

Guidance on disciplinary, capability and grievance procedures

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1 Introduction

- 1.1. Every organisation in Great Britain which employs people or appoints people to positions where they are expected to carry out certain responsibilities has a disciplinary, capability and grievance procedure. It may be something the organisation has created or it may be the ACAS disciplinary, capability and grievance procedures.
- 1.2. Having your own procedures allows you to tailor them to the particular needs of your organisation and to be more flexible in how you impose discipline by, for example, adding a wider range of informal approaches or including restorative justice processes in the procedures. However, the organisation needs to have access to people who have the skills to write such procedures and those implementing the procedures need to be familiar with these additional features.
- 1.3. The organisation also needs to recognise that the ACAS procedures are updated from time to time and they need to make arrangements to update their procedures to reflect changes in the ACAS recommendations. However, using a procedure that has not been updated is not normally a problem unless it includes a feature which has been deemed inherently unfair or unreasonable by Parliament or the courts.
- 1.4. Using the ACAS procedures allows you to use tried and tested approaches, albeit framed in a more general way, which do not require additional knowledge or expertise in those implementing them. It also means that the organisation does not have to have people with the skills to write such procedures.
- 1.5. But it is important for you to be satisfied that the organisation's needs can be met within the ACAS procedures; if not, you might benefit from seeking external advice on writing your own procedures.
- 1.6. It also means that those implementing the procedures need to keep up-to-date with the most recent version of the ACAS recommendations.
- 1.7. Whichever the organisation chooses to use, those responsible for implementing them need to be familiar with and to understand the implications of each stage in the procedure. An employee is entitled to a fair hearing and an employment tribunal or court will normally

rule against an employer who has failed to give the employee a fair hearing, even where it is clear that the employee was in the wrong.

- 1.8. Tribunals are allowed to increase awards by 25% where an employer has ‘unreasonably failed to follow the guidance set out in the Code’ (Advisory, Conciliation and Arbitration Service, 2015, p. 1).

2 Purpose

- 2.1. The purpose of a disciplinary or capability procedure is to ensure that people receive a quality service. ‘Discipline’ comes from the Latin word for ‘teaching’ and so should be ‘used primarily to help and encourage employees to improve rather than just as a way of imposing punishment’ (Advisory, Conciliation and Arbitration Service, 2019, p. 13). Punishment is the least effective way of teaching someone what to do (Sheldon, 1995).
- 2.2. In other words, you normally use a disciplinary procedure when you expect to keep the person and capability where you think you may have to move or get rid of them. The only exception is *gross misconduct* where you must use a formal disciplinary procedure to decide whether to dismiss someone.
- 2.3. The purpose of a grievance procedure is to enable an employee or anyone else holding a position of responsibility to raise concerns, problems or complaints about their working situation. These may range from someone giving an order which the person considers unreasonable through unreasonable behaviour by a colleague to the measures the employer takes to protect them from unreasonable behaviour by third parties.

3 Basic principles

- 3.1. The ACAS Code of Practice recommends the following principles:
 - raise and deal with issues promptly;
 - act consistently;
 - establish the facts of the case;
 - inform people of the basis of the problem;
 - give people an opportunity to put their case before any decisions are made;
 - allow people to be accompanied at any formal meeting;
 - allow people to appeal against any formal decision made (Advisory, Conciliation and Arbitration Service, 2015, pp. 3–4).
- 3.2. The ACAS Guide recommends that procedures should be based on principles of natural justice, that is,
 - the duty to give someone a fair hearing;
 - the duty to ensure that the matter is decided by someone who is impartial; and
 - the duty to allow an appeal against a decision (Advisory, Conciliation and Arbitration Service, 2019, p. 76).

3.3. If you decide to create your own procedures, they should:

- be in writing;
- be non-discriminatory;
- provide for matters to be dealt with speedily;
- allow for information to be kept confidential;
- tell people what disciplinary action might be taken;
- say who has authority to take the various forms of disciplinary action;
- require people to be informed of the complaints against them and supporting evidence before a disciplinary meeting;
- give people a chance to have their say before any decision;
- provide for the right to be accompanied at formal hearings;
- provide for no dismissal for a first breach of discipline, except in cases of *gross misconduct*;
- require full investigations before any action is taken;
- ensure people are given an explanation for any sanction;
- allow people to appeal against a decision;
- apply to everyone unless there are good reasons to have different rules for different groups;
- ensure that any investigatory period of suspension is with pay and is brief during which the suspended person is kept informed of progress;
- ensure that the employee will be heard in good faith and that there is no pre-judgement of the issue;
- ensure that, where the facts are in dispute, no disciplinary penalty is imposed until the case has been carefully investigated, and there is a reasonably held belief that the employee committed the act in question (Advisory, Conciliation and Arbitration Service, 2019, pp. 14–15).

4 Some notes on writing your own procedures

- 4.1. While anyone can initiate informal discipline, *wilful* or *persistent* breaches of discipline or *gross misconduct* should always be addressed through formal discipline.
- 4.2. Your procedure should state which forms of *gross misconduct* will be grounds for summary dismissal. These might include fraud, theft, violence to persons or property, sexual offences, harms caused through negligence or breaches of confidentiality. You don't have to list them all but, if you find that you want to dismiss someone for something not on the list, you will have to show that it is as serious as the things on the list. Note that you can only dismiss someone for a first offence if it amounts to *gross misconduct*.
- 4.3. Beware of including relationship or 'political' issues in the list of behaviours considered *gross misconduct*. Some years ago a well-meaning organisation included racism in their list and the number of complaints about racism dried up because people did not want

their racist colleagues to face the risk of being sacked; they just wanted them to change their behaviour which could have been achieved through informal discipline.

- 4.4. The ACAS Guide only mentions a work colleague, an accredited member of a trade union or a companion of a disabled person as likely to accompany someone to a meeting but in many organisations it would be more appropriate to allow a friend, a member of a profession or a lawyer to accompany someone to a meeting. Whoever you decide to include, it is important to apply the procedure in a non-discriminatory way.
- 4.5. Even though formal discipline must be handled by designated people, anyone with supervisory responsibilities, whether or not they hold a formal title of 'manager' or 'supervisor,' for example, a volunteer organiser or someone who is mentoring a new member of staff, is involved with issues of discipline and capability. Most of these will be handled through informal discussions (Figure 1) but sometimes they may have to initiate formal disciplinary procedures and, as such, they need to be fully briefed on what they should and should not do because a failure at this stage may result in any subsequent procedure being regarded as flawed.

5 Reluctance to initiate disciplinary and capability procedures

- 5.1. People are sometimes reluctant to initiate disciplinary and capability procedures because of the person involved, because of the situation or because of the reputational damage to the organisation. Some years ago a woman with mental health problems reported a paedophile to the local social services but, because of her mental health problems, her allegations were disregarded and the paedophile was able to continue operating for several more years. Workplace bullies often hold senior positions and bully several people in the organisation but each believes that they are the only one and, if one makes an allegation which is not investigated, this reinforces the impression that the bully is 'untouchable.'
- 5.2. When someone makes an allegation, it needs to be investigated to find out if there is any substance to it and to take action if there is; if there is no substance the person making the allegation needs an explanation as to why there is no substance in the allegation.
- 5.3. When something is alleged about someone, they need to have that allegation investigated and, if there is substance to it, given the opportunity to accept responsibility for it, to apologise and, if appropriate, to make restitution. If there is no substance to it, that needs to be acknowledged formally.
- 5.4. The majority of sex offenders are ashamed of what they have done and would welcome an opportunity to acknowledge what they have done and apologise to their victims. The decision of many religious organisations not to provide a formal mechanism within which the offender can accept responsibility for what they have done, apologise and, if appropriate, make restitution removes any possibility of the victim and the offender achieving any closure. In the end it causes the very reputational damage which the organisation was seeking to avoid.
- 5.5. Of course, a minority of sex offenders will not accept responsibility but a proper investigation is the very minimum that is owed to their victims.

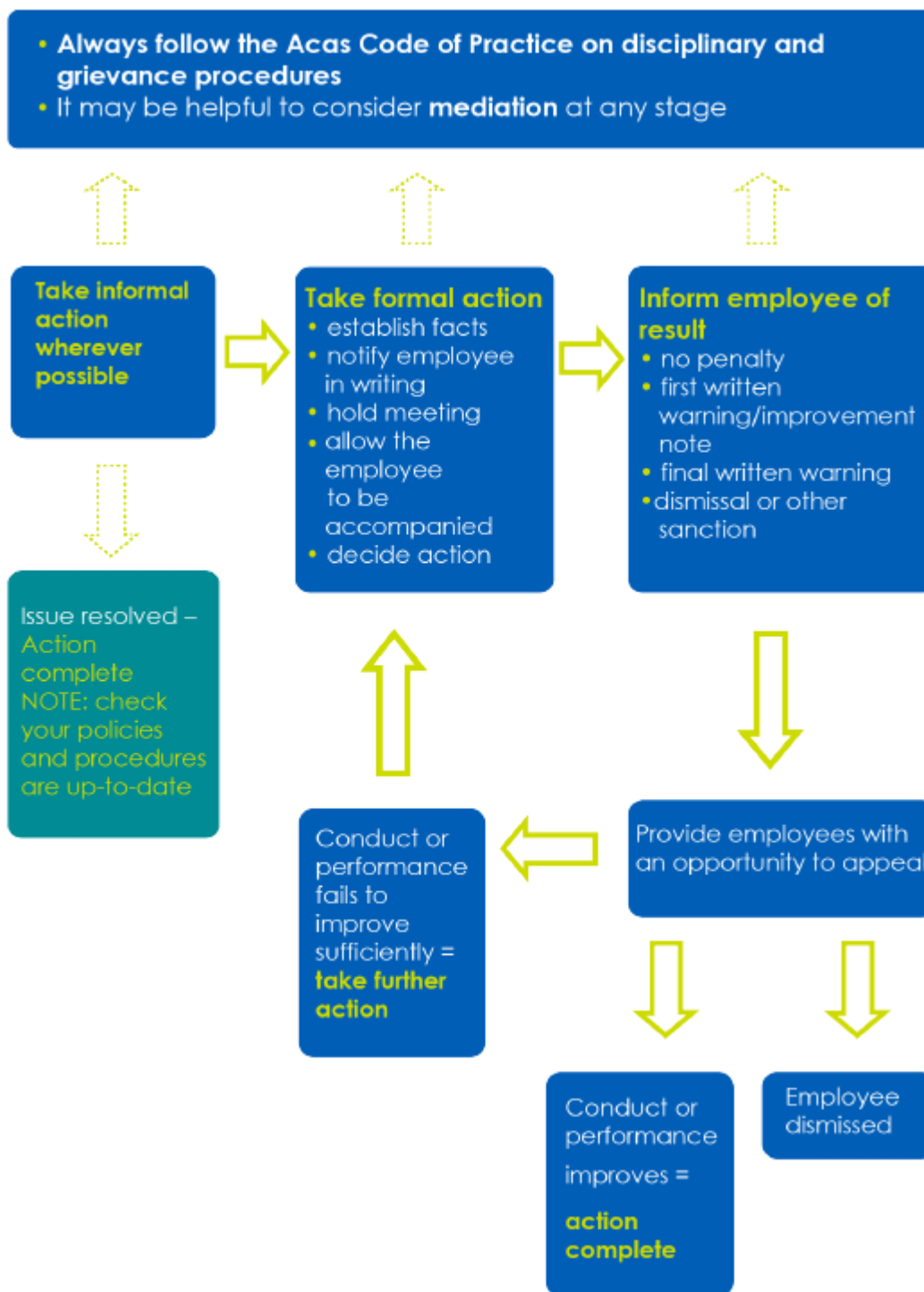


Figure 1: Overview of disciplinary procedure (Advisory, Conciliation and Arbitration Service, 2019, p. 7)

6 Initiating disciplinary and capability procedures

- 6.1. All discipline is instigated by someone in relation to the unsatisfactory performance of someone for whom they are responsible or with whom they share a responsibility.
- 6.2. While everyone can initiate informal discipline, *wilful* or *persistent* breaches of discipline or *gross misconduct* should always be addressed through formal discipline.
- 6.3. If it becomes clear in the course of an informal discussion that there are issues, such as a possible case of *gross misconduct*, which can only be dealt with through a formal procedure, the discussion should be terminated immediately and the person informed of the need to initiate the formal procedure. Failing to do this may compromise the formal procedure.
- 6.4. Appendix A offers a checklist for initiating informal disciplinary action.

7 Informal discipline

- 7.1. Informal discussions are normally face-to-face and confidential; the person concerned about the behaviour explains what the concern is and the person whose behaviour is giving rise to concern is given the chance to explain the behaviour about which concern is being expressed and, if appropriate, agree a course of remedial action.
- 7.2. The discussion may take place solely between the two people involved or the person concerned about the behaviour may take someone with them to witness the discussion. This can be a helpful step where the behaviour that causes concern involves bullying, harassment, sexism or racism, etc. but may be interpreted by the person being confronted about their behaviour as people ‘ganging up’ on them.
- 7.3. In these cases, the witness does not normally participate in the discussion; they just observe the discussion with a view to providing an independent account of the discussion or possibly advising the person concerned on next steps.
- 7.4. Should both parties agree, a mediator in whom they both have confidence could be brought in from elsewhere in the organisation, if they have had no involvement in issues relating to the behaviour giving rise to concern, or from outside the organisation in order to assist the parties in reaching an appropriate resolution.
- 7.5. In some cases, a person may not have the confidence to initiate informal discipline, particularly where there is a power distance between them and the person whose behaviour gives rise to concern. In these cases, the procedure could permit the person to ask someone else to speak on their behalf during the informal discussion.
- 7.6. The person concerned about the behaviour or a third party present at the discussion should make brief notes of the discussion and any action to be taken.
- 7.7. Should the person about whose behaviour there is concern be unwilling to engage in informal discussion, formal discipline should be initiated.
- 7.8. Should the informal discussion result in the desired change in behaviour, no further action is needed.

- 7.9. However, a series of changes in behaviour after informal discipline followed later by relapses can be grounds for initiating formal discipline. This needs to be specified in the procedure if it is to be considered grounds for formal discipline.
- 7.10. The number of people involved in informal discipline should be as small as possible both to maintain confidentiality and to avoid embarrassment if the outcome is not what people expected and also to leave as many people as possible without knowledge of the concerns raised and therefore able to be on panel hearings or appeal hearings at a later date.

8 Criminal offences

- 8.1. A criminal offence committed outside work is not of itself enough to justify dismissal; it must be relevant to the post or one which would lead to a breakdown in trust between the person concerned and those with whom they are working.
- 8.2. An organisation may have a responsibility to report certain criminal offences, for example, certain offences against children.
- 8.3. However, a criminal offence committed in work should be treated in the same way as any other form of unsatisfactory performance, that is, if it is as serious as *gross misconduct*, it should be treated as *gross misconduct*.
- 8.4. Because the panel in a formal disciplinary hearing only has to be satisfied that the offence took place *on the balance of probabilities*, an organisation may be justified in taking action against someone where the courts are not satisfied that the offence took place *beyond reasonable doubt*.
- 8.5. In other words, the organisation should initiate the appropriate procedure if they have sufficient grounds for doing so; they should not rely on a police investigation, which may in any case take several months, to provide the grounds. If they do not have sufficient grounds for doing so, the person should be presumed innocent until such time as the organisation has evidence to the contrary.
- 8.6. In a case in which I was involved, a person committed a criminal offence but apologised immediately afterwards and sought to repair the damage caused. The employer initiated formal discipline and gave him a final warning. A few years later he was supported by his employer for further career development. Proper use of the disciplinary procedure in a case involving a criminal offence led to a satisfactory outcome for the employer and the employee without recourse to the courts.

9 Suspension

- 9.1. Organisations should not normally suspend a person concerned, even pending the outcome of a police investigation; if they do not have the evidence to initiate formal proceedings, there should be a presumption of innocence and the person concerned should not be subject to any formal procedure.
- 9.2. They may however suspend the person concerned in any case where they have the evidence to initiate formal proceedings and there is a:

- a) risk of witness tampering,
- b) risk in the working environment,
- c) criminal prosecution which raises questions as to whether the person will be able to continue in their position (see Advisory, Conciliation and Arbitration Service, 2019, p. 18).

9.3. In many cases, these fears will be groundless but an organisation may have to consider the views of other staff or customers who might be unduly affected by the continued presence of the person. In all cases, the suspension should only be long enough for an investigation to be carried out and a hearing held and should never be considered as implying guilt.

10 Capability

10.1. A breach of discipline may arise for a wide variety of reasons; however, when it becomes clear from all that has been said in an informal discussion or in the course of an investigation and hearing that the unsatisfactory performance arises from capability issues rather than from *negligence* or *wilful misconduct*, the person concerned will be given an 'improvement note' setting out:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement;
- a review date; and
- any support, including any training, that the organisation will provide to assist the person concerned (Advisory, Conciliation and Arbitration Service, 2019, p. 28).

10.2. This might take place within informal discipline subject to the agreement of the person whose behaviour is considered unsatisfactory or within formal discipline. Where this takes place within informal discipline the requirements should not exceed those set for formal discipline in Section 16.

11 Grievance

11.1. A grievance may be raised by anyone against anyone in a supervisory position in relation to any instruction, advice, guidance or action/lack of action which the person believes is inappropriate in the light of their responsibilities.

11.2. A grievance may also be raised in relation to working conditions or relationships with colleagues or to matters not entirely within the control of the organisation, such as client or customer relationships. These should be treated in the same way as grievances within the organisation, with the organisation investigating as far as possible and taking action if required. The organisation should make it very clear to any third party that grievances are taken seriously and action will be taken to protect their staff.

11.3. A grievance may cover:

- terms and conditions of employment
- health and safety
- work relations
- bullying and harassment
- new working practices
- the working environment
- organisational change
- discrimination (Advisory, Conciliation and Arbitration Service, 2019, p. 38).

11.4. The purpose of a grievance procedure (Figure 2) is to:

a) settle or end a grievance:

- by taking appropriate action if the grievance is justified

OR

- by setting the record straight if the grievance is not justified, and

b) obtain feedback about something that has gone wrong.

11.5. Where the grievance does not relate to anything which might be considered gross misconduct in a disciplinary context, the person should if possible raise the issue with the supervisor concerned.

11.6. Such discussions are normally face-to-face and confidential; the supervisor concerned will be given the chance to explain the behaviour about which concern is being expressed and, if appropriate, agree a course of remedial action. The person concerned will agree with the supervisor concerned brief notes of the discussion and any action to be taken.

11.7. Where appropriate, the grievance may also be discussed in ways similar to those set out in Section 7.

11.8. Where an informal discussion has failed to resolve the grievance or the grievance relates to a wider issue such as an organisational policy, the person concerned should put the grievance in writing, specifying, if possible, the exact nature of the grievance and any evidence they have to support the grievance and pass it to a senior member of the organisation who has had no involvement in any aspect of the grievance.

11.9. Where someone raises a grievance in the context of a disciplinary or capability process, the disciplinary or capability process will be suspended and the grievance process concluded before any further action is taken in relation to the disciplinary or capability process unless the issues raised by the grievance and the disciplinary or capability process are so interrelated that it is practical to deal with them together within the disciplinary or capability process.

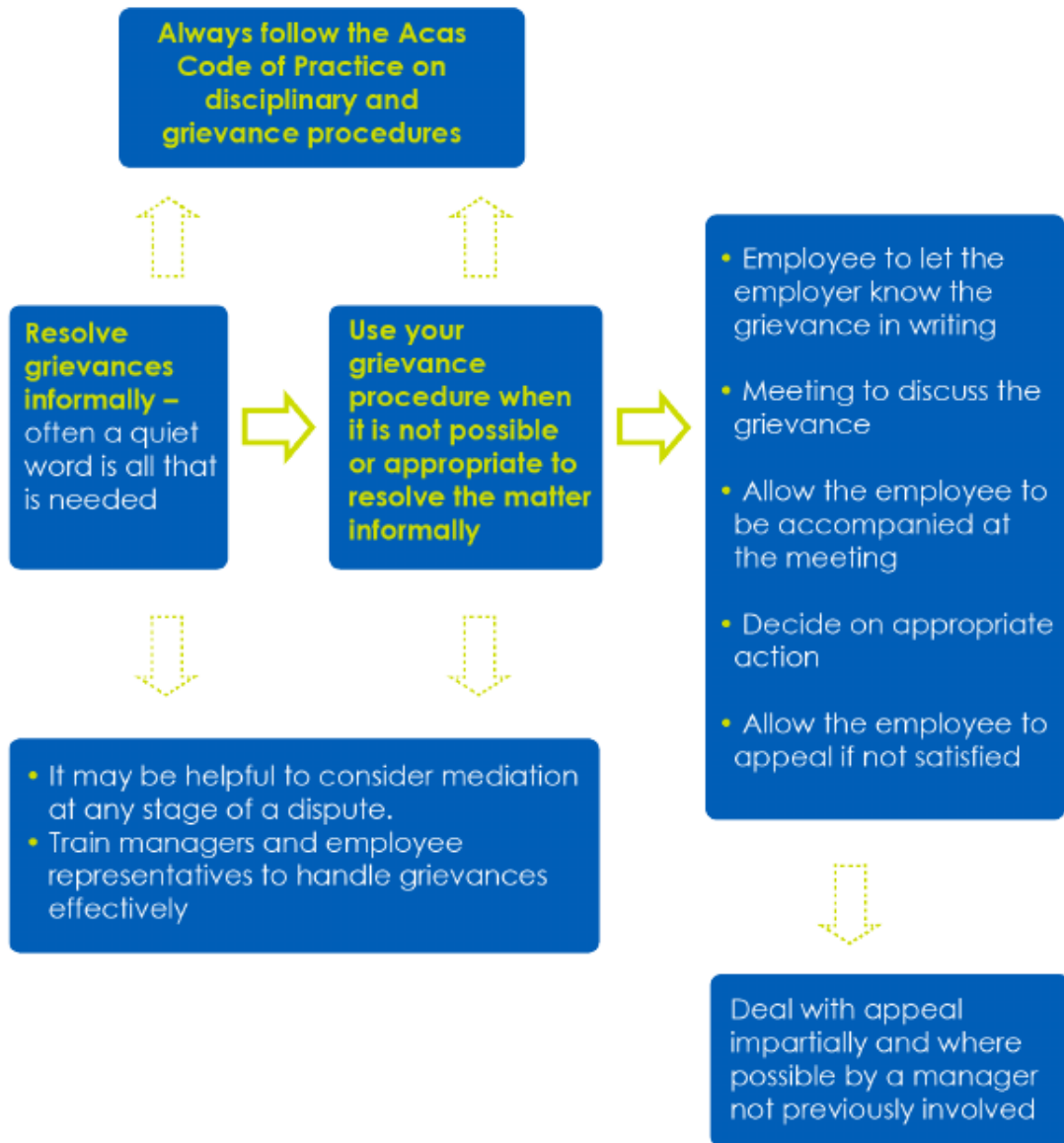


Figure 2: Overview of grievance procedure (Advisory, Conciliation and Arbitration Service, 2019, p. 8)

12 Support

- 12.1. The parties to a disciplinary, capability or grievance procedure should receive support from an independent person of their choice from within the organisation or from outside the organisation.
- 12.2. The purposes of support will include:
 - ensuring that people understand the formal procedure including its possibilities and its limitations;
 - helping people to deal with the emotions which are inevitably aroused as a result of being involved in the procedure;
 - supporting them to use the procedure to ways which lead to a constructive resolution for all parties.

13 Explaining the situation

- 13.1. Other than in a case of informal discipline which is resolved informally, there need to be arrangements for explaining to others the situation regarding someone. This may not be easy as it is normally inappropriate to state the precise allegation that has been made against the person, both for confidentiality reasons and because doing so may reveal the name of a victim or other innocent party. It will however normally be appropriate to indicate to those who work closely with someone whether the alleged offence is *misconduct* or *gross misconduct* and, if applicable, the reason why they are being suspended on full pay pending the outcome of the investigation.
- 13.2. These arrangements should involve keeping people who need to know informed of the progress of the proceedings and the implications of what happens at each stage. Care must be taken if some members of the organisation are likely to be witnesses at a hearing to avoid saying anything which might be construed as ‘contaminating’ the witnesses’ evidence. If this is a possibility, what is to be said may need to be agreed by the parties and/or a neutral third party may need to provide the information by agreement with the parties concerned as and when required.
- 13.3. There may be situations following formal discipline where it is appropriate to make a statement about the outcome, not least to dispel rumours and suspicions about those involved, but any such statement needs to respect the confidentiality of the proceedings and should normally be agreed by the parties involved unless there is an overriding consideration, for example, where an innocent person has been wrongly implicated in the issues raised, to make a statement without the agreement of all parties.

14 Formal procedures

- 14.1. *Formal procedures* will be initiated by a designated person who is independent of any parties to the procedure; this person will provide the person concerned with a written statement of the exact nature of the complaint and of any evidence they have to support the complaint and that formal proceedings have been initiated.

- 14.2. The designated person will normally give the person concerned the chance to answer any allegation simply to ensure that there has been no misunderstanding which would make a mockery of taking the proceedings any further (see Checklist for designated person's initial interview).
- 14.3. The person concerned may be given up to a specified number of days to reply — not less than three and probably no more than seven, but local conditions may suggest a longer period — before any further steps are taken in the proceedings. The person concerned is entitled to remain silent at this stage but the designated person will explain the procedure whatever the response of the person concerned.

15 Investigation

- 15.1. Unless the designated person decides that there is no case to answer or that no further evidence is needed to proceed to a formal hearing, there will be an investigation to establish the facts; this may take the form of a meeting at which the person concerned is given an opportunity to state her/his account of the allegations or an independent investigation of the allegations. The purpose of this investigation is not to strengthen the case against the person concerned but to establish the facts and whether in fact there is evidence which contradicts the initial allegations.
- 15.2. The designated person may undertake the investigation themselves, unless they consider that they do not have the necessary skills or time available to do it or they are, in spite of their independence from either of the parties to the procedure, not seen as sufficiently 'independent' to carry out the investigation. In this case, it is normally appropriate to ask for someone else within the organisation or an outside person to carry out the investigation.

16 The formal hearing

- 16.1. If the designated person considers that no further evidence is needed to proceed to a formal hearing or the outcome of the investigation suggests that there has been a breach of discipline, the designated person will inform the person concerned of this and provide them, in writing, with the evidence collected in the course of the investigation along with information about the procedure for a formal hearing.
- 16.2. They will arrange for an independent panel, for an independent person to minute the hearing and for a venue for the hearing capable of ensuring privacy and access for anyone with a disability and propose a date for the hearing; the person concerned will be able to propose an alternative time, typically up to five days after the proposed date, to accommodate a friend, companion, interpreter or witness whom they might wish to bring.
- 16.3. Where there are not enough people in the organisation who are sufficiently independent of the concerns raised to sit on the panel, the designated person will invite independent people from a similar organisation to make up the panel.

- 16.4. In the absence of relevant support (Section 12), the designated person may assist either party in preparing for the hearing to ensure that it is fair for both parties but may not do anything which would prejudice their independence in the proceedings.

Chairing a hearing

1. Say ‘This is a formal disciplinary/capability/grievance hearing.’
2. Invite all those present to introduce themselves and say why they are attending the meeting.
3. Explain the purpose of the meeting and how it will be conducted.
4. Read out the substance of the complaint.
5. Present the evidence to support the complaint, explaining where necessary how it supports the complaint. In complex cases, this would be done by someone other than the chair.
6. Allow the person concerned to challenge any or all of the evidence or to present their own evidence.
7. If at any time it becomes clear that the person concerned has no case to answer, bring the hearing to a close.
8. Give time for general discussion of the issues that have been raised.
9. Allow the person concerned to confer with a friend or companion at any time.
10. Where the person concerned accepts at least some responsibility for the unsatisfactory performance, ask them if there is any reason or mitigating circumstance that ought also to be considered; encourage them to put forward their own remedies for the unsatisfactory performance.
11. Consider mediation in cases where there is a conflict between people and all parties are prepared to enter into mediation (section 17). In this case, suspend the hearing until the outcome of the mediation.
12. Summarise what has been said in the course of the meeting.
13. Unless it has become clear that the person concerned has no case to answer, adjourn the meeting in order to consider a decision.
14. Consider the reasons/explanations put forward and evaluate:
 - a) is the person concerned entirely at fault or did someone else contribute to the situation? Was it an organisational failure?
 - b) if it was their fault, have they been made a scapegoat for others who are similarly at fault?
 - c) if it was their fault, are there personal/mitigating circumstances to be taken into account?

- d) are the reasons/explanations just excuses or has the person concerned accepted responsibility for their unsatisfactory performance?
- e) how does the unsatisfactory performance compare with previous experience? Have there been similar complaints in the past?
- f) does the unsatisfactory performance suggest a need for specific training or supervision?
- g) in the case of a grievance,
 - i. should you uphold the grievance in part or in full and, if so, what action should the Trustees take?
 - ii. would a resolution of the grievance affect others who might then have a legitimate grievance?
 - iii. does the grievance highlight failures in the organisation's existing policies or procedures?

Note that a hearing is only required to make a finding 'on the balance of probabilities' which is why it is possible to be disciplined for an offence for which the Police have been unable to find sufficient evidence to meet the higher criminal court standard of 'beyond reasonable doubt.'

15. If it appears to be an issue of capability (section 10), consider as appropriate
 - a) an improvement notice if there has been no previous improvement notice
 - b) whether to extend an existing improvement notice or consider a redeployment of the person concerned to a post more suited to their capabilities
 - c) a final warning if an improvement notice has gone past its review date and there has been no significant improvement in the person concerned's performance
 - d) dismissal if a final warning is in place or the unsatisfactory performance presents a risk of harm to those with whom the person concerned is expected to work.
16. Except where an issue of capability justifies in the view of the panel a longer period, the review date for an improvement notice and a final warning should be no longer than six months after it was issued as, if people are going to demonstrate an improvement, that is normally evident after four months.
17. Otherwise, consider what might be an appropriate penalty, for example, for an officer, employee or volunteer,
 - a) a written warning in the case of a first offence
 - b) a final warning in the case of a repeated offence or an offence of gross misconduct which does not warrant summary dismissal
 - c) dismissal in the case of a repeated offence where a final warning is still in place
 - d) summary dismissal in the case of an offence of gross misconduct which results in a breakdown of trust between the person concerned and the organisation.

18. Except where a pattern of unsatisfactory conduct justifies in the view of the panel a longer period, written warnings will expire and not be taken into consideration in any further disciplinary procedure after six months and final written warnings after twelve months.
19. Additional penalties, such as disciplinary transfer, disciplinary suspension without pay, demotion, loss of seniority or loss of increment, may be available but only if they are written into the person concerned's contract (Advisory, Conciliation and Arbitration Service, 2019, p. 30).
20. Immediately after the meeting, set out in writing the decision of the hearing, including the justification for any longer period before a warning will expire, any action to be taken and how the person concerned may appeal the decision; in particular, give reasons for not upholding a grievance.
21. Take immediate steps to address any issues of discipline or capability revealed in the course of the hearing.

17 Mediation

- 17.1. Mediation may be appropriate to resolve conflicts between members of an organisation where there is no overwhelming power differential between the members of the organisation. The mediator may be a member of the organisation or from an external organisation.
- 17.2. Mediation can also be used after action has been taken, whether resulting in a sanction or not, to address relationships undermined by the unsatisfactory performance or the grievance.
- 17.3. The purpose of mediation is to reach an agreement acceptable to all parties which will enable the unsatisfactory performance or the grievance to be addressed.
- 17.4. Any formal procedure should be suspended for the duration of any mediation and reconvened only when there has been a successful outcome or when it is clear that mediation is unlikely to succeed.
- 17.5. Where mediation is offered, a note of its success or otherwise should be made in any follow up.

18 Rights of appeal

- 18.1. There is a right to appeal against an improvement note or any sanction imposed by a hearing within a timescale specified in the organisation's procedure. This will be heard by one or more people who have had no part in any of the earlier proceedings as soon as possible after the sanction was imposed and at a time convenient for the person concerned and any friend, companion and interpreter.
- 18.2. Appeals may be raised on a number of grounds, for instance
 - new evidence,

- undue severity or inappropriate resolution or
- inconsistency of the penalty or the resolution.

18.3. The appeal may be either a review of the sanction or a re-hearing depending on the grounds of the appeal (Advisory, Conciliation and Arbitration Service, 2019, p. 34). Whatever the outcome of the appeal, it will not result in the raising of any penalty imposed (Advisory, Conciliation and Arbitration Service, 2019, p. 33).

19 Follow up

19.1. Employees with two years' service or more have the right to request a 'written statement of reasons for dismissal' (Advisory, Conciliation and Arbitration Service, 2019, p. 32) but good practice suggests that this should be the practice for all employees.

19.2. In the first instance, it is normal to keep records of:

- the complaint made
- the defence provided
- findings made and actions taken
- the reason for actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during a disciplinary procedure
- subsequent developments
- notes of any formal meetings (Advisory, Conciliation and Arbitration Service, 2019, pp. 15–16).

19.3. Where any disciplinary measure short of redeployment or dismissal has been taken against a person, the person's supervisor will normally have a role in monitoring the person's performance for the period the measure remains in force. S/he may also be involved in providing or arranging additional supervision, support, training or development to ensure that there is no repetition of the unsatisfactory conduct or performance.

19.4. Where the disciplinary proceedings have been public knowledge, arrangements may need to be made to inform customers, suppliers and the person's colleagues of the outcome and implications of the finding of the disciplinary interview or hearing. In many cases, it will be appropriate to agree a form of words with the person so that different accounts do not lead to extravagant speculation or gossip.

19.5. Where the person has been suspended, arrangements should to be made for the person to be re-inducted to work. Some staff may have been witnesses at a hearing; some staff may be new. Managing the re-entry of the person into the team may require considerable tact, diplomacy and negotiation.

19.6. Where the breach of disciplinary arose from a complaint by or involved a customer or supplier, there may need to be an apology or some specific arrangement to re-establish

a working relationship with the customer or supplier concerned. This is likely to be difficult for all parties, more so if one party feels that they were not fairly treated during the proceedings.

- 19.7. It may also be necessary to arrange opportunities for staff to explore the feelings engendered by the proceedings. Particularly if they have, as potential witnesses, been constrained in what they could say to each other or if the details of the offence have been partly or wholly concealed from them to save others from embarrassment or to avoid breaches of confidentiality, it may be necessary to allow them to explore a whole range of pent-up emotions and feelings in order to come to terms with the implications of the events for themselves as well as for others affected by the proceedings.
- 19.8. There should be a follow up interview with the person sanctioned when the time limit has been reached for an improvement notice or a written warning. Satisfactory progress should be praised and, where progress has not been satisfactory, any factors which might have affected progress should be explored before any decision on further action, for example,
- has the same or a similar incident of unsatisfactory behaviour occurred within the time limit?
 - has the support or training which was envisaged at the time the improvement notice or written warning not been given?
 - are there mitigating circumstances to account for the failure to make satisfactory progress?

If the answer to the first question is yes, then consideration should be given to reopening the formal procedure with a view to a further sanction; if the answers to the second and third questions are yes, consideration will be given to providing support or training to enable satisfactory progress to be made.

20 Personal and personnel records

- 20.1. If no action is taken or is found to be unwarranted, then all references to it should be removed from any record. In any other case, records should be retained in accordance with the 2018 Data Protection Act which requires the deletion of personal data once the purpose for which it was collected no longer exists, normally in relation to personal data collected in respect of a disciplinary, capability or grievance procedure when all sanctions have expired.

21 And finally . . .

- 21.1. I became aware of these situations through *Bullying at work* (Adams, 1992) and the series *Making advances* introduced by Emma Freud and broadcast on the BBC in 1993 and through undertaking courses on supporting professionals in these sorts of situations at around the same time.
- 21.2. Since then I have supported both victims and perpetrators, undertaken investigations on behalf of organisations, presented a case myself and managed the procedure. Though

I have found these situations very stressful because they usually involve a relationship breakdown, I continue to support people because I know how stressful they can be for those involved.

- 21.3. I have tried to summarise clearly and coherently what I have learnt over the past thirty years but I would welcome a note of any errors which readers may find and any clarification which readers may find useful.

References

- Adams, A. (1992). *Bullying at work: how to confront and overcome it*. London: Virago.
- Advisory, Conciliation and Arbitration Service (2015). *Code of Practice on disciplinary and grievance procedures*. Norwich: The Stationery Office.
- Advisory, Conciliation and Arbitration Service (2019). *Discipline and grievances at work: the ACAS guide*. London: Advisory, Conciliation and Arbitration Service.
- Sheldon, B. (1995). *Cognitive-behavioural therapy: research, practice and philosophy*. London: Tavistock.

A Checklist for discipline — should action be taken?

- A.1. Is the matter trivial and worth overlooking or must some action be taken to prevent a recurrence? Things to bear in mind:
- a) will the conduct be potentially dangerous or lead to difficulties for the organisation and/or the provision of quality services?
 - b) is it conduct which shows a disrespect for other people?
 - c) is it conduct which others may be encouraged to copy and which may therefore get out of control?
 - d) does the conduct prejudice the successful performance of the person's responsibilities?
 - e) is the conduct a breach of a rule or regulation which is normally enforced?
 - f) does the conduct annoy, irritate or offend other members of the organisation?

If the answer to any of these questions is yes, then action to remedy the situation should be considered.

- A.2. Has informal or formal action been taken before?
- A.3. What is the issue? What are the facts? What is the evidence? Where appropriate, you may need to request written and signed information from another person.
- A.4. If you are in any doubt, have you checked this document?
- A.5. Even if you are sure of the rules and/or that the issue is likely to be resolved within an informal discussion, might it be advisable to take further confidential advice?

B Checklist for designated person's initial interview

Have you

- B.1. told the person clearly and in simple terms the nature of allegation and the implications for her/him if it is found to be true?
- B.2. told the person that s/he is regarded as innocent until found otherwise?
- B.3. as appropriate to the procedure, invited the person to provide an explanation and explained that, if you do not regard this initial explanation as satisfactory, an investigation will be undertaken either by yourself or by someone not involved in the situation to ascertain the facts of the situation?
- B.4. told the person that s/he can be accompanied by a friend or companion at all stages of the procedure?
- B.5. told the person that, if the proposed date of any hearing is inconvenient for any friend, companion, interpreter or witness whom they might wish to bring, they can request a postponement of up to five days?
- B.6. explored whether embarrassment might be caused to residents, their families, Trustees, officers, employees or volunteers and what action might be taken to mitigate that?
- B.7. told the person what support the organisation is able to offer her/him during this difficult period and, if for any reason the organisation is unable to offer her/him support, identified possible sources of support from outside the organisation?

C Checklist for a formal hearing

Preliminary steps

- 1. Have you got the facts at your fingertips?
- 2. Have you obtained all the relevant data, including statements, records and papers; in particular, have you obtained statements from witnesses who may not be able to attend the hearing?
- 3. Have you given the people concerned copies of all the relevant data, including statements, records and papers?
- 4. Have you given the people concerned sufficient time to consider these?
- 5. Have you defined precisely what the issue is?
- 6. Have you considered any explanations given by the people concerned and, where appropriate, checked them out?
- 7. Have you considered any special circumstances of the case which may need to be taken into consideration?

8. Have you thought about the structure of the meeting and made brief notes to prompt your memory and ensure that you do not leave anything out?
9. Have you arranged for an independent person to make notes of the meeting?

Physical organisation of the hearing

1. Have you arranged for the hearing to take place somewhere quiet, out of earshot of others, where the hearing can be conducted in private?
2. Have you chosen the best time to hold the interview?
3. Have you left instructions that you should not be interrupted?
4. Have you offered the people concerned the option to suggest an alternative time up to five days later in order to accommodate any friend, companion, interpreter or witness whom they might wish to bring?
5. Have you made all the necessary adjustments that might be necessary to accommodate a person with disabilities?
6. Should you have refreshments organised — or not?

Dos and Don'ts

Avoid physical contact.

Restrict your body movements while speaking and don't fiddle with objects on the desk.

State the issue as briefly and concisely as possible.

Don't harangue people.

Don't get involved in arguments.

Don't raise your voice or become abusive; avoid sarcasm.

Don't try to humiliate or make personal remarks.

Try to avoid tension in your body posture, facial expression of voice.

Don't joke or smile extravagantly; seriousness of purpose should be registered throughout.

Maintain eye contact.

D Presenting a case

If you are responsible for presenting a case at a disciplinary hearing, remember that you have to show three things:

- D.1. that a breach of discipline has occurred; this may be easy if the breach of discipline is covered in the rules of the organisation but less so if it is a failure to heed an instruction or work within professional guidelines; in this latter case, be clear whose professional guidelines you are applying and why it was reasonable to expect the person concerned to adhere to those guidelines;
- D.2. that the person concerned knew that it was a breach of discipline; this may be easy if s/he received an instruction to that effect but less so if it was something based on someone's professional opinion;
- D.3. that the person concerned was capable of acting differently but chose to act in the way s/he did *wilfully*; in other words, the breach of discipline did not occur because the person concerned was faced with an impossible situation where what s/he did was the lesser of two evils and, given a different situation, s/he would not have acted in such a way.

If you have to give evidence, do not try to dress up the evidence or cover up any failings on your part; do not try to explain away what happened or attribute motives to the person concerned. Say simply what you saw and heard. Don't rush to answer questions. Speak slowly and truthfully throughout as the other side may try to rush you to confuse you and so discredit your evidence.

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