**Homework sheet for Reps Part 2** Online session 2

**Your name:**

1. Read the information on pages 83-96 for Activity H and repeated again at the end of the document, complete the strengths, weaknesses and mitigation for Sasha’s case and then prepare a strategy for the upcoming meeting using the nine points below. **Please email this sheet to your tutor before online session 3.**
2. Watch the *Side effects* video: <https://www.youtube.com/watch?v=wN5BqCKO9DY>
3. Read pages 97 & 98.

Sasha Payne case – strengths and weaknesses

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| **Strengths of member’s case** | **How risky?** | | **How to maximise  this point** |
| For example:  Incorrect allegations  Procedural issues  Policies/agreements/rules  Employment law  Precedent from previous cases. | Assess the risks of everything that you see as a strength to make sure it can’t backfire against your member. | | Think about how you can get the best out of a strong point.  When and how are you going to raise it? |
|  |  | |  |
| **Weaknesses of member’s case** | | **How to minimise this point** | |
| Make sure you list all areas that are possible problems for your member. | | Think about the best way to deal with the weaknesses. | |
|  |  | |  |
| **Mitigating circumstances  of member’s case** | **What effect could  they have had?** | | **Where can they  be brought up?** |
| Make sure you list all possible reasons for your member’s conduct. |  | |  |

**Preparing for the meeting**

Plan, plan, plan!

**1. Summary of your key points – keep it simple**

Identify just one or key points that are the core of your case and the most persuasive way to get those points over

**2. Procedural points (if any)**

Think about any procedural points you might want to raise, such as a meeting that wasn’t called properly, or charges not explained, or the right to representation.

Decide if you want to raise this at the start of the meeting or at some other time.

**3. Opening statement**

This is your chance to shape the meeting from the start.

It might make sense to prepare a short statement and ask the member to sign it. This could be later used to deflect questions to the member. You need to decide if the member is accepting all or part of the allegation.

**4. Questions for the investigating officer**

Use where and when type questions, not whys and hows.

Identify closed questions that highlight the key points of your case, eg ask if the responsible manager knows the procedure and the part you want to refer to. Then ask them when they did this action, which you believe they did not do correctly. Ask them to record that it was not done. Make a note of it yourself.

**5. Presenting the member’s case**

With the member, go through the points to focus on and get them to practice this with you. Tell them where you are going to come in with questions or where you may tie the case to answers by witnesses or the investigating officer.

**6. Minimising the pressure on your member**

Identify ways you can avoid your member being put under pressure. For instance, you might want to use the statement you provided earlier and refer to that. Agree responses to likely questions

**7. Adjourn to review notes**

Look through your notes. You may need to change tack. Point out where the management have negated arguments or where you have won arguments.

**8. Closing statement/summary**

Repeat key points, highlighting any backed-up points from statements/evidence heard at the meeting.

Make clear any mitigating reasons. Create empathy, putting in them in the member’s shoes.

**9. Statements to disciplinary hearings**

Address the points made against the member in any case documentation – overall charges and specific examples given.

Challenge evidence that is inaccurate or could be interpreted differently.

Provide countervailing evidence, eg testimony from colleagues, good performance/conduct.

Include arguments in mitigation, if relevant.

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Activity H – Sasha Payne case pro-forma

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| Basic details | | |
| Name: **Sasha Payne** | Membership number: **123** |
| Does this issue pre-date membership? Yes No **🗸** | |
| Employer name and work address *(including postcode)*:  **Main office**  **London**  **SE1** | |
| Work telephone number: **Ext 55** | |
| Email address: **n/a** | |
| Mobile: **n/a** | |
| Home contact details:  **24 Nelson Mandela Tower**  **London**  **SE5** | |
| Preferred contact details: Home: Work: **🗸** | |
| Employer contact details: *(i.e. HR Advisor or Line Manager as appropriate)*  **Paul Smith Ext 56** | |
| Type of case: *(e.g. grievance, disciplinary, discrimination, capability, absence management etc.)*  **Performance management – formal meeting** | |
| Has the member kept a diary of events? Yes **🗸**  No *(If not, suggest they do, if yes, request a copy)* | |
| Has anyone else been involved in advising the member? Yes **🗸**  No  Who? *(include details of their role and contact details)*  Contact initially made with branch secretary. Due to concerns about the outcome, and the link to health issues, the case was passed to a case handler | |
| Has member been provided with appropriate contact details for the rep or Prospect office /full-time officer who will deal with their enquiry? Yes 🗸  Name /contact details provided: **Case handler No.1** | |
| Outline of case  The following questions are examples, to guide you. Ask other questions as appropriate or relevant to the circumstances of the case.  **Have you raised the issue with your line manager/HR/anyone else and what, if any, advice was given or action taken?**  The line manager wrote to the member inviting him to a formal performance management meeting on 21 July 2023.  **When did the issue arise?**  The branch secretary contacted the rep in July 2023. A member had been invited to a formal poor performance management meeting, following a performance management process carried out in 2022.  **Who is involved?**  Prospect member; line manager (also a Prospect member); branch secretary referred the case only.  **Why is it happening?**  In 2022, the member went through a formal poor performance management process which resulted in a written warning for not hitting targets.  Insufficient action was taken to support the member after the warning was issued, no review meetings between Feb 2022 and June 2023.  In July 2023, the line manager decided that the performance issues were continuing and invited the member to a further formal performance management meeting.  The member disclosed that he had been severely affected by an eye condition since late 2019 which required three operations to their left eyelid at various stages in 2020.  The member returned to work in January 2021 and joined the present line manager’s team on a phased return to work.  The member is still suffering and is still under the care of the eye hospital.  At the first efficiency review meeting Feb 2022 it was agreed to pause the Poor Performance procedure pending an occupational health report.  Mar 2022 the occupational health report stated that any further improvement in the condition is unlikely The report gave the following recommendations:   * Allow for breaks every 20 minutes and then stare 20 feet away for 20 secs, opticians call it the 20:20:20 rule * Use a larger VDU screen, 21”or more * Where there are large documents to be read, they are printed out * The work station is not to be in a ‘draft zone’ * A full DSE assessment to undertaken and no glare to be on the screen * Voice activated software could increase work * Even if all the above measures were put in place it may not mean the work speed would be increased, so consider to reducing work targets.   The following reasonable adjustment were made in April 2022 after the report:   * larger VDU screens * a workstation away from draughts from the air conditioning * voice-activated software was tried, but did not work with the internal software.   The member’s workload was not reduced. It is the same as other members in the team who do not have a disability.  The member told the line manager that he is slowed down by his condition which dries the eyes out making them sensitive to air flow, cold, heat, light, pollutants and brings on tiredness.  The member wears sunglasses in and out of the office.  Although the speed of the member’s work has been reduced, the quality and standard of the member’s work is still satisfactory and the line manager has accepted this verbally at a meeting June 2023.  The member’s condition has improved slightly since returning to work but is not expected to improve any more.  **What has happened?**  The line manager has an issue with the speed the work is being done after reasonable adjustments have been made and therefore thinks it is below the standard of the team.  The member has told the line manager on several occasions that the targets are unrealistic and breach disability discrimination legislation (the Equality Act).  In February 2022, the line manager suspended the poor performance procedure pending medical evidence. The medical evidence supported the member’s assertions about his condition.  Though nothing was raised formally, the line manager raised the member’s slow work in meeting notes.  The formal process was restarted in July 2023. This surprised the member who thinks it was triggered by an email from the member which said the line manager was being unsupportive.  On 30 June 2023, the member also asked the line manager about the status of the poor performance procedure, as it had been over a year.  During the meeting on 30 June, the line manager agreed that the member’s work had improved and that he had “gone up a gear”.  The member says this period has been very stressful and believes that the line manager is bullying him.  The member thinks the line manager can be quite vindictive and is twisting the truth to fit the outcome he wants.  The member has stated other employees, Chris Foulds, Georgina Spears, Carmen Capria, have found the line manager difficult to work with. Chris and Georgina were dismissed on health grounds after extended sick leave.  Although the member has had extended sick leave, he feels he is being lined up to be dismissed. | |
| Are there any mitigating circumstances?   * Since 2019 Sasha has had a serious eye condition that led to 3 operations and has led to Sasha being unable to work at the same speed others can. * Not all the occupational health recommendations have been acted on. * The policy does not seem to have been followed | |
| Is it still going on? Yes **🗸** No | |
| Timescale/key dates?   * 2019 eye condition developed * 2020 three operations on left eye   2021 Sasha returned to work on a phased return   * 10th Jan 2022 a written warning was issued under the Poor Performance Management process * 9th Feb 2022 an Efficiency Review meeting took place and the outcome was to pause the Poor Performance procedure pending Occupational Health advice * 25th Mar 2022 Occupational Health report received * 5th April 2022 partial reasonable adjustments were put in place * 20th June 2023 Sasha sent email to Paul Smith asking for more support * 30th June 2023 at a meeting with Paul Smith, Sasha was told his work had ‘gone up a gear’. Sasha asked was the Poor Performance procedure over? * 21st July 2023 Sasha receives Invitation letter to the next stage Poor Performance meeting. | |
| Have any meetings taken place or are any future meetings arranged?  Yes **🗸** *(give dates and details of any planned meetings)* No  Formal meeting arranged for 31 July | |
| *Ask member for copies of any letters, emails or notes relating to the case; attach them to pro-forma.* | |
| Are there any witnesses you need to speak to? *(but remember it is not your role to undertake an investigation, your role is to support the member)*  Yes No **🗸**  names of key witnesses: | |
| What does the member expect/look for as a solution?  Member wanted:   * the formal 2022 written warning set aside and the performance improvement period ended, as the procedure has not been followed * all reasonable adjustments to be put in place, and * a move to another team.   The member is considering putting in a grievance against the line manager. | |
| Make a note of any guidance you have given to the member. | |
| Make a note of any Prospect materials given/signposted to them. *(e.g. applicable member guides etc.)* | |
| Make a note of relevant management guidelines. | |
| Reassure the member that:  the case will be dealt with confidentially  the information you have gathered will not be shared with others unless agreed, and it will be kept securely.  If they wish to have a copy of this form please let them have one. | |

### Sasha Payne case, invitation to meeting email

By email to Sasha Payne

21 July 2023

Dear Sasha,

**Invitation to Poor Performance Meeting**

I refer to my previous letter of 10/1/22 and Efficiency Review meeting of 9/2/22 under the Poor Performance Policy.

The letter of 10/1/22 was setting a review meeting to consider a move to the next stage of the procedure. This followed a formal review period in which insufficient improvement has been made.

The Efficiency Review meeting of 9/2/22 considered performance issues and reasonable adjustments. The meeting was adjoined and the procedure subsequently suspended pending receipt of occupational health advice. Arising from this advice reasonable adjustments have been implemented.

During and after this over the past year, the poor performers procedure has not been progressed. However poor performance issues have continued to be identified. Therefore, I am considering proceeding to the next stage of the managing Poor performance process.

I attach documentation regarding this process (policy & procedure).

I would like to meet with you to discuss your work performance as set out in the Managing Poor Performance process. The objective of the meeting is to support you in improving your performance to the required level.

I propose to meet you in Room 2A at 10.30am on the 31st July 2019. The meeting may result in a final written warning and the setting of a final monitoring period.

You have the statutory right to be accompanied at the meeting by your TU representative or a work colleague. Please notify me in advance of the meeting of who will be accompanying you.

If you or your companion cannot attend on this day then you should contact me and ask for the meeting to be re-arranged.

Please note that any new meeting must take place within 5 days of the original date and that the meeting may only be re-arranged once.

If you or your companion have any special requirements please let me know before the meeting so that I can make the necessary arrangements.

Yours sincerely

Paul Smith, Line manager

### Sasha Payne case, managing poor performance policy

**Managing Poor performance policy**

**Policy Principles**

The management expects effective performance from all its employees. Managing poor performance fairly, effectively and promptly is critical to maintaining a professional service.

Managers will address poor performance with the aim of improving performance. Where routine performance management activities and support have failed to result in performance at the required standard, this policy should be applied.

The policy is based on fair and transparent treatment of all employees, and complies with: employment legislation; Advisory, Conciliation and Arbitration Service (ACAS) best practice and the Equality Act 2010.

**Policy Summary**

Poor performance is when an employee’s performance falls below the expected performance required to carry out their role effectively. These performance expectations may vary depending on the role but they will be specified in a combination of: agreed work objectives; competency frameworks and job descriptions.

**Stage 1 and 2**

In order to issue a written warning, managers must meet with the employee. The written warning should be given shortly after, the meeting. It should include:

* What the performance issues are and the expected performance the employee needs to reach.
* What assistance will be provided to help them to make the required improvements.
* That there will be a review period in which they will be expected to improve their performance.
* The duration of this review period, and the date of the next meeting at the end of the period. Review periods should not normally be longer than 1 month. In exceptional circumstances, the review period may be extended, to take account of reasonable adjustments as a result of a disability and training needs, up to a maximum of 3 months.
* That if their performance does not improve to the required level, they will move to the next stage in the procedure. The manager must make the employee aware that ultimately this process could lead to sanctions including dismissal or downgrading.

**Sustained Performance Period**

Written warnings are followed by a review period in which an employee has the opportunity and support to improve their performance. If the employee is

### Sasha Payne case, managing poor performance policy

successful, the manager should use the meeting at the end of the review period to advise them that a 12-month Sustained Performance Period now applies.

During this time, the manager must hold monthly performance discussions with the employee. Otherwise, normal performance management arrangements apply.

If the employee maintains their performance throughout the Sustained Performance Period, all action under this procedure ceases.

The manager should address any dips in performance promptly during the Sustained Performance Period. If the performance is of a level that justifies poor performance procedures, they will move directly to the next stage.

**Stage 3 – Dismissal Decision**

An employee will move to stage 3 of the procedure if they fail to improve their performance after a final written warning, or fail to maintain their performance during the Sustained Performance Period following a final warning. The case will be passed to HR by line management and HR will appoint a decision-maker (at Senior Manager level) who will meet with the employee and make a decision as to whether to dismiss the employee.

**Employee Actions**

Employees have 5 working days from the date of receipt of the decision, in which to submit their appeal in writing to the Appeal Manager. The appeal must make clear whether it is against a procedural error and / or a decision. The appeal should clearly state the employee’s desired outcome.

**Appeal Manager Actions**

The Appeal Manager will, within 5 working days of receiving the appeal, invite the employee to a meeting. The employee should be given at least 5 working days’ notice of the meeting.