Dealing with work problems:

We have lots of clients approach us when they are facing difficulties at work and they don't know what steps they should be taking to seek a resolution. Often, the steps will be the same, so we've produced this general overview of the possible steps to take. It would usually be appropriate to start at the informal resolution and work through the steps until Tribunal proceedings. However, there may be some circumstances in which you skip steps or pick particular steps that are appropriate to your circumstances.

Informal resolution:

At an early stage, it might be possible to resolve your concerns informally by discussing the issue with an appropriate manager. It may be that the person in question does not appreciate they are doing anything wrong or having a negative impact on you. They may be glad that you've pointed out the problem and explained your point of view and be prepared to make changes.

It might also help to speak to someone different – such as HR or your managers manager. Having someone prompt the wrong-doer gently and impartially may just be the push that is needed for a change of direction.

Raise concerns in writing:

Putting your concerns in writing, can slightly escalate matters as compared to having an informal discussion. This isn't the same as a formal grievance process. Putting your concerns in writing will make it less likely your concerns will be misinterpreted or that the manager will forget to take action.

You may be wary of putting your concerns in writing due to fears of reprisals. Unfortunately, for a small number of people that will be true, raising concerns (whether verbally or in writing) can make them a target. However, for most people the reverse will be true. It creates an important audit trail (and therefore proof) that you have raised the concerns, and this might encourage more cautious treatment than if you only raised your concerns verbally. For example, if you make a written complaint about discrimination and are dismissed, it may be easier to prove victimization compared to, perhaps, having problems proving you'd made a complaint about discrimination if you had only raised it verbally.

To reduce conflict and increase your chances of a positive resolution, it may be helpful focus on what can be done now to help resolve things for you. To the extent you need to make allegations (and sometimes it is necessary) instead of writing "*you have*

discriminated against me" try writing something like, "*I am worried that X has been done because of my [insert protected characteristic]*."

Grievance or other formal process:

If it is not possible or appropriate to resolve matters informally, you may want to consider raising a grievance. You should check your employer's grievance policy to see how to raise and grievance and what you should expect from the process. You are entitled for your employer to follow the basic steps in the Acas Code of Practice on disciplinary and grievance procedures. There might be other policies that apply to your situation such as a whistleblowing policy if you think someone is acting illegally.

Unfortunately, formal grievances can have their drawbacks. They can sometimes be seen as a complaint to dismiss rather than a genuine opportunity to resolve a problem. However, as above, it can help to focus on what your employer can do to resolve things for you. Be pragmatic. There is no point in asking for something that your employer has no power to give you; but there might be other things your employer could do. It can also help to explain what has happened, where you are coming from and the effect it's having on you rather than making bold assertions.

Appeal:

You usually have a right to appeal formal decisions taken by your employer – e.g. grievance outcomes, disciplinary sanctions, selection for redundancy etc. It is a valuable opportunity to explain to your employer where things have gone wrong, submit additional evidence and offer alternative solutions.

Check your employer's policies to see whether there is a deadline for appealing and whether there are any procedural requirements for the appeal.

ACAS Early Conciliation:

ACAS are an independent statutory body that helps people resolve workplace disputes.

Early Conciliation is mandatory if you wish to make a claim to the Employment Tribunal. In that case, you must submit your ACAS Early Conciliation notification within the relevant statutory time limit – which is usually 3 months less 1 day from the date of the act or decision that you are complaining about.

However, ACAS will still be able to help you if you are not sure whether you want to pursue a Tribunal claim. Just because you engage in Early Conciliation does not mean you are obliged to make a claim to the Employment Tribunal. You can engage in the Early

Conciliation process and evaluate what you want to do at the end of that process, depending upon how it has gone.

It is important to note that ACAS being "independent" does not mean they advise you on what is in your best interest. They are there to help facilitate settlement / dispute resolution. It may be necessary to get independent legal advice whilst going through the Early Conciliation process.

Make a claim to the Employment Tribunal:

If you are unable to resolve your problem by other means, you may only be left with the option to start Employment Tribunal proceedings.

Early Conciliation:

Before you can do this, most types of claims are subject to the requirement to go through ACAS Early Conciliation first.

Time limits:

Most Employment Tribunal claims have a time limit of 3 months less 1 day from the date of the act or decision complained of but there are a few exceptions to this including:

- Some claims, such as redundancy payment, have a 6 month less 1 day time limit. However, if you are also pursuing other claims, like notice pay or unfair dismissal, the 3 month less 1 day time limit still applies to those claims.

- In some cases it can be possible to treat the time limit as running from the date of the last act/decision that you are complaining about. This applies when the Tribunal decides that each act of discrimination is sufficiently connected that it can be treated as an 'act extending over time' and is only treated as being done, for time limit purposes, on the date of the last act. However, this can be risky where there isn't a sufficient connection between each complaint and/or where it is an act that has continuing consequences rather than being an act extending over time. It therefore usually advisable to be cautious and treat the earliest act as being the date from which your time limit runs from to avoid some of the earlier acts being what we call 'time barred'. However, it will not always be possible for you to be cautious in this way and so you have to make the best of the circumstances you are in, noting that there are time limit risks.

- The Tribunal has a discretion to extend the time limit. The presumption is against extending the time limit unless you, the Claimant are able to prove that it would be in the interests of justice to do so. Some cases (like discrimination) require you to prove it would be "*just and equitable*" to extend the time limit and this is essentially a balancing of the

prejudice caused to you in not being allowed to pursue your case verses the prejudice to your employer in allowing you to pursue the case. Other types of claims (like unfair dismissal) have a much harder test – that it was not reasonably practicable to present your claim within the time limit and that you presented your claim within a reasonable period thereafter.

If you miss a time limit, and none of the exceptions apply, you will not be able to pursue your case. So, it is important to be cautious as possible, submit your ET1 claim form well within the time limit so you do not risk losing out on getting justice.

What to put in your ET1 claim form:

It is important you include all of the facts and legal claims that you want the Tribunal to decide.

You do not need to include every single detail of what has happened in your employment; rather focus on what it is that has prompted you to make a claim and what legal claims you want the Tribunal to determine.

For example, if you think you've been selected for redundancy because you've been on maternity leave, and it is easy for the employer to target the person who is not working presently. You need to allege exactly this and claim it is an unfair dismissal and/or maternity discrimination. It wouldn't usually be appropriate, for a case of this essential nature, to include a complaint about not having a proper induction 3 years ago, being passed over for promotion 1 year ago and/or an unfair criticism that was made against you prior to your maternity leave – unless these are cited as the factors that led to you being selected for redundancy.

The Tribunal has a limited discretion to permit an amendment to the ET1 claim form, for example, adding in more details about an incident that was already included in the ET1 or to put a new legal label if the underlying facts and allegations are already in the ET1. However, it is much more difficult to get the Tribunal to allow you to make a completely new claim that is not already referenced in the ET1. For further information, on how the Tribunal treats applications to amend, please see: Presidential Guidance – General Case Management.

Whilst focusing on the specific details of your complaints is advisable, because of the limitations on later amending your claim, it is important to mention everything that you expect to come up and be determined by the Tribunal. Again be cautious – it is easier to later abandon claims than apply to have new claims included.

Is it still possible to resolve your dispute without having a full Tribunal hearing?

The good news is that it is still entirely possible to settle your case once proceedings have started. Often you may need to lodge Tribunal proceedings to protect your position (to keep the pressure on your employer and avoid losing your right to make a claim) whilst constructive negotiations are on-going. Lodging a Tribunal claim would not normally be detrimental to your prospects in negotiations; and can often increase the settlement you can get).

You will be allocated an ACAS conciliator throughout your case, and this may be the same person whom you had for Early Conciliation. Also, following a Preliminary Hearing, you may be offered Judicial Assessment or Judicial Mediation, which are both services offered by the Tribunal, conducted by Judges, to help the parties reach a resolution. We would generally encourage employees to engage with any services on offer and it is always possible to conduct negotiations yourself or ask a representative to do it for you.

Alternative work or resignation:

Are you wondering whether you have a constructive dismissal claim if you resign? Possibly you could, but it is very unwise to resign just because you think you might have a claim of this nature. Constructive dismissal claims are notoriously difficult to prove and how badly you've been treated doesn't always correlate to proving constructive dismissal. It is always advisable to get independent legal advice before resigning, and don't be surprised if you can't find a lawyer to give you a definitive answer one way or the other as this often depends on evidence the Claimant doesn't have access to and/or subject to a Judge making findings of fact where there is a disputed account of what happened but no independent evidence.

If working in this environment is going to have a negative impact on your mental and/or emotional well-being, it's appropriate for you to make your own decision; but please do not do so based on maybe having a case.

You might also want to consider whether there are alternative practical options: e.g. mediation, changing your hours / days of work, moving into a different role. If your employer is aware you are considering resigning because of what has happened, they might be willing to agree something along these lines to resolve the dispute.

Disciplinary proceedings:

Often there can be a situation where you've been struggling and coping with difficulties at work but these can come to a head when you're subject to disciplinary proceedings – perhaps because your employer wants to resolve the difficulties by pushing you out.

If you can, it is important to engage with the process. You should check your employer's disciplinary policy to understand how things should move forward. You are entitled to basic procedural protections in the Acas Code of Practice on disciplinary and grievance procedures.

Some basic steps to take include:

- Make sure you have enough information to understand why you are accused of doing, the evidence against you and what your employer has said the charges and potential outcome are.
- Prepare your case, including gathering together any evidence you have. If you believe there is evidence that you do not have access too it is important to tell your employer what that evidence is (e.g. CCTV footage, written logs, etc), what it will show and where your employer can find it.
- Get statements from anyone who is willing to be a witness for you and check they would be happy to confirm this to your employer if asked.
- As disciplinary hearings can be stressful, it is usually a good idea to create a written document of your case. Set out what happened from your point of view,
- Use your statutory right to be accompanied by a colleague or trade union representative. This can be a good source of moral support, prompt you to mention items and they can take a careful note of what was discussed.
- It is important to fully set out your defense and any evidence in your support. Point out any mitigating circumstances and if you agree you've done something wrong, apologizing and setting out what you've learned can go a long way to resolve problems.
- After the meeting it is important to check the notes of the meeting and make corrections if necessary.
- In most situations, you have a right to appeal against any disciplinary sanction imposed, including warnings. It is a good opportunity to set out what you think your employer has gone wrong, provide any further evidence or explain why any sanction is too harsh and a lower sanction would be appropriate.

Of course, it may be appropriate to request a postponement if: (1) the outcome would be prejudiced if decided prior to your grievance, (2) you are too sick to attend, or (3) your chosen companion is not available.