be no adjustment of compensation.

What if a grievance is raised during a disciplinary case?

33. In the course of a disciplinary process, an employee might raise a grievance that is related to the case. If this happens, the employer should consider suspending the disciplinary procedure for a short period while the grievance is dealt with. Depending on the nature of the grievance, the employer may need to consider bringing in another manager to deal with the disciplinary process. In small organisations this may not be possible, and the existing manager should deal with the case as impartially as possible.

34. Where the action taken or contemplated by the employer is dismissal the statutory grievance procedure does not apply. Where the action taken or contemplated is paid suspension or a warning the statutory grievance procedure and not the dismissal and disciplinary procedure applies to any grievance. However, where the employer takes, or is contemplating other action short of dismissal and asserts that the reason for the action is conduct or capability related, the statutory grievance procedure does not apply unless the grievance is that the action amounts, or would amount, to unlawful discrimination, or that the true reason for the action is not the reason given by the employer. In those cases the employee must have raised a written grievance in accordance with the statutory grievance procedure before presenting any complaint to an employment tribunal about the issue raised by the grievance. However, if the written grievance is raised before any disciplinary appeal meeting, the rest of the grievance procedure does not have to be followed, although the employer may use the appeal meeting to discuss the grievance.

Dealing with gross misconduct

35. If an employer considers an employee guilty of gross misconduct, and thus potentially liable for summary dismissal, it is still important to establish the facts before taking any action. A short period of suspension with full pay may be helpful or necessary, although it should only be imposed after careful consideration and should be kept under review. It should be made clear to the employee that the suspension is not a disciplinary action and does not involve any prejudgement.

36. It is a core principle of reasonable behaviour that employers should give employees the opportunity of putting their case at a disciplinary meeting before deciding whether to take action. This principle applies as much to cases of gross misconduct as it does to ordinary cases of misconduct or unsatisfactory performance. There may however be some very limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting an employment tribunal will, very exceptionally, find the dismissal to be fair. To allow for these cases there is a statutory modified procedure under which the employer is required to write to the employee after the dismissal setting out the reasons for the dismissal and to hold an appeal meeting, if the employee wants one. The statutory procedure that must be followed by employers in such cases is set out in Annex B. If an employer fails to follow this procedure and the case goes to tribunal, the dismissal will be found to be automatically unfair.

Dealing with absence from work

37. When dealing with absence from work, it is important to determine the reasons why the employee has not been at work. If there is no acceptable reason, the matter should be treated as a conduct issue and dealt with as a disciplinary matter.

38. If the absence is due to genuine (including medically certified) illness, the issue becomes one of capability, and the employer should take a sympathetic and considerate approach. When thinking about how to handle these cases, it is helpful to consider:

    - how soon the employee's health and attendance will improve;
    - whether alternative work is available;
    - the effect of the absence on the organisation;
    - how similar situations have been handled in the past; and
    - whether the illness is a result of disability in which case the provisions of the Disability Discrimination Act 1995 will apply.

39. The impact of long-term absences will nearly always be greater on small organisations, and they may be entitled to act at an earlier stage than large organisations.

40. In cases of extended sick leave both statutory and contractual issues will need to be addressed and specialist advice may be necessary.

Dealing with special situations

If the full procedure is not immediately available

41. Special arrangements might be required for handling disciplinary matters among nightshift employees, employees in isolated locations or depots, or others who may be difficult to reach. Nevertheless the appropriate statutory procedure must be followed where it applies.

Trade union representatives

42. Disciplinary action against a trade union representative can lead to a serious dispute if it is seen as an attack on the union's functions. Normal standards apply but, if disciplinary action is considered, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official.

Criminal charges or convictions not related to employment

43. If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The employer should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody.

Appeals

44. Employees who have had disciplinary action taken against them should be given the opportunity to appeal. It is useful to set a time limit for asking for an appeal – five working days is usually enough.

45. An employee may choose to appeal for example because:
    - they think a finding or penalty is unfair;
    - new evidence comes to light; or
    - they think the disciplinary procedure was not used correctly.

    It should be noted that the appeal stage is part of the statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal.

46. As far as is reasonably practicable a more senior manager not involved with the case should hear the appeal. In small organisations, even if a more senior manager is not available, another manager should hear the appeal, if possible. If that is not an option, the person overseeing the case should act as impartially as possible. Records and notes of the original disciplinary meeting should be made available to the person hearing the appeal.

47. The employers should contact the employee with appeal arrangements as soon as possible, and inform them of their statutory right to be accompanied at the appeal meeting.

48. The manager must inform the employee about the appeal decision, and the reasons for it, as soon as possible. They should also confirm the decision in writing. If the decision is the final stage of the organisation's appeals procedure, the manager should make this clear to the employee.

Keeping records

49. It is important, and in the interests of both employers and employees, to keep written records during the disciplinary process. Records should include:
    - the complaint against the employee;
    - the employee's defence;
    - findings made and actions taken;
    - the reason for actions taken;
    - whether an appeal was lodged;
    - the outcome of the appeal;
    - any grievances raised during the disciplinary procedure; and
    - subsequent developments.

50. Records should be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and have access to certain personal data.

51. Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

Drawing up disciplinary rules and procedures

52. Management is responsible for maintaining and setting standards of performance in an organisation and for ensuring that disciplinary rules and procedures are in place. Employers are legally required to have disciplinary procedures. It is good practice to involve employees (and, where appropriate, their representatives) when making or changing rules and procedures, so that everyone affected by them understands them.

Rules

53. When making rules, the aim should be to specify those that are necessary for ensuring a safe and efficient workplace and for maintaining good employment relations.

54. It is unlikely that any set of rules will cover all possible disciplinary issues, but rules normally cover:
    - bad behaviour, such as fighting or drunkenness;
    - unsatisfactory work performance;
    - harassment or victimisation;
    - misuse of company facilities (for example email and internet);
    - poor timekeeping;
    - unauthorised absences; and
    - repeated or serious failure to follow instructions.

55. Rules should be specific, clear and recorded in writing. They also need to be readily available to employees, for instance on a noticeboard or, in larger organisations, in a staff handbook or on the intranet. Management should do all they can to ensure that every employee knows and understands the rules, including those employees whose first language is not English or who have trouble reading. This is often best done as part of an induction process.

56. Employers should inform employees of the likely consequences of breaking disciplinary rules. In particular, they should list examples of acts of gross misconduct that may warrant summary dismissal.

57. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms and are best decided by organisations in the light of their own particular circumstances. However, examples of gross misconduct might include:
    - theft or fraud;
    - physical violence or bullying;
    - deliberate and serious damage to property;
    - serious misuse of an organisation's property or name;
    - deliberately accessing internet sites containing pornographic, offensive or obscene material;
    - serious insubordination;
    - unlawful discrimination or harassment;
    - bringing the organisation into serious disrepute;
    - serious incapability at work brought on by alcohol or illegal drugs;
    - causing loss, damage or injury through serious negligence;
    - a serious breach of health and safety rules; and
    - a serious breach of confidence.

Procedures

58. Disciplinary procedures should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improvement amongst employees whose conduct or performance is unsatisfactory. Some organisations may prefer to have separate procedures for dealing with issues of conduct and capability. Large organisations may also have separate procedures to deal with other issues such as harassment and bullying.

59. When drawing up and applying procedures employers should always bear in mind the requirements of natural justice. This means that employees should be given the opportunity of a meeting with someone who has not been involved in the matter. They should be informed of the allegations against them, together with the supporting evidence, in advance of the meeting. Employees should be given the opportunity to challenge the allegations before decisions are reached and should be provided with a right of appeal.

60. Good disciplinary procedures should:
    - be put in writing;
    - say to whom they apply;
    - be non-discriminatory;
    - allow for matters to be dealt without undue delay;
    - allow for information to be kept confidential;
    - tell employees what disciplinary action might be taken;
    - say what levels of management have the authority to take disciplinary action;
    - require employees to be informed of the complaints against them and supporting evidence, before a meeting;
    - give employees a chance to have their say before management reaches a decision;
    - provide employees with the right to be accompanied;
    - provide that no employee is dismissed for a first breach of discipline, except in cases of gross misconduct;
    - require management to investigate fully before any disciplinary action is taken;
    - ensure that employees are given an explanation for any sanction; and
    - allow employees to appeal against a decision.

61. It is important to ensure that everyone in an organisation understands the disciplinary procedures including the statutory requirements. In small firms this is best done by making sure all employees have access to a copy of the procedures, for instance on a noticeboard, and by taking a few moments to run through the procedures with the employee. In large organisations formal training for those who use and operate the procedures may be appropriate.

Further action

62. It is sensible to keep rules and procedures under review to make sure they are always relevant and effective. New or additional rules should only be introduced after reasonable notice has been given to all employees and any employee representatives have been consulted.

Section 2
Grievance Procedures

At a glance

Drawing up grievance procedures

- Involve management, employees and their representatives where appropriate (Paragraph 90).
- Explain procedures to employees and make sure they have a copy or ready access to a copy of them (Paragraph 94).

Operating grievance procedures

- Many grievances can be settled informally with line managers (Paragraph 67).
- Employees should raise formal grievances with management (Paragraph 73).
- Invite the employee to a meeting and inform them about the right to be accompanied (Paragraph 77).
- Give the employee an opportunity to have their say at the meeting (Paragraph 78).
- Write with a response within a reasonable time and inform the employee of their right to appeal (Paragraph 81).

Appeals

- If possible, a more senior manager should handle the appeal (Paragraph 82).
- Tell the employee they have the right to be accompanied (Paragraph 82).
- The senior manager should respond to the grievance in writing after the appeal and tell the employee if it is the final stage in the grievance procedure (Paragraph 83).

Records

- Written records should be kept for future reference (Paragraph 87).

Guidance

Why have grievance procedures?

63. Grievances are concerns, problems or complaints that employees raise with their employers.

64. Grievance procedures are used by employers to deal with employees' grievances.

65. Grievance procedures allow employers to deal with grievances fairly, consistently and speedily. Employers must have procedures available to employees so that their grievances can be properly considered.

66. Guidance on drawing up grievance procedures is set out in paragraphs 90-95.

Dealing with grievances in the workplace

67. Employees should aim to resolve most grievances informally with their line manager. This has advantages for all workplaces, particularly where there might be a close personal relationship between a manager and an employee. It also allows for problems to be resolved quickly.

68. If a grievance cannot be settled informally, the employee should raise it formally with management. There is a statutory grievance procedure that employees must invoke if they wish subsequently to use the grievance as the basis of certain applications to an employment tribunal.

69. Under the standard statutory procedure, employees must:

Step 1

Inform the employer of their grievance in writing.

Step 2

Be invited by the employer to a meeting to discuss the grievance where the right to be accompanied will apply and be notified in writing of the decision. The employee must take all reasonable steps to attend this meeting.

Step 3

Be given the right to an appeal meeting if they feel the grievance has not been satisfactorily resolved and be notified of the final decision.

More detail on the standard statutory procedure is set out in Annex C.

70. There are certain occasions when it is not necessary to follow the statutory procedure for example, if the employee is raising a concern in compliance with the Public Interest Disclosure Act or a grievance is raised on behalf of at least two employees by an appropriate representative such as an official of an independent trade union. A full list of exemptions is set out in Annex E.

71. It is important that employers and employees follow the statutory grievance procedure where it applies. The employee should (subject to the exemptions described in Annex E) at least have raised the grievance in writing and waited 28 days before presenting any tribunal claim relating to the matter. A premature claim will be automatically rejected by the tribunal although (subject to special time limit rules) it may be presented again once the written grievance has been raised. Furthermore if a grievance comes before an employment tribunal and either party has failed to follow the procedure then the tribunal will normally adjust any award by 10 per cent or, where it feels it just and equitable to do so, by up to 50 per cent, depending on which party has failed to follow the procedure. In exceptional cases compensation can be adjusted by less than 10 per cent or not at all.

72. Wherever possible a grievance should be dealt with before an employee leaves employment. A statutory grievance procedure ("the modified grievance procedure" described in Annex D), however, applies where an employee has already left employment, the standard procedure has not been commenced or completed before the employee left employment and both parties agree in writing that it should be used instead of the standard statutory procedure. Under the modified procedure the employee should write to the employer setting out the grievance as soon as possible after leaving employment and the employer must write back setting out its response.

Raising a grievance

73. Employees should normally raise a grievance with their line manager unless someone else is specified in the organisation's procedure. If the complaint is against the person with whom the grievance would normally be raised the employee can approach that person's manager or another manager in the organisation. In small businesses where this is not possible, the line manager should hear the grievance and deal with it as impartially as possible.

74. Managers should deal with all grievances raised, whether or not the grievance is presented in writing. However, employees need to be aware that if the statutory procedure applies, they will not subsequently be able to take the case to an employment tribunal unless they have first raised a grievance in writing and waited a further 28 days before presenting the tribunal claim.

75. Setting out a grievance in writing is not easy – especially for those employees whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee should be encouraged to seek help for example from a work colleague, a trade union or other employee representative. Under the Disability Discrimination Act 1995 employers are required to make reasonable adjustments which may include assisting employees to formulate a written grievance if they are unable to do so themselves because of a disability.

76. In circumstances where a grievance may apply to more than one person and where a trade union is recognised it may be appropriate for the problem to be resolved through collective agreements between the trade union(s) and the employer.

Grievance meetings

77. On receiving a formal grievance, a manager should invite the employee to a meeting as soon as possible and inform them that they have the right to be accompanied. It is good practice to agree a time and place for the meeting with the employee. Small organisations might not have private meeting rooms, but it is important that the meeting is not interrupted and that the employee feels their grievance is being treated confidentially. If an employee's companion cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the date originally proposed by the employer. This five day time limit may be extended by mutual agreement.

78. The employee should be allowed to explain their complaint and say how they think it should be settled. If the employer reaches a point in the meeting where they are not sure how to deal with the grievance or feel that further investigation is necessary the meeting should be adjourned to get advice or make further investigation. This might be particularly useful in small organisations that lack experience of dealing with formal grievances. The employer should give the grievance careful consideration before responding.

79. Employers and employees will normally be expected to go through the statutory grievance procedures unless they have reasonable grounds to believe that by doing so they might be exposed to a significant threat, such as violent, abusive or intimidating behaviour, or they will be harassed. There will always be a certain amount of stress and anxiety for both parties when dealing with grievance cases, but this exemption will only apply where the employer or employee reasonably believes that they would come to some serious physical or mental harm; their property or some third party is threatened or the other party has harassed them and this may continue.

80. Equally, the statutory procedure does not need to be followed if circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad but wherever possible the employer should consider appointing another manager to deal with the procedure.

81. The employer should respond in writing to the employee's grievance within a reasonable time and should let the employee know that they can appeal against the employer's decision if they are not satisfied with it. What is considered reasonable will vary from organisation to organisation, but five working days is normally long enough. If it is not possible to respond within five working days the employee should be given an explanation for the delay and told when a response can be expected.

Appeals

82. If an employee informs the employer that they are unhappy with the decision after a grievance meeting, the employer should arrange an appeal. It should be noted that the appeal stage is part of the statutory procedure and if the employee pursues an employment tribunal claim the tribunal may reduce any award of compensation if the employee did not exercise the right of appeal. As far as is reasonably practicable the appeal should be with a more senior manager than the one who dealt with the original grievance. In small organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If that is not an option, the person overseeing the case should act as impartially as possible. At the same time as inviting the employee to attend the appeal, the employer should remind them of their right to be accompanied at the appeal meeting.

83. As with the first meeting, the employer should write to the employee with a decision on their grievance as soon as possible. They should also tell the employee if the appeal meeting is the final stage of the grievance procedure.

84. In large organisations it is good practice to allow a further appeal to a higher level of management, such as a director. However, in smaller firms the first appeal will usually mark the end of the grievance procedure.

Special considerations

85. Complaints about discrimination, bullying and harassment in the workplace are sensitive issues, and large organisations often have separate grievance procedures for dealing with these. It is important that these procedures meet the statutory minimum requirements.

86. Organisations may also wish to consider whether they need a whistleblowing procedure in the light of the Public Interest Disclosure Act 1998. This Act provides protection to employees who raise concerns about certain kinds of wrongdoing in accordance with its procedures.

Keeping records

87. It is important, and in the interests of both employer and employee, to keep written records during the grievance process. Records should include:
    - the nature of the grievance raised;
    - a copy of the written grievance;
    - the employer's response;
    - action taken;
    - reasons for action taken;
    - whether there was an appeal and, if so, the outcome; and
    - subsequent developments.

88. Records should be treated as confidential and kept in accordance with the Data Protection Act 1998, which gives individuals the right to request and have access to certain personal data.

89. Copies of meeting records should be given to the employee including any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.

Drawing up grievance procedures

90. When employers draw up grievance procedures, it pays to involve everybody they will affect, including managers, employees and, where appropriate, their representatives.

91. Grievance procedures should make it easy for employees to raise issues with management and should:
    - be simple and put in writing;
    - enable an employee's line manager to deal informally with a grievance, if possible;
    - keep proceedings confidential; and
    - allow the employee to have a companion at meetings.

92. Issues that may cause grievances include:
    - terms and conditions of employment;
    - health and safety;
    - work relations;
    - bullying and harassment;
    - new working practices;
    - working environment;
    - organisational change; and
    - equal opportunities.

93. Where separate procedures exist for dealing with grievances on particular issues (for example, harassment and bullying) these should be used instead of the normal grievance procedure.

94. It's important to ensure that everyone in the organisation understands the grievance procedures including the statutory requirements and that, if necessary, supervisors, managers and employee representatives are trained in their use. Employees must be given a copy of the procedures or have ready access to them, for instance on a noticeboard. Large organisations can include them with disciplinary procedures as part of an induction process.

95. Take the time to explain the detail of grievance procedures to employees. This is particularly useful for people who do not speak English very well or who have difficulty with reading.

Section 3

A worker's right to be accompanied

At a glance

The right to be accompanied

- All workers have the right to be accompanied at a disciplinary or grievance hearing (Paragraph 96).
- Workers must make a reasonable request to the employer if they want to be accompanied (Paragraph 96).
- Disciplinary hearings, for these purposes, include meetings where either disciplinary actions or some other actions might be taken against the worker. Appeal hearings are also covered (Paragraphs 97-99).
- Grievance hearings are defined as meetings where an employer deals with a worker's complaint about a duty owed to them by the employer (Paragraphs 100-102).

The companion

- The companion can be a fellow worker or a union official (Paragraph 104).
- Nobody has to accept an invitation to act as a companion (Paragraph 107).
- Fellow workers who are acting as companions can take paid time off to prepare for and go to a hearing (Paragraph 109).

Applying the right

- Agree a suitable date with the worker and the companion (Paragraph 110).
- The worker should tell the employer who the chosen companion is (Paragraph 112).
- The companion can have a say at the hearing but cannot answer questions for the worker (Paragraph 113-114).
- Do not disadvantage workers who have applied the right, or their companions (Paragraph 116).

Guidance

What is the right to be accompanied?

96. Workers have a statutory right to be accompanied by a fellow worker or trade union official where they are required or invited by their employer to attend certain disciplinary or grievance hearings. They must make a reasonable request to their employer to be accompanied. Further guidance on what is a reasonable request and who can accompany a worker appears at paragraphs 103-109.

What is a disciplinary hearing?

97. For the purposes of this right, disciplinary hearings are defined as meetings that could result in:
    - a formal warning being issued to a worker (ie a warning that will be placed on the worker's record);
    - the taking of some other disciplinary action (such as suspension without pay, demotion or dismissal) or other action; or
    - the confirmation of a warning or some other disciplinary action (such as an appeal hearing).

98. The right to be accompanied will also apply to any disciplinary meetings held as part of the statutory dismissal and disciplinary procedures. This includes any meetings held after an employee has left employment.

99. Informal discussions or counselling sessions do not attract the right to be accompanied unless they could result in formal warnings or other actions. Meetings to investigate an issue are not disciplinary hearings. If it becomes clear during the course of such a meeting that disciplinary action is called for, the meeting should be ended and a formal hearing arranged at which the worker will have the right to be accompanied.

What is a grievance hearing?

100. For the purposes of this right, a grievance hearing is a meeting at which an employer deals with a complaint about a duty owed by them to a worker, whether the duty arises from statute or common law (for example contractual commitments).

101. For instance, an individual's request for a pay rise is unlikely to fall within the definition, unless a right to an increase is specifically provided for in the contract or the request raises an issue about equal pay. Equally, most employers will be under no legal duty to provide their workers with car parking facilities, and a grievance about such facilities would carry no right to be accompanied at a hearing by a companion. However, if a worker were disabled and needed a car to get to and from work, they probably would be entitled to a companion at a grievance hearing, as an issue might arise as to whether the employer was meeting its obligations under the Disability Discrimination Act 1995.

102. The right to be accompanied will also apply to any meetings held as part of the statutory grievance procedures. This includes any meetings after the employee has left employment.

What is a reasonable request?

103. Whether a request for a companion is reasonable will depend on the circumstances of the individual case and, ultimately, it is a matter for the courts and tribunals to decide. However, when workers are choosing a companion, they should bear in mind that it would not be reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing or who might have a conflict of interest. Nor would it be reasonable for a worker to ask to be accompanied by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied does not have to be in writing.

The companion

104. The companion may be:

- a fellow worker (ie another of the employer's workers);
- an official employed by a trade union, or a lay trade union official, as long as they have been reasonably certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary or grievance hearings. Certification may take the form of a card or letter.

105. Some workers may, however, have additional contractual rights to be accompanied by persons other than those listed above (for instance a partner, spouse or legal representative). If workers are disabled, employers should consider whether it might be reasonable to allow them to be accompanied because of their disability.

106. Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether the union is recognised or not. However, where a union is recognised in a workplace, it is good practice for workers to ask an official from that union to accompany them.

107. Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.

108. Trade unions should ensure that their officials are trained in the role of acting as a worker's companion. Even when a trade union official has experience of acting in the role, there may still be a need for periodic refresher training.

109. A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing. A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer. In cases where a lay official agrees to accompany a worker employed by another organisation, time off is a matter for agreement by the parties concerned.

Applying the right

110. Where possible, the employer should allow a companion to have a say in the date and time of a hearing. If the companion cannot attend on a proposed date, the worker can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

111. In the same way that employers should cater for a worker's disability at a disciplinary or grievance hearing, they should also cater for a companion's disability, for example providing for wheelchair access if necessary.

112. Before the hearing takes place, the worker should tell the employer who they have chosen as a companion. In certain circumstances (for instance when the companion is an official of a non-recognised trade union) it can be helpful for the companion and employer to make contact before the hearing.

113. The companion should be allowed to address the hearing in order to:

- put the worker's case
- sum up the worker's case
- respond on the worker's behalf to any view expressed at the hearing.

114. The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing, including asking witnesses questions. The companion has no right to answer questions on the worker's behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

115. Workers whose employers fail to comply with a reasonable request to be accompanied may present a complaint to an employment tribunal. Workers may also complain to a tribunal if employers fail to re-arrange a hearing to a reasonable date proposed by the worker when a companion cannot attend on the date originally proposed. The tribunal may order compensation of up to two weeks' pay. This could be increased if, in addition, the tribunal finds that the worker has been unfairly dismissed.

116. Employers should be careful not to disadvantage workers for using their right to be accompanied or for being companions, as this is against the law and could lead to a claim to an employment tribunal.

Section 4

Annexes

Annex A: Standard statutory dismissal and disciplinary procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

This procedure applies to disciplinary action short of dismissal (excluding oral and written warnings and suspension on full pay) based on either conduct or capability. It also applies to dismissals (except for constructive dismissals) including dismissals on the basis of conduct, capability, expiry of a fixed-term contract, redundancy and retirement. However, it does not apply in certain kinds of excepted cases that are described in Annex E.

Step 1

Statement of grounds for action and invitation to meeting

- The employer must set out in writing the employee's alleged conduct or characteristics, or other circumstances, which lead them to contemplate dismissing or taking disciplinary action against the employee.
- The employer must send the statement or a copy of it to the employee and invite the employee to attend a meeting to discuss the matter.

Step 2

The meeting

- The meeting must take place before action is taken, except in the case where the disciplinary action consists of suspension.
- The meeting must not take place unless:

  i) the employer has informed the employee what the basis was for including in the statement under Step 1 the ground or grounds given in it; and

  ii) the employee has had a reasonable opportunity to consider their response to that information.

- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of their decision and notify them of the right to appeal against the decision if they are not satisfied with it.
- Employees have the right to be accompanied at the meeting (see section 3).

Step 3

Appeal

- If the employee wishes to appeal, they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a further meeting.
- The employee must take all reasonable steps to attend the meeting.
- The appeal meeting need not take place before the dismissal or disciplinary action takes effect.
- Where reasonably practicable, the appeal should be dealt with by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).
- After the appeal meeting, the employer must inform the employee of their final decision.
- Employees have the right to be accompanied at the appeal meeting (see section 3).

Annex B: Modified statutory dismissal and disciplinary procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

Step 1

Statement of grounds for action

- The employer must set out in writing:

  i) the employee's alleged misconduct which has led to the dismissal;

  ii) the reasons for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct; and

  iii) the employee's right of appeal against dismissal.

- The employer must send the statement or a copy of it to the employee.

Step 2

Appeal

- If the employee does wish to appeal, they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a meeting.
- The employee must take all reasonable steps to attend the meeting.
- After the appeal meeting, the employer must inform the employee of their final decision.
- Where reasonably practicable the appeal should be dealt with by a more senior manager not involved in the earlier decision to dismiss.
- Employees have the right to be accompanied at the appeal meeting (see section 3).

Annex C: Standard statutory grievance procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

Step 1

Statement of grievance

- The employee must set out the grievance in writing and send the statement or a copy of it to the employer.

Step 2

Meeting

- The employer must invite the employee to attend a meeting to discuss the grievance.
- The meeting must not take place unless:

  i) the employee has informed the employer what the basis for the grievance was when they made the statement under Step 1; and

  ii) the employer has had a reasonable opportunity to consider their response to that information;

- The employee must take all reasonable steps to attend the meeting.
- After the meeting, the employer must inform the employee of their decision as to their response to the grievance and notify them of the right of appeal against the decision if they are not satisfied with it.
- Employees have the right to be accompanied at the meeting (see section 3).

Step 3

Appeal

- If the employee does wish to appeal, they must inform the employer.
- If the employee informs the employer of their wish to appeal, the employer must invite them to attend a further meeting.
- The employee must take all reasonable steps to attend the meeting.
- After the appeal meeting, the employer must inform the employee of their final decision.
- Where reasonably practicable, the appeal should be dealt with by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).
- Employees have the right to be accompanied at the appeal meeting (see section 3).

Annex D: Modified statutory grievance procedure

(This is a summary of the statutory procedure which is set out in full in Schedule 2 to the Employment Act 2002.)

Step 1

Statement of grievance

- The employee must set out in writing:

  i) the grievance; and

  ii) the basis for it.

- The employee must send the statement or a copy of it to the employer.

Step 2

Response

- The employer must set out their response in writing and send the statement or a copy of it to the employee.

Annex E: Statutory Procedures: Exemptions and Deemed Compliance

The Employment Act 2002 (Dispute Resolution) Regulations 2004 contain detailed provisions about the application of the Statutory Dispute Resolution Procedures. This Annex summarises the particular provisions of the 2004 Regulations which describe:

(a) certain situations in which the statutory procedures will not apply at all; and

(b) other situations in which a party who has not completed the applicable procedure will nevertheless be treated as though they had done so.

Where a statutory procedure applies and one of the conditions for extending time limits contained in the 2004 Regulations has been met, then the normal time limit for presenting an employment tribunal claim will be extended by three months. The guidance notes accompanying tribunal application forms describe those conditions. However, in cases where the procedures do not apply at all, there can be no such extension.

(a) Situations in which the Statutory Procedures do not apply at all

The Disciplinary and Dismissal Procedures do not apply where:

- factors beyond the control of either party make it impracticable to carry out or complete the procedure for the foreseeable future; or
- the employee is dismissed in circumstances covered by the modified dismissal procedure and presents a tribunal complaint before the employer has taken step 1; or
- all of the employees of the same description or category are dismissed and offered re-engagement either before or upon termination of their contract; or
- the dismissal is one of a group of redundancies covered by the duty of collective consultation of worker representatives under the Trade Union and Labour Relations (Consolidation) Act 1992; or
- the employee is dismissed while taking part in unofficial industrial action, or other industrial action which is not "protected action" under the 1992 Act, unless the employment tribunal has jurisdiction to hear a claim of unfair dismissal; or
- the employee is unfairly dismissed for taking part in industrial action which is "protected action" under the 1992 Act; or
- the employer's business suddenly and unexpectedly ceases to function and it becomes impractical to employ any employees; or
- the employee cannot continue in the particular position without contravening a statutory requirement; or
- the employee is one to whom a dismissal procedure agreement designated under section 110 of the Employment Relations Act 1996 applies.

The Grievance Procedures do not apply where:

- the employee is no longer employed, and it is no longer practicable for the employee to take step 1 of the procedure; or
- the employee wishes to complain about an actual or threatened dismissal; or
- the employee raises a concern as a "protected disclosure" in compliance with the public interest disclosure provisions of the 1996 Act;
- the employee wishes to complain about (actual or threatened) action short of dismissal to which the standard disciplinary procedure applies, unless the grievance is that this involves unlawful discrimination (including under the Equal Pay Act) or is not genuinely on grounds of capability or conduct.

In addition, neither party need comply with an applicable statutory procedure where to do so would be contrary to the interests of national security.

(b) Situations in which the Statutory Procedures have not been completed but are treated as having been complied with

The Disciplinary and Dismissal Procedures are treated as having been complied with where all stages of the procedure have been completed, other than the right of appeal, and:

- the employee then applies to the employment tribunal for interim relief; or
- a collective agreement provides for a right of appeal, which the employee exercises.

The Grievance Procedures are treated as having been complied with where:

- the employee is complaining that action short of dismissal to which the standard disciplinary procedure applies is not genuinely on grounds of conduct or capability, or involves unlawful discrimination, and the employee has raised that complaint as a written grievance before any appeal hearing under a statutory procedure or, if none is being followed, before presenting a tribunal complaint; or
- the employment has ended and the employee has raised a written grievance, but it has become not reasonably practical to have a meeting or an appeal. However, the employer must still give the employee a written answer to the grievance; or
- an official of a recognised independent union or other appropriate representative has raised the grievance on behalf of two or more named employees. Employees sharing the grievance may choose one of their number to act as a representative; or
- the employee pursues the grievance using a procedure available under an industry-level collective agreement.

(c) Other Special Circumstances in which the Statutory Procedures need not be begun or completed

In addition, neither the employer nor employee need begin a procedure (which will then be treated as not applying), or comply with a particular requirement of it (but will still be deemed to have complied) if the reason for not beginning or not complying is:

- the reasonable belief that doing so would result in a significant threat to themselves, any other person, or their or any other persons' property;
- because they have been subjected to harassment and reasonably believe that doing so would result in further harassment; or
- because it is not practicable to do so within a reasonable period.

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