

Acas consultation on the updated draft Code of Practice on disciplinary and grievance procedures

GENERAL COMMENTS

1. NASUWT welcomes the opportunity to respond to the Acas consultation on the updated draft Code of Practice on disciplinary and grievance procedures.
2. NASUWT – The Teachers' Union – represents teachers and headteachers across the United Kingdom.
3. NASUWT is The Teachers' Union and is the voice of the teaching profession.
4. Our aim is to improve and protect the status, morale and working conditions of the teaching profession so that teachers and headteachers can provide the best education and support to children and young people.
5. We are committed to ensuring that teachers and headteachers are recognised and rewarded as highly skilled professionals with working conditions that enable them to focus on their core role of leading teaching and learning.
6. The questions in the consultation are significant and wide-ranging and cover a number of areas associated with disciplinary and grievance procedures. Our submission seeks to address these issues.

GENERAL COMMENTS

7. The Union provides extensive casework assistance to members, which includes representing them in formal disciplinary and grievance procedures. We therefore have wide knowledge and regular, day-to-day experience of the Acas Code of Practice.
8. Any changes to the Acas Code of Practice should not threaten principles of a fair and decent society where all people are treated with dignity at work. We would only support reforms to the Code of Practice that do not put teachers, and other ordinary working people, at a further disadvantage in the workplace.
9. NASUWT believes that access to fair and proper hearings for workers is a fundamental and guiding principle of a civilised society, and the Acas Code of Practice on disciplinary and grievance procedures is an important component of this which provides procedural fairness for many workers.

SPECIFIC COMMENTS

Resolving concerns informally

- **Informal resolution of employer concerns about worker misconduct or unsatisfactory performance**
10. NASUWT believes that the current Acas Code of Practice would benefit from an overhaul so that better reflects current employment norms and practices, including in relation to the role of informal resolution in addressing workers' concerns.
 11. We agree that the revised draft Acas Code of Practice should be more explicit about the role played by informal resolution in situations where an employer or worker has an issue or concern at work.

12. Informal resolution can, for instance, play a key role in improving workplace relationships and reducing the personal and organisational costs associated with workplace conflict.
13. Emphasising the role of informal resolution in the revised draft Code means that employers will have to do more to demonstrate how they have dealt with workplace issues informally. If not, they risk the possibility of an employment tribunal considering this where applying an award.
14. Indeed, NASUWT adopts a 'no surprises' approach to how issues of performance and capability are managed by schools and colleges, with the expectation clearly being that issues are addressed through informal mechanisms such as normal day-to-day line management before being progressed through to formal stages.
15. However, it is important to note the context of this and the fact that under the introduction of reforms by the Coalition Government reforms between 2010 and 2015, there was a requirement from the Secretary of State for Education, Michael Gove, that formal capability proceedings against a teacher should be disclosed on a reference.¹
16. Whilst the Union recognises the need to resolve disputes at the earliest stage and the vital role that can be played by informal resolution, there are some extremely important caveats that must be taken into consideration.
17. For example, any informal resolution must be genuinely voluntary and underpinned by the principles of fairness and equality, particularly as NASUWT has experience of some employers seeking to game the system by utilising informal procedures, knowing that this denies our members their statutory right to be accompanied by a trade union representative.
18. Of even greater concern is when employers hold informal meetings and seek to impose a 'lesser sanction' on the pretence of doing the worker 'a

¹ [Teacher references: A classic moral hazard for schools](#)

favour' by not initiating formal procedures, especially if the lesser sanction is indefinitely retained on their file.

19. In addition, there will always be the need for some workplace disputes to require more formal routes, including the representing of members in employment tribunals.
20. It is vitally important that workers have access to a range of methods of redress as well as that offered through informal resolution, especially given the inequity in power that exists between workers and employers in the workplace.
21. The revised draft Code of Practice needs to recognise the important role that formal processes play in allowing workers to have their concerns placed on record and ensure that serious issues (e.g. sexual harassment and/or workplace bullying) cannot be 'swept under the carpet'. As such, formal procedures provide important safeguards, transparency and accountability.
22. It cannot go unnoticed that a formal disciplinary or grievance process is often the point at which a worker first seeks support from their trade union.
23. Furthermore, whilst we recognise that the revised draft Code acknowledges that it can be helpful for an employer to discuss a concern informally with a trade union representative at an early stage,² it still does not go far enough in ensuring workers can enforce the right to be accompanied when considering informal resolution.
24. Indeed, many good employers do permit workers to be accompanied in informal meetings and this has been something that is reflected in a number of grievance and disciplinary procedures that NASUWT has negotiated with employers.

² [Code of Practice on disciplinary and grievance procedures \(draft\) | Acas](#)

25. Nevertheless, the draft revised Code of Practice needs to be more explicit about the important role that trade union representation can play in successful informal resolution, as well as emphasising that it is good practice to permit trade union representation in situations where the statutory right to representation does not exist (e.g. informal resolution).
26. This must include making it clear that the presence of a trade union representative can assist informal resolution by supporting workers with understanding processes, as well as engaging constructively with management. In doing so, informal resolutions can be reached earlier.
27. If Acas wishes to encourage the successful informal resolution of issues, it must explicitly reference the importance and legitimacy of trade union accompaniment for workers, as well as putting unscrupulous employers on notice.
28. The need for trade union representation becomes even more important if the intention of the revised draft Code is to provide written confirmation of the outcome of an informal approach to both parties, especially if this is going to be retained on a worker's employment file.
29. NASUWT notes with interest comments from the coroner's inquest into the death of Treasury official Chloe Moffat that highlighted the fact that she was not offered the opportunity to have a third party of her choice present in an informal meeting where potentially serious allegations were raised.³
30. Trade union representation at informal and formal meetings would benefit from the revised draft Acas Code of Practice referencing the importance of employers contributing and facilitating paid release time, including contributing to local authority pooled arrangements, for trade union representatives to be appropriately trained to support members to resolve workplace concerns/issues.

³ [UK Treasury must change disciplinary process after worker's suicide, mother says | Civil service | The Guardian](#)

31. This is particularly important if it is: *‘good practice to provide training and support to help managers, workers and representatives build the skills and confidence needed to resolve concerns early and effectively.’*⁴
32. NASUWT maintains that if there is an expectation in the revised draft Code of Practice for more informal resolution then there must be a corresponding statutory right to trade union representation beyond that currently only provided for in formal disciplinary and grievance procedures.
33. We therefore call upon the Government to move at pace to resolve this issue so that workers are better protected in both informal and formal procedures, thereby addressing some of the inequity of the employment relationship.
34. Finally, the Union is concerned that the increased use of informal resolution espoused in the revised draft Code of Practice could result in a situation where systemic issues in a workplace remain hidden (e.g. sexually harassment and/or workplace bullying).
35. As such, the revised draft Code must make it clear that employers monitor and keep a record of the use of informal resolution and the issues raised, and that this must be shared on an annual basis with recognised trade unions, including by those with protected characteristics, so that any trends and patterns that emerge can be fully addressed.
36. Given the points raised above, NASUWT believes that paragraphs 16 to 23 of the revised draft Code of Practice go some way to emphasising the need for employers to address concerns about conduct or performance informally where appropriate.
37. We are supportive of the fact that many issues can be dealt with by engaging in early conversations that clarify expectations and provide for discussions around any agreed training and support – the so called ‘no surprises’ approach referenced above.

⁴ [Code of Practice on disciplinary and grievance procedures \(draft\) | Acas](#)

38. However, as detailed above, the revised draft Code needs to be stronger in emphasising the importance of trade union representation when workers are unsure of workplace procedures, unaware of their rights or reluctant to challenge the process.

39. Without trade union accompaniment, the unequal nature of the employment relationship means that some workers may not feel in a position to engage meaningfully in the process to seek an effective resolution.

40. This is especially evident when informal approaches to investigations are undertaken by some employers that see workers being subjected to a deluge of questions as part of a 'fact-finding exercise' ahead of a formal disciplinary process.

41. We are concerned that the revised draft Acas Code of Practice is not clear enough on the fact that the process is about early intervention and supporting the worker to make the necessary improvement, including discussion and agreement on any training and support provided.

42. In amending this, the revised draft Code would emphasise the fact that this is not about simply about gathering enough evidence to set workers up to fail, but instead it is about helping workers to improve performance or conduct so as to remain in employment.

43. It is therefore welcomed that paragraph 21 provides an important safeguard by stating that: *'An informal conversation should never by itself result in a formal disciplinary warning or other formal disciplinary action.'*⁵

- **Informal resolution of concerns that workers raise with their employers**

44. Whilst NASUWT supports the emphasis on informal resolution, it is important to understand the context of the arguments made above

⁵ Ibid.

regarding the need for the revised draft Code to be stronger in emphasising the importance of trade union accompaniment and the role trade unions play in ensuring a more 'level playing field' when a worker raises a concern informally.

45. This increases the likelihood that the issue is properly discussed and resolved, and that there is a genuine and lasting resolution at an earlier stage.

46. The Union welcomes the recognition in paragraph 23 of the revised draft Code of Practice that informal resolution is not appropriate in every case, as we maintain that it is up to a worker and their trade union to decide the best course of action, including recourse to formal procedures as and when necessary.

47. Informal resolutions must therefore never act as a barrier for workers accessing redress through other formal processes. Instead, it should complement rather than replace other formal processes available to workers.

Language and tone of the Code

48. Whilst NASUWT is supportive of anything that can help make the Acas Code of Practice more accessible and give workers more confidence in engaging with workplace processes, we would be concerned if this had the unintended consequence of making it harder for workers to appreciate when they needed support or representation.

49. The move to use the term 'concerns' when describing informal resolution is welcomed, but it must avoid scenarios where workers are unable to recognise the seriousness of the situation and therefore fail to seek advice and guidance from their trade union, including the right to accompaniment.

50. In addition, many NASUWT caseworkers are familiar and well versed in the language used in the current Acas Code of Practice, so it may be the

case that a glossary of key terms in an appendix to the revised draft Acas Code of Practice strikes the right balance, along with the arguments previously made in relation to the need for a much stronger emphasis on availability and benefits of trade union support.

- **Should the current title of the Code be retained?**

51. NASUWT is supportive of anything that can help make the Acas Code of Practice more accessible, including giving further consideration to whether or not the current title of the Code should be retained.

Principles of fairness

52. In appreciating the desire to place a new expectation on employers and workers to resolve concerns early and informally to avoid unnecessary escalation, NASUWT is concerned that paragraph 8 does not go far enough in placing an explicit obligation on employers to inform workers of their right to trade union accompaniment, including assisting in the facilitation of this.

53. We contend that the burden must not fall entirely on workers to request trade union support, especially if they are unaware of the process and unsure of next steps.

54. As detailed earlier in this consultation, if there is an expectation in the revised draft Code of Practice for more informal resolution then there must be a corresponding statutory right to trade union representation beyond that currently only provided for in formal disciplinary and grievance procedures.

55. It should be noted that one of the six principles in the 2015 Acas Code of Practice refers to the fact that: *‘Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.’*⁶ We believe that this must be incorporated into the revised draft Code, along with an

⁶ [Code of Practice on disciplinary and grievance procedures | Acas](#)

expectation that employers inform workers of the benefits and importance of trade union accompaniment.

56. Whilst recognising the need to ensure that employers should deal with issues promptly and not unreasonably delay conversations, meetings or discussions (paragraph 7), the Union contends that this will depend on the issue, who is involved and how it can be resolved.

57. Any such expectations should therefore not be at the expense of a reasonable and appropriate process being agreed and followed by those involved.

Reasonable adaptations to the principles and steps in the Code

- **Recognising that employment tribunals will take the size and resources of an employer into account**

58. Whilst appreciating that employment tribunals will take the size and resources of an employer into account, NASUWT is concerned at the references in the draft revised Code of Practice to ‘....*should apply in most situations*’⁷(paragraph 2) and employer size and resources (paragraph 3), as they give the impression that smaller employers are exempt from the Code and run the risk of creating a two-tier system.

59. We are clear that workers in small businesses must not enjoy fewer protections from those working in larger businesses, particularly as this would appear to contradict the core principle of fairness as espoused in the draft revised Code.

- **Getting the balance right in stating where other legal requirements need to be applied alongside the Code**

60. Whilst recognising that there may be some circumstances where an employer needs to comply with other legal requirements, we are

⁷ Ibid.

concerned that paragraph 4 suggests that employers can unilaterally choose to depart from the revised draft Code if another legal or professional obligation applies, especially if this risks restricting the application of procedural safeguards under the Code of Practice.

61. The Union expects employers to make every effort to comply with both the Code and any other relevant obligations, and, where there is a genuine conflict the revised draft Code must make it clear that this must be identified and discussed with all the parties involved.

Avoiding unlawful discrimination

62. NASUWT welcomes the revised draft Code making reference to the need for employers to meet their obligations under the Equality Act 2010, including in relation to reasonable adjustments for workers with a disability.

63. We are supportive of any measures in the revised draft Code that remind employers of the importance of equality and inclusion when handling workplace concerns, including the use of illustrative examples set out in paragraph 14.

64. However, the Union welcomes a much more comprehensive list of examples in addition to those already included in paragraph 14, such as adjusting timescales and deadlines, providing additional breaks during meetings and/or altering the format or location of meetings.

65. In addition, the revised draft Code of Practice must be explicit that the revised list in paragraph 14 is not exhaustive and must account for other circumstances as appropriate.

66. Whilst we acknowledge that workers should discuss any adjustments to the procedures as soon as possible, we contend that the burden must not fall entirely on workers to discuss as early as possible if any reasonable adjustments are needed, as there must be an explicit obligation on employers to ask if any reasonable adjustments are required.

67. Furthermore, the revised draft Code must make it clear that the attendance of someone in a supporting capacity as part of a reasonable adjustment is not the same as the right to be accompanied.

Training

68. NASUWT agrees that the revised draft Code must make it clear that it is good practice to provide training to ensure that managers, workers and representatives have the skills and confidence to resolve concerns early and effectively.

69. Indeed, this is a key tenet of policies that the Union pushes for in all policies it negotiates with employers in order to protect members, particularly if members are line managers and may be asked to manage a process on behalf of their employer.

70. However, we would want the revised draft Code to go beyond stating that it is '*good practice*' (paragraph 13) and place a stronger expectation on employers in relation to training.

71. In addition, the Union would want the revised draft Code to be explicit about the fact that training for trade union representatives is provided by their trade union rather than by the employer.

72. As such, the revised draft Code must include an expectation for employers to provide sufficient facilities time and reasonable paid time off for trade union representatives to train to be able to carry out their role properly, including paying into local authority pooled arrangements.

Formal disciplinary procedures

- **Fact finding and investigations**

73. NASUWT agrees that the revised draft Code on fact-finding (paragraphs 24 to 26) is helpful and could avoid unnecessary escalation of concerns into formal disciplinary procedures.

74. Furthermore, we welcome the reference to the fact that an investigation must not, *'by itself result in any disciplinary action.'*⁸ This clearly establishes the parameters regarding an investigatory meeting and puts employers on notice not to stray into deciding on disciplinary action during an investigatory meeting.

75. This is especially relevant when employers hold informal meetings that seek to persuade a worker to admit misconduct on the basis that the employer can impose a 'lesser sanction' to be seen to be doing the worker 'a favour' rather than making something formal.

76. Coupled with this must be an expectation in the revised draft Code that employers adjourn an investigatory meeting and remind a worker of their right to be accompanied if such a situation arises.

77. However, as stated throughout this consultation, the Union would want to see a much stronger steer placed on the right to be accompanied at all informal and formal meetings, including investigations.

78. In addition, we believe that the revised draft Code would be enhanced if there was a reference to investigations being conducted by employers to establish the facts, and if there is a case to answer, by an objective and competent person with no involvement in the case.

79. Moreover, in order to alleviate unnecessary stress and anxiety caused by such a process, we contend that the revised draft Code of Practice must

⁸ Ibid.

set out timescales (e.g. 15 working days), recognising that these could be varied by mutual consent as appropriate.

80. Furthermore, NASUWT would want to see the revised draft Code place an expectation on employers to provide workers with sufficient detail of the issue to allow them to prepare appropriately, including seeing it as good practice to allow them to meet and discuss it with their trade union representative; something that is already contained in paragraph 32.

81. Furthermore, the revised draft Code must place an expectation on employers to provide a note-taker to record meetings, and that all decisions at each stage must be confirmed in writing.

- **Suspensions**

82. The Union welcomes the revised draft Code of Practice providing additional guidance on the role played by suspension, including making it clear that suspension must only be used in limited circumstances (paragraph 28). This is due to the negative impact that suspensions can have for those involved (despite not implying wrongdoing), including on their wellbeing, mental health and relationships at work.

83. Nevertheless, we contend that the revised draft Code of Practice must be strengthened to make it explicit that suspension must never be an automatic act and must only be considered in extreme cases when all other possible alternatives to suspension (i.e. redeployment, amended hours of work) have been discussed and considered with the worker and their trade union representative.

84. To encourage such discussions the revised draft Code must consider listing the potential alternatives available.

85. In addition, we believe that the revised draft Code of Practice must place an expectation on employers to confirm that a notice of suspension will be given in writing, setting out: the reason for suspension and how long it is

likely to last; the details of an independent agreed point of contact for the individual during the period of suspension; and that the purpose of suspension is to investigate and is therefore based on an assumption of guilt.

86. Furthermore, NASUWT maintains that the revised draft Code of Practice must place an expectation on employers to confirm that any suspension will be kept under constant review, with a date for reinstatement, and that this will be communicated to both the worker and their trade union representative.

87. As well as this, the revised draft Code must make it clear that both the worker and their trade union representative must be kept abreast of any developments.

88. The Union maintains that the revised draft Code must place an expectation on employers to confirm that the suspension and the reason for it will be kept confidential, as appropriate, and that there is an agreed explanation that will be used with others in the workplace.

89. In the context of schools and colleges, NASUWT believes that further consideration should be given to specific advice and guidance to avoid situations where members are suspended due to an allegation with all that entails, yet those who have made the allegation, such as parents and/or students, are able to carry on and discuss the matter with impunity, including – in extreme cases – colluding in vexatious and malicious allegations.

90. Finally, we contend that the revised draft Code must place greater emphasis on employers offering welfare support during suspension, given the potentially severe effects that workplace investigations and disciplinary processes can have on individuals, and the importance of employers treating such processes with care and sensitivity.

91. This includes placing an expectation on employers to hold return-to-work meetings with the worker and their trade union to discuss and agree

reintegration back into the workplace, including the possibility of a phased return to work or amended duties.

92. In addition, we are supportive of the inclusion of good practice guidance on informing a worker that they are going to be suspended as this is an important part of procedural fairness.

93. However, NASUWT would want to see the inclusion of a statement regarding the right to trade union accompaniment at any such meeting, as well as reference to contacting a trade union as part of the information regarding communicating available support.

- **Considering a range of responses after establishing the facts**

94. Whilst appreciating the intent of this in the revised draft Code, the Union is concerned at any suggestions that employers must be prompted to consider a range of options after establishing the facts (paragraph 31), as there is a danger that unscrupulous employers could utilise this to pre-empt outcomes without the involvement of a worker and their trade union representative.

95. If a worker and their trade union representative are not made aware of any such outcome, there would be serious concerns about their ability to exercise their right to appeal, as well as concerns over what information is retained, who has access to it, and for what purposes.

96. The purpose of establishing the facts is simply to establish if there is a case to answer and appropriate next steps, so the draft revised Code must be explicit that any expectations around mediation or facilitated conversations must be subject to discussion and agreement with a worker and their trade union representative.

- **Considering other next steps after a formal disciplinary meeting in addition to considering formal disciplinary action**

97. NASUWT notes that the same applies in regards to any suggestions in the revised draft Code of Practice that employers must consider other next steps after a formal disciplinary meeting in addition to considering formal disciplinary action (paragraph 42).

98. In addition, in regards to the two scenarios outlined above and in paragraphs 31 and 42, the revised draft Code must make it clear that no worker should suffer a detriment for refusing either mediation or a facilitated discussion.

- **Expectation on employers to state what steps have been taken to resolve issues informally when notifying a worker of a formal disciplinary meeting**

99. The Union is supportive of the inclusion in the revised draft Code of Practice of an expectation that employers must state what steps have been taken to resolve issues informally, or explain why no such steps were taken.

100. As stated earlier in this consultation, changes to the recording of formal capability proceedings against a teacher mean that we have advocated and secured a 'no surprises' approach with many employers that sees issues addressed through informal mechanisms such as normal day-to-day line management before being progressed to any formal stage.

101. This sort of approach must be made explicit in the revised draft Code of Practice to further reinforce the importance of informal resolution, and for the purposes of being transparent and fair on those involved so that there are no misunderstandings as to why the issue has progressed to a formal meeting.

102. As stated previously, the intention of a disciplinary procedure is to provide workers with the opportunity to improve, so the reference to this in the revised draft Code should help focus the minds of employers.

103. We further welcome the revised draft Code emphasising the need for employers to detail why an informal approach has not been pursued, as this should encourage more careful decision-making and ensure that formal procedures are not used prematurely.

104. However, all of this is based on the fact that there has been genuine discussion and agreement on the level of support provided during any informal stages with a worker and their trade union representative, and that an appropriate length of time has been agreed by which any improvements should be made.

105. NASUWT contends that there must also be the right for a workers and/or their trade union representative to raise concerns during the informal process, including seeking to appeal where unattainable or unrealistic targets are imposed that set workers up to fail.

Formal grievance procedures

- **Setting out how a worker would like a grievance resolved**

106. NASUWT supports the inclusion of new guidance that requires workers to suggest how they would like their issue resolved at the point of raising a formal grievance, as it essential that workers have a meaningful voice in the decisions that affect them and the opportunity to input into how their concerns will be resolved.

107. Discussions at an early stage can assist employers understanding the worker's concerns and can increase the likelihood of them being addressed satisfactorily.

108. However, the revised draft Code must recognise that this may not always be possible, so a worker should not be required to do this or suffer any sort of detriment for not setting out how their grievance can be resolved.

109. This is particularly prescient in situations where a worker is unsure of what an appropriate resolution would be until they have received advice and guidance from their trade union representative, or heard what their employer has to say.

110. As such, we believe that the revised draft Code must emphasise and encourage workers to contact their trade union representative given the invaluable role they can play supporting workers to narrow down the issue and identify possible resolutions.

- **Expecting workers to state what steps have been taken to resolve the issue informally when raising a formal grievance**

111. NASUWT is concerned at the expectation in the revised draft Code of Practice for workers to state what steps have been taken to resolve an issue informally when raising a formal grievance, or outline the reason why no informal steps were taken (paragraph 63).

112. Whilst appreciating that there may be *‘a trend towards long and complex written grievances, which can cause delays in responding to and resolving concerns⁹*, the Union is concerned that the consultation fails to recognise the inequity in power that exists between workers and employers in the workplace.

113. We contend that there is a meaningful difference between expecting employers and workers to demonstrate prior informal efforts, particularly given that employers possess significantly greater resources and power within the workplace.

⁹ [consultation-disciplinary-grievance-2026-organisation.docx](#)

114. In contrast to this, workers may have to contend with the fear of retaliation, victimisation, bullying and harassment, especially if the grievance involves someone in a more senior role.

115. Furthermore, the very nature of the issue may mean that it is not feasible to attempt to resolve the issue informally. For example, those who may have experienced sexual harassment or racist behaviour may have entirely legitimate reasons for not attempting informal resolution.

116. Indeed, this is precisely why protections against whistleblowing, victimisations and discrimination exist.

117. Given this, the Union maintains that the Code must not create additional expectations that could dissuade workers from escalating concerns if they wish to pursue something formally, nor should they suffer a detriment for doing so (i.e. having their grievance rejected or delayed).

- **Providing a short, clear written explanation when raising a formal grievance**

118. NASUWT is supportive of a short, clear written explanation being seen as sufficient when initially raising a formal grievance and would want the revised draft Code to emphasise the importance of workers contacting their trade union representative, as trade unions are well versed in supporting members to identify key issues.

119. Moreover, we believe that the revised draft Code must make it clear that workers will have the opportunity to provide further information as the process progresses, including once they have sought advice and guidance from their trade union representative.

- **Accompaniment at informal and formal meetings**

120. NASUWT maintains that the evidence presented throughout this consultation on the fundamental and important issue of accompaniment at

informal and formal meetings demonstrates the need for a step-change in the approach taken in the revised draft Acas Code, as well as by the Government.

121. As such, we are adamant that the revised draft Code of Practice must make reference to the importance that being accompanied can make and place an expectation on employers that this will be facilitated for both informal and formal meetings.

122. In conjunction, the revised draft Acas Code emphasising the importance of facilities time and reasonable paid time off for trade union representatives to meet, discuss and prepare for informal and formal meetings, especially if the stated aim of the draft revised Code is to promote early and effective resolution of workplace concerns.

- **Guidance on when it may be reasonable to postpone a formal disciplinary meeting for more than 5 working days where a companion is unavailable**

123. NASUWT is supportive of guidance in the revised draft Acas Code that recognises that an employer must consider allowing longer time for a rearranged meeting than five days where a trade union representative is unavailable.

124. The Union welcomes recognition of the recent principles set out in *Talon Engineering Ltd v Smith*, specifically the fact that a refusal to postpone a disciplinary hearing because of the unavailability of the worker's chosen companion may make a dismissal unfair.¹⁰

125. Indeed, given the practicalities of allowing a worker to contact, meet and discuss the issue with their trade union representative, including reviewing all the relevant documentation, we have long since advocated for ten

¹⁰ [Talon Engineering Ltd v Mrs V Smith: UKEAT/0236/17/BA - GOV.UK](#)

working days' notice for all meetings and secured this in policies with a number of employers.

126. Furthermore, the revised draft Code must place an expectation on employers to consider the specifics of each case when setting timescales to ensure that factors such as annual leave, sickness and caring responsibilities are giving due consideration, as well as the complexity of the case.

- **Good practice for employers to consider allowing accompaniment where the statutory right does not apply**

127. NASUWT maintains that the evidence presented throughout this consultation on the fundamental and important issue of accompaniment at informal and formal meetings demonstrates the need for a step-change in the approach taken in the revised draft Acas Code, as well as by the Government.

128. Whilst we welcome and agree that the revised draft Code must state that it is good practice for employers to consider allowing accompaniment where this is requested and statutory right does not apply, it cannot go unnoticed that the current wording focuses on employers 'considering' requests.

129. We maintain that the revised draft Code must go further by placing an expectation on employers that this will be facilitated for both informal and formal meetings.

130. This is particularly important given the given the draft Code's emphasis on informal resolution, as permitting a worker to be accompanied by a trade union representative can be critical in facilitating constructive discussions and reaching an amicable resolution.

Mediation and facilitated conversations

131. Given that mediation and facilitated conversations are often provided for in procedures, NASUWT believes that the revised draft Code of Practice must include guidance to mitigate against poor policy and practice, including detailing that mediation may not be a suitable way to address all workplace concerns (e.g. sexual harassment and/or workplace bullying).
132. Moreover, where a worker declines mediation or a facilitated discussion, the revised draft Code must make it clear that they should not be placed in a position where concerns remain unaddressed simply because a proposed mediation process has not proceeded or been unsuccessful.
133. Furthermore, the revised draft Code must be clear that no worker should suffer a detriment for refusing either mediation or a facilitated discussion when seeking to resolve a workplace issue.
134. The Union maintains that the use of external mediators is preferable and would therefore have concerns over paragraph 91 and the fact that it places too much emphasis on the use of mediators based within the workplace who may not be impartial, or have the appropriate skills to address the issue.
135. Given this, we maintain that the revised draft Code of Practice must make it clear that mediation can only occur when all parties agree that this is an appropriate way to seek to resolve an issue.

Employee/worker terminology

136. Given the situation associated with supply teachers securing assignments with schools and colleges through employment businesses and/or umbrella companies, NASUWT is supportive of the revised draft Code referring to the broader concept of 'worker'.

137. We believe that this will go some way to addressing the significant and well-documented difficulties that supply teachers face in securing and enforcing their rights and entitlements, whilst putting employment agencies and umbrella companies on notice.
138. Using the broader concept of 'worker' will help ensure that the principles of fair disciplinary and grievance procedures are seen to apply across the widest possible range of employment relationships.
139. In addition, the use of the term 'worker' in the revised draft Code must encourage employers to extend good practice protections to all those who work for them, including supply teachers as agency workers.
140. Moreover, such an approach would appear to be consistent and reinforce Part four of *Keeping Children Safe in Education*, issued by the Department for Education (DfE), regarding how allegations against supply teachers as agency workers should be managed.¹¹
141. However, the Union would want the revised draft Acas Code to go further in its coverage in order to avoid giving the impression that its protections and standards apply only to employees.

Artificial intelligence (AI)

142. Whilst appreciating that questions have been raised about the use of AI, the Union believes that this requires careful consideration in order to strike the right balance.
143. For example, the use of AI could help some workers access disciplinary and grievance procedures when raising workplace issues by helping them structure their thoughts or improving the clarity of what it is they are trying to say.

¹¹ [Keeping children safe in education 2026: September 2026](#)

144. As such, the use of AI may be particularly important for workers with lower levels of confidence in written communication and those with literacy difficulties.

145. Given this, it is imperative that employers do not dismiss out of hand or question the legitimacy of grievances drafted using AI tools, especially if this is likely to create barriers and disproportionately impact on some groups of workers.

146. However, there is a recognition that the use of AI could result in overly complex cases, factual inaccuracies and confusing legalese.

ADDITIONAL COMMENTS

147. It is imperative that any changes to the revised draft Acas Code of Practice are incorporated in the non-statutory Acas guidance that provides practical advice to complement the statutory Acas Code on disciplinary and grievance procedures.

The vital role of trade unions

148. Trade unions have a vital role to play in ensuring that workers are better informed and empowered in respect of their employment rights.

149. The decline in the coverage of collective bargaining and unionised voices in the workplace has resulted in the rise of flexible contracts and precarity in the profession, as unions and workers have been unable to negotiate better terms and conditions and more secure work.

150. Research by the National Institute of Economic and Social Research (NIESR) suggests that trade unions involved in collective bargaining have historically helped in limiting wage inequality and raised the pay of the

lowest paid in bargaining units, as well as generally improving terms and conditions.¹²

151. Indeed, research undertaken by the Chartered Institute of Personnel and Development (CIPD) found that of those employers with employee representative arrangements, only 3% said that there were no benefits to having employee representatives in the workplace.¹³

152. We believe that measures should be introduced to promote and support collective bargaining/collective agreements and the right of trade unions to access workplaces and represent agency workers, such as supply teachers.

153. The evidence outlined above suggests that the involvement of trade unions is crucial in negotiating improved terms and conditions and putting in place mechanisms to remedy breaches of these terms and conditions.

154. Trade union representatives should therefore have better protections against suffering a detriment when acting to defend the interests of their members.

Matt Wrack

General Secretary

For further information on the Union's response, contact Paul Watkins at paul.watkins@mail.nasuwt.org.uk

NASUWT

Rose Hill

¹² <https://www.niesr.ac.uk/wp-content/uploads/2021/10/Bryson-and-Forth-2017-lit-review-4.pdf?ver=ols1gmVztDcbNtnSCM58>

¹³ https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/collective-employee-voice-report-july-2022_tcm18-110238.pdf

Rednal

Birmingham

B45 8RS

0121 453 6150

www.nasuwt.org.uk

nasuwt@mail.nasuwt.org.uk