



Thomas More Chambers

ACAS Guidance on Disciplinary and Grievance Procedures **During the Coronavirus Pandemic**

Introduction

ACAS has produced helpful guidance for employers as to how to deal with disciplinary and grievance issues during the Covid19 pandemic and lockdown. A copy of that guidance can be found [here](#).

Set out below is a short summary and analysis of that guidance.

The normal rules apply

The guidance makes it clear that the law and normal rules relating to disciplinary and grievance proceedings apply even when lockdown measures are in place. Where an employer decides to continue or start a disciplinary or grievance procedure at this this time, it must follow ACAS's normal Codes of Practice on [disciplinary procedures](#) and [grievance procedures](#).

Should a disciplinary or grievance procedure take place

The guidance makes it clear that employers should give careful consideration as to whether disciplinary and grievance procedures should either commence or continue at this time of lockdown and social distancing and when many employees are either furloughed or working from home.

The guidance makes the point that going through a disciplinary or grievance procedure in normal times is an inherently stressful exercise and that employees may well be suffering from additional stress factors during this time of the pandemic and lockdown. Employers must,



therefore, give careful consideration to the health and wellbeing of employees when determining when and how to proceed.

Employers should consider talking through the options with everyone involved before making a decision whether or not to proceed at this time. The decision as to whether or not to proceed should be explained to all involved.

Employees are still entitled to raise grievances at this time, even if they are on furlough or working from home. If such a grievance is raised, employers must give the consideration referred to above as to whether the grievance process can take place right now.

Can furloughed employees take part in disciplinary and grievance procedures

It is a requirement of the Job Retention Scheme that furloughed employees are not allowed to work for their employers.

The guidance makes it clear, however, that furloughed employees can participate in disciplinary and grievance proceedings providing that they are doing so out of their own choice ('voluntarily') and that it takes place in line with current public health guidance.

Areas of potential involvement for furloughed employees expressly identified in the guidance are:

- a. where they are under investigation in a disciplinary procedure;
- b. where they have raised a grievance;
- c. where they are chairing a disciplinary or grievance hearing;
- d. where they are taking notes at a hearing or during an investigation interview;
- e. where they are being interviewed as part of an investigation;
- f. where they are a witness at a hearing; and
- g. where they are an employee's companion at a hearing.

The guidance states that any involvement in the process of furloughed employees must be voluntary. This could cause difficulties when such involvement is not voluntary, e.g. where the employee is the subject of the disciplinary process or the subject of a grievance complaint.



How to hold disciplinary and grievance hearings at this time

Any disciplinary or grievance procedure that is operated by an employer at this time must be carried out in a way that follows public health guidelines around health and safety, social distancing and closure of certain business premises.

Where the workplace is still open. If all individuals involved in the process are still going to their normal workplace, employers must consider whether the procedure can be carried out in line with public health guidelines. An example given of the considerations involved is whether interviews and meetings can be held in a place that safely allows for social distancing as well as privacy.

If employees are working from home. If some or all of the employees involved in the process are furloughed or working from home, the employer must determine whether the procedure can be carried out in a fair and reasonable way.

Employers should consider the following issues:

- a. the individual circumstances and sensitivity of the case, for example if it needs to be dealt with urgently or if it would be dealt with more fairly when people are able to return to work; and
- b. if anyone involved has a reasonable objection to the procedure going ahead at this time

Video meetings

Where some or all of those involved in the process are furloughed or working from home, the likelihood of some or all of the process being dealt with by way of video meetings is vastly increased. If video meetings are to take place, the employer must consider how to do this in a fair way. Issues that must be considered include:

- a. whether everyone involved has access to the technology needed for video meetings, for example necessary equipment and internet connections;



- b. whether anyone involved has any disability or other accessibility issues that might affect their ability to use video technology and whether any reasonable adjustments might be needed;
- c. whether any witness statements or other evidence can be seen clearly by everyone during the relevant meeting;
- d. whether it will be possible to fairly assess and question evidence given by people interviewed in a video meeting;
- e. whether it is possible to get hold of all the evidence needed for the investigation or hearing;
- f. whether it is possible for the employee who is under a disciplinary investigation or who has raised a grievance to be accompanied during the hearing.

Recording of video meetings

It might be thought that the use of video meetings could do away with the need for disciplinary and grievance meetings and hearings to be minuted as they could be recorded instead. The guidance, however, suggests otherwise. It states that for most disciplinary and grievance meetings held by video there will be no need for them to be recorded. The guidance goes on to make the point that if the employer is of the opinion that there is a good reason for the meeting to be recorded that it must be done in accordance with data protection law.

In light of this guidance, employers should not record such meetings but ensure that a note taker (usually from the HR Department) participates in such meetings.

The right to be accompanied

The statutory right for an employee to be accompanied at a disciplinary or grievance hearing continues to apply. This applies even where the hearing is to be conducted by way of video.

The hearing must be set up to allow the employee's chosen companion to:

- a. put and sum up the employee's case;
- b. respond on behalf of the employee to anything said;



- c. talk privately with the employee at any point (one way of doing this in a multi-party video meeting would be to adjourn at any point when the employee and companion wish to talk privately and let them speak together on the phone).

If the companion is unable at any point to attend at the time and date of the hearing, the employee has the right to suggest another time and date. This is as long as it is reasonable and not more than five working days after the original date.

The guidance makes the point that during the Covid19 pandemic the availability of the employee's chosen companion might be more limited than usual. The guidance indicates that employers should consider if a delay of more than five days is reasonable in the circumstances.

Right of appeal

The employee's normal rights of appeal continue to apply.

The employer must follow a fair appeals procedure taking into account the same considerations that relate to carrying out a disciplinary or grievance procedure at this time of pandemic and lockdown (as outlined above).

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The Thomas More Chambers Employment Law Team is able to assist instructing sources on any employment law issues, including those arising from the Covid-19 pandemic. We are well used to working remotely and can arrange for confidential telephone or video conferences and meetings on a variety of platforms with you and our mutual clients. In addition, we all are well used to paperless working and to dealing with remote hearings and are always happy to assist in setting them up.



The Thomas More Chambers Employment Law Team is able to assist instructing sources on any employment law issues arising from the Coronavirus crisis. If you need such assistance, please contact Craig Brown, Senior Civil Clerk on 020 7404 7000 or at cbrown@thomasmore.co.uk.

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