

The major issues raised by gibbons report law employment essay

[Law](#)



**ASSIGN
BUSTER**

The ACAS is the product a government effort to set up a voluntary conciliation and arbitration service in 1896. In 1976 the ACAS was made a statutory body by the Employment Protection Act as given powers under the Trade Union and Labour Relations (Consolidation) Act 1992 chapter 52 s. 199 which states " ACAS may issue codes of practice containing such practical guidance as it sees fit for the purpose of promoting the improvement of industrial relations"[2]. Prior to the ACAS Code 2009 all matters relating to discipline were encompassed under the Employment Act 2002. More specifically Section 35 of this Act which slightly amends section 3 of the Employment Rights Act 1996 (c. 18) s. 3 which contains notes about disciplinary procedures and pensions. The Employment Act 2008 improved the way that disciplinary and grievance matters are handled, by replacing the statutory dismissal, discipline and grievance procedures (the statutory procedures) with a new ACAS Code of Practice on handling discipline and grievances. The new code came into force on the 6th April 2009 and repealed the 2004 regulations and replaced them with a new structure constructed around the Employment Act 2008, the 2008 Act also repeals sections 29 to 33 of and Schedules 2 to 4 to the Employment Act 2002. The previous procedures in the Employment Act 2002 (Dispute Resolution) that came into force on 1st October 2004 required all employers to follow a minimum set of statutory procedures when dealing with disciplinary actions in the workplace. The 2004 changes were aimed at supporting the resolution of disputes at an early stage. The ACAS code is not legally binding but it is taken into account by tribunals when making decisions. The three steps in the standard disciplinary action are; step one-

the employer communicates in writing to the employee a written explanation of circumstances that have led to the consideration of taking disciplinary action. Step 2- The employer invites the employee to a meeting to discuss the issue, informs them of any decisions and their right of appeal. The final step is if the employee wishes to appeal he is then invited to another meeting and the final decision is then communicated to the employee. It is advisable that a more senior manager should conduct the appeal hearing. furthermore, if the employee still feels the dispute is unresolved they may take their case to an employment tribunal.. These changes came as a result of the Gibbons report commissioned by Rt. Hon Alistair Darling who was secretary of State for the Department of Trade and Industry. Gibbons stated that about 42% of respondents in a DTI survey had experienced a workplace dispute in the past 5 years.[3]With such a high number of workplace disputes it was essential that the dispute resolution process had to be changed to allow flexibility and have a more simple system. The major issues raised by the Gibbons Report were first that current regulations exacerbate and accelerate disputes; many disputes that could have been solved internally in an informal manner are now escalated to a formal process and are draining resources. The Gibbons review heard that in the typical retail sector there has been an increase in disputes of 30%-40%.[4]This increase has affected small businesses which have an informal culture and the need for one to formally express their problems can trigger conflict. The formal process is seen to create a burden that doesn't help resolving disputes. Gibbons saw that although having procedures will benefit the company, the 'one-size-fits-all' mentality is not always beneficial.[5]Hepple and Morris

(2002) also suggested that the impact of the procedural changes introduced under the Employment Act 2002 was to downgrade rather than enhance procedural fairness.[6] Second is the high level of complexity drives users of regulations to seek legal advice earlier which increases costs. There is substantial subjective evidence showing legal advice is being taken at early stages of disputes, although legal advice is allowed it is usually utilized when matters go to tribunals. The old procedures influenced the use of legal advice as soon as internal proceedings were initiated. Their use of legal advice this early on increases cost substantially and this can deter other bringing action against employers as they see it as costly. It was uncovered that although the three step process is seen to be simple and easily interpreted, employers and employees did not understand them and referred themselves to legal advice. A lot of intermediaries stated that terms in the three step process actually complicated issues, a lot of the terms were ambiguous and legal advice was required to assert what the terms meant. [7] Finally the regulations were seen not to always be relevant to the situation. The Gibbons review highlighted that in situations such as agreed departures, time related contract termination or redundancy that problems arise in interpreting procedures and correctly apply them. As well as these problems, the report uncovered that although provisions for either discipline or grievance procedures were in place there was a lot of uncertainty as to what should be done in the case where there was both a disciplinary matter and grievance matter. The old code did not play into the hands of employees as fairly as it should have. It provided a lot of red tape and difficulties to employees and did not make access to natural justice. The employers were

also affected and it became more of a problem for small business owners who had fewer resources to pump into formal styles of dispute resolution. More recent findings from WERS 2004 suggested that there has been little change in the use of grievance and disciplinary procedures compared to 1998(Kersley et al., 2005).[8]The new ACAS Code of conduct set out five key procedural steps to deal with matters of discipline.; Paragraphs 5 to 8 of the ACAS Code of practice 1 concerns matters relating to establishing the facts of each case; it is important that all necessary investigations are carried out in a timely and transparent manner so as to establish the facts and events that occurred. The employer is allowed to hold a meeting with the employee and is purely to collate evidence.[9]For sake of fairness it is suggested that different individuals should carry out the investigation and disciplinary hearing. The second step is to inform the employee of the problem; if the investigations yield that there is a disciplinary case to be answered to then the employee is informed in writing, contained in this written notification the employer must provide satisfactory evidence about the alleged misconduct, this permits the employee some time so as to be able to prepare a response. This notification will also include a time and venue of when the disciplinary meeting will occur, all the employees rights such as the right to be accompanied will be detailed.[10]The third step is to hold a meeting with the employee to discuss the problem, the meeting should be held at a time that is seen to be reasonable and setting a time constraint that allows for sufficient investigations and time for the employee to prepare. The minutes of the meeting should include an explanation from the employer and both parties are to go through the evidence. The meeting is formal and witnesses

are allowed to be called in by both parties but they must inform one another of who they will call. The employer must ensure the employee has their say and they are to answer any questions posed by the employee.[11]In the event that a disciplinary meeting could result in a formal warning being issued, any sort of disciplinary action or the conformation of a warning then the employee has a statutory right to be accompanied to the meetings but may only do so upon making a reasonable request. The fifth and final step is deciding on an appropriate action. The employer must make a decision and convey it in writing. If a warning is given (applies to both first and final warnings) then the nature of the misconduct should be detailed and the consequences if it occurs again. If the employer has decided that a penalty is to be applied such as demotion then this must also be put down in writing. Given some cases result in dismissals, the power to do so only lies with the manager who has the given authority. The manager must inform the employee as soon as possible, their right to appeal and the date that will be recorded as the termination of the contract. It is essential that a fair disciplinary process is carried out.[12]The employer must ensure they provide an opportunity to appeal where an employee feels that the action that may have been taken against them is unjust. This should be done within a reasonable timeframe and at an agreed time and must be put down in writing and should be conducted by a manager who preferably has not been involved in the case. The statutory rights regarding being accompanied still stand and all decisions should be put down in writing. The ACAS code has indeed made the process regarding disciplinary matters in employment, the most extensive changes have occurred as a result of the new policy

providing enough detailed guidance about how to handle disciplinary matters at an early stage so they do not go to tribunals, this is in line with reducing costs and providing natural justice to those who deserve it. however care has been taken by ACAS not to put employers at a disadvantage and have given employers clear guidelines and powers regarding disciplinary action. The changes were described as increasing emphasis on early resolution.

[13]People tend to attribute a causal link behind other people's actions when interpreting human behaviour, which is rarely taken at face value (Rollinson et al, 1998). By providing a fair service with results that are uniform, it will deter others from taking disciplinary actions lightly as it sets a clear example. The ACAS annual report showed that the code exceed its targets in a vast number of areas such as Pre-claim conciliation which had a target (2011-12) of 80% and an outturn of 91%. The ACAS report also shows that the ACAS was involved in 100% of large scale disputes, as the ACAS is a service they pride themselves on the availability of advisers which was projected to be about 23 hrs p/week and the out turn was 28. 2 hrs p/week.

[14]This shows the ACAS is doing its best to try and provide a streamlined and flexible service. The ACAS also promotes flexibility by trying to keep the proceedings informal and at the organisational level and not a formal expensive tribunal level. Personally I see the changes in the code to be a huge step to strengthen both the position of employees and employers by giving them stringent and fair guidelines to follow and to try and minimise the ambiguity in terms relating to disciplinary procedures and matters. Given the statistics it is also showing a positive benefit to both employees and

employers, and promoting earlier and fair-minded decisions. The evidence is clear and it shows that the ACAS is performing an efficient job.