



## HR Broadcast – ACAS Code of Practice on Disciplinary and Grievance Procedures

As I am sure you are aware, when dealing with issues of discipline or grievance then the ACAS Code of Practice should be followed. In cases of unfair dismissal, where either party has not followed the ACAS Code, an employment tribunal may, if it considers it just and equitable in all the circumstances to do so, increase or reduce any award it makes by up to 25%.

The code does not apply to ill health cases. Very recently this exclusion has been extended even further. The Employment Appeal Tribunal (EAT) considered whether an employer should have followed the ACAS Code when it dismissed an employee because of an irretrievable breakdown of the working relationship, which resulted in a “some other substantial reason” dismissal – often referred to as a SOSR dismissal.

S was employed as a financial accountant for a charity. Following a restructure of the charity, in which her role changed, the relationship between S and her manager deteriorated. S raised a grievance about her manager and the restructure which was rejected, and following attempts at mediation, she was dismissed because her employer concluded that the working relationship was beyond repair. The employment tribunal found that the dismissal was unfair, and one of the reasons it provided was that the employer had failed to follow the ACAS Code.

The employer appealed the decision to the EAT, which upheld the tribunal's decision overall, but dismissed its finding that the employer should have followed the ACAS Code.

The EAT stated that the ACAS Code did not apply to dismissals where the reason is a breakdown of the working relationship. It noted that, in these situations, the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee cannot be reincorporated into the workforce without unacceptable disruption.

While elements of the ACAS Code were capable of being, and should be, applied, for example giving the employee the opportunity to demonstrate that they can fit back into the workplace without undue disruption, anything beyond that and imposing a sanction because of a failure to comply with the letter of the ACAS Code was not what Parliament had intended.