To which cases does the Acas Code apply?

[et_pb_section admin_label="Section" global_module="136″ fullwidth="on" specialty="off" transparent_background="off" background_color="#ffffff" allow_player_pause="off" inner_shadow="off" parallax="off" parallax_method="off" padding_mobile="off" make_fullwidth="off" use_custom_width="off" width_unit="on" make_equal="off" use_custom_gutter="off"][et_pb_fullwidth_code global_parent="136″ admin_label="Post Header"][Page_Header_Start] Employment Law News [Page_Header_End][/et_pb_fullwidth_code][/et_pb_section][et_pb_section admin_label="section"][et_pb_row admin_label="row"][et_pb_column type="3_4″][et_pb_text admin_label="Text" background_layout="light" text_orientation="left" use_border_color="off" border_color="#ffffff" border_style="solid"]

To which cases does the Acas code apply?

[post_details]

[Social-Share]

The Acas Code of Practice on Disciplinary and Grievance Procedures does not apply to cases where there is no culpability on the part of the employee, including where the dismissal is on ill health grounds or due to a breakdown in the working relationship.

In *Holmes v Qinetic*, Mr Holmes was employed as a security guard but problems with his back, hips and legs meant he had

extended absences from work. Qinetic later decided to dismiss Mr Holmes on ill health grounds as he was no longer capable of performing his duties. Qinetic accepted that the dismissal was unfair. Mr Holmes argued that an uplift should be applied to his compensation to reflect the fact that Qinetic did not follow the Acas Code.

The Employment Appeal Tribunal held that the Acas Code could not apply. The Code was intended to cover situations where the employee is facing an allegation which could lead to a disciplinary procedure. In a case where illness precludes the employee from doing his job, there could not be said to be culpability which requires sanction.

In *Phoenix House Ltd v Stockman*, Ms Stockman was employed as a Financial Accountant by Phoenix House, a charity. After the charity was restructured, her role was lost and she applied internally for other positions. The role she was given, Payroll Controller, was more junior. Ms Stockman felt she had been treated unfairly in the process by the Finance Director, Mr Lambis, and lodged a grievance critical of him. She later confronted him whilst he was in a meeting and was subjected to a disciplinary procedure for misconduct. Whilst she was on sick leave, Ms Stockman's grievance was dismissed and she was given a 12 month written warning.

After unsuccessful appeals and a mediation, the charity asked Ms Stockman (who was still on sick leave) to attend a formal meeting to discuss whether the employment relationship had irreparably broken down. At the meeting, Ms Stockman said she wanted to return to work and that she would be able to work with Mr Lambis. The charity decided to dismiss Ms Stockman on the basis that the working relationship had broken down without hope of repair.

The Employment Appeal Tribunal held that, whilst Ms Stockman's dismissal had been unfair, it was not a case to which the Acas Code could apply. Whilst certain elements of the Code could be

used in a situation such as this, it makes no express provision for dismissals of this type so a Tribunal cannot impose a sanction for failure to comply with it.

Whilst these decisions are helpful, employers should always apply their minds to whether the Code applies in each individual case. Even if employers are under no legal obligation to follow it, the Code remains good practice and it may be that some aspects of it can be applied.

Holmes v Qinetic Ltd UKEAT/0206/15 and *Phoenix House Ltd v Stockman and another UKEAT/0264/15*

[/et_pb_text][/et_pb_column][et_pb_column type=”1_4″][et_pb_sidebar admin_label=”Sidebar” orientation=”right” area=”sidebar-1″ background_layout=”light” remove_border=”off”]

[/et_pb_sidebar][/et_pb_column][/et_pb_row][/et_pb_section]