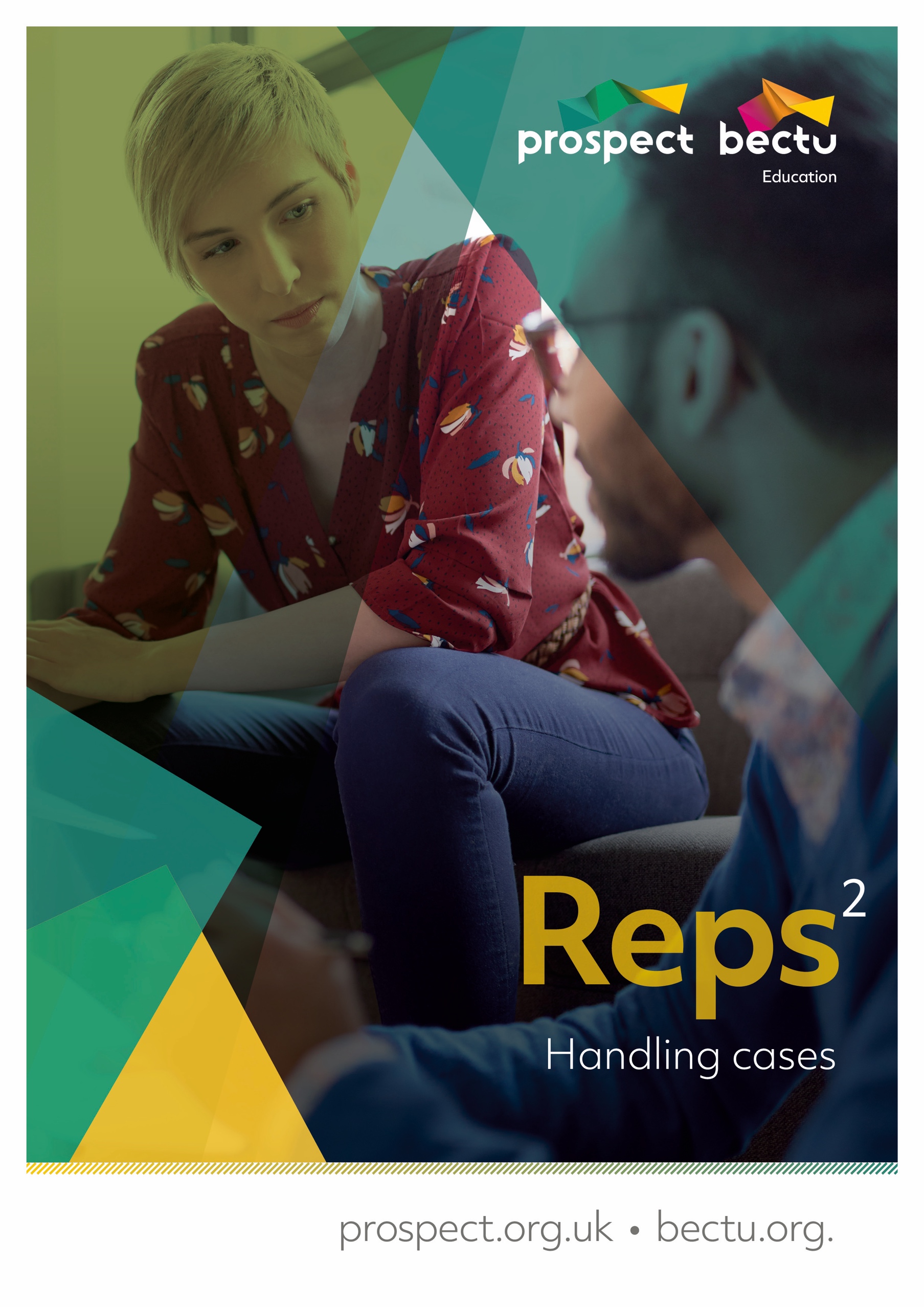
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## Welcome to handling cases

Welcome to Prospect/Bectu’s Reps 2 course – handling personal cases.

The aim of the course is to give you the skills and knowledge to represent your local members as individuals and collectively with personal and collective cases.

By the end of this course, we will accredit you to represent individual members at formal meetings and hearings. You will also be competent to represent groups of members at meetings with your employers.

We will also look at how to build a relationship with your members and your employer and how to strengthen your workplace organisation so that we are accountable to our members and accurately represent their interests.

The training is very informal and there is no pressure on anyone to do anything they are not comfortable with. There is plenty of discussion and focused problem solving, as these are the most effective methods in adult learning.

### Learning outcomes

* learn more about the laws, policies and agreements that shape union representation
* learn more about how to represent individual members effectively
* find out how to identify collective issues and problems and deal with them
* make some plans for when you return to work.

## Course timetable

|  |  |
| --- | --- |
| **Session 1**: Introductions and objectives   * Activity A: Getting to know you   **Session 2**: Personal cases and members’ rights  **Session 3**: Help for members   * Activity B: How you can help   **Session 4**: Handling cases: the basics   * Activity C: Ground rules for casework * Activity D: The right to be accompanied   **Session 5**: Interview skills   * Activity E: Doing an interview   **Session 6**: Data protection   * Optional sessions 6a and 6b | **Session 7**: Investigations   * Activity F: Rep’s role   **Session 8**: Formal disciplinary process   * Activity G: Prepare a strategy   **Session 9**: Managing expectations   * Activity H: Managing expectations   **Session 10**: Grievances   * Activity I: Sharon’s grievance * Activity J: Writing a formal letter   **Session 11**: There must be a law against it…  And finally… |

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## Trade union terminology

|  |  |  |
| --- | --- | --- |
| **ACAS** – The Advisory, Conciliation and Arbitration Service – a public body that provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law. <https://www.acas.org.uk/>  **Bargaining unit** – The 'bargaining unit' is the group of employees that will be represented by the union. The employer and the union can agree who is in this unit as part of their negotiations. If the employer and the union don’t agree, the Central Arbitration Committee (CAC) will decide.  **Branch** – Branches are the key organising unit in the union. Branches form the basis of representation to other advisory or policy-making bodies in the union structure.  **Case handler** – A rep that is trained to represent a member in a personal case.  **Collective agreement** – Where collective bargaining has led to an agreement, for example pay increase, these agreements are called collective agreements. Collective agreements within the workplace can cover both union and non-union staff as trade unions often negotiate on behalf of the staff employed in a specific group. This group is known as the bargaining unit.  **Collective bargaining** – If a union is formally recognised by an employer, it can negotiate with the employer over terms and conditions. This is known as 'collective bargaining'.  **Constructive Dismissal –** If an employee feels they have no choice but to resign because of something very serious their employer has done, they might be able to claim for constructive dismissal. (Success of these cases are very low between 1-3%)  **Disciplinary** - A disciplinary procedure is used by an employer to address an employee's conduct or performance.  **Facilities agreement** – An agreement between the employer and the union setting out the provision of facilities and facility time for trade union officials, representatives and members.  **Grievance** - A grievance procedure is used to deal with a problem or complaint that an employee raises.  **Gross Misconduct** - Gross misconduct is when an employee has done something that's very serious or has very serious effects. Examples could include fraud, physical violence, serious lack of care to their duties or other people ('gross negligence'), serious insubordination, for example refusing to take lawful and reasonable orders from a supervisor. Your workplace might have its own policy or rules with other examples of gross misconduct |  | **Industrial action** - usually happens when a trade dispute in the workplace can’t be resolved through negotiation. There are three main forms of industrial action:   * strike – where workers refuse to work for the employer * action short of a strike – where workers take action such as working only to the terms of their contracts, overtime bans or callout bans (sometimes called work to rule). * lock-out – a work stoppage where the employer stops workers from working.   **Mitigation** –actions you or any other/employer takes to reduce that identified risk or potential risk - mitigation can include additional procedures, processes, personal or other equipment to reduce that risk which could lead to a loss or detriment from the occurrence of any undesirable event. Something that causes you to judge a crime to be less serious, or to make a punishment less severe.  **Policy & Procedure** –A workplace **policy** is a statement which outlines an organisation's practices and **procedures** concerning part of its business, which can cover everything from day-to-day operational matters to compliance with employment legislation.  **Prospect Data Protection Compliance Officer** – The person who handles data requests and data on behalf of Prospect [datacompliance@prospect.org.uk](mailto:datacompliance@prospect.org.uk)  **Prospect’s Member Contact Centre (MCC) –** a service for members to have their queries answered/triaged. Tel.0300 6001878  [info@prospect.org.uk](mailto:%20info@prospect.org.uk)  **Protected Characteristics** -Discrimination is when someone is treated unfairly for any of these reasons: age, disability, race, sex, religion/belief, gender reassignment, marriage/civil partnership, pregnancy/maternity, sexual orientation. These are called 'protected characteristics' under the law (the Equality Act 2010). Discrimination based on any of these protected characteristics is usually against the law.  **Protected conversations/Settlement agreements** -A protected conversation or sometimes known as pre-termination negotiations are the negotiations to reach an agreed termination of contract between an employer and an employee, the outcome is known as a settlement agreement. If you sign a settlement agreement, you cannot make a constructive dismissal claim. The conversations in most cases cannot be used in an employment tribunal.  **Trade Union Congress (TUC)** – the umbrella body for the majority of unions in England and Wales.It has 48 member unions representing around 5.5 million people. <https://www.tuc.org.uk/> |

## What happens on trade union courses?

For many trade union activists, Prospect/Bectu courses mark a return to education, sometimes when previous experiences have been less than positive.

Trade union education places great value on the knowledge that union reps bring to the course and seeks to enhance this by working co-operatively to gain new knowledge.

We place great emphasis on team working and involving everybody in the learning process. This not only makes learning interesting and challenging, but is rooted in well-researched and tested educational methods.

As part of this approach we will:

* encourage a cooperative approach to learning
* allow workplace experiences to be reflected and valued throughout the programme
* help you to build a useful resource pack to support your union activity
* encourage a collective approach to your role as a Prospect/Bectu representative.

### The tutor’s role

Trade union tutors are qualified to teach in the ‘learning and skills sector’ (adult education outside of university) and will also have extensive practical experience as trade unionists.

They should be inspiring, accessible and empowering – you should learn from them! Your tutor will:

* make sure that the expected learning outcomes are clear
* encourage and facilitate everyone’s participation
* introduce you to new ideas and concepts that will make sense of work and employment issues
* giving guidance on how to become an accredited rep
* help you understand your own preferred learning styles and ensure that everyone can participate and benefit.

### Your role

The focus of trade union education is 'learning' rather than 'teaching'. The focus is on you and your colleagues as learners rather than on the tutor (although their role is absolutely vital) as teacher. In particular, we hope you will:

* feel confident to participate fully
* be able to support your colleagues
* enjoy the learning process
* add to your existing knowledge and skill
* use your new knowledge and skills to support Prospect/Bectu’s aims in your workplace.

We ask that you take an active part in the course, support your fellow reps and course members when you can and be respectful of other delegates during the course – this will help you promote collective and co-operative activity at your own workplace.

We respect whatever pronoun you wish to be referred to during the course – please write it on your namecard.

### Using your knowledge and skills

Learning and knowledge are valuable in their own right – they need no justification but as practical people we want to encourage you to develop further.

First, we want your experience of learning with us to encourage you to engage in other forms of learning.

Second, we hope you will use your learning to make a difference at work – for the better.

To help you put your learning to good use we will provide you with a small ‘action plan’ for you to apply at your workplace. We will also support you to carry it out.

## Equality and diversity statement

Prospect/Bectu is dedicated to providing training for all its representatives and activists that aspires to the highest standards of respect for difference and diversity.

This statement is inspired by our trade union values of justice, fairness, democracy, solidarity and equality. As a trade union, we oppose any view, action or organisation that undermines the ability of working people to act collectively to pursue their democratically determined policies and objectives.

We are opposed to discrimination against people on the basis of their gender, nationality, ethnicity, religion, disability, sexual orientation, marital status, social class, age, politics or education.

We defend the right to freedom of expression and to political opinions and beliefs except where these conflict with, or tend to undermine, the freedom of other people from discrimination on the grounds listed above.

In particular, we are opposed to sexist, racist and fascist ideologies and will not permit such views to be promoted at Prospect/Bectu education events.

We will seek to ensure that all Prospect/Bectu training is accessible to all who wish to attend. Recruitment to courses will be open, fair and in line with our commitments above.

All courses will allow opinions to be put forward and defended (consistent with the statement above). All members who attend Prospect/Bectu courses are entitled to respect.

Members who want to raise issues relating to our commitment to equality and diversity, or if they wish to lodge a complaint about any incident or failure concerning this policy, should use the following procedure:

* any issue occurring during a course to be raised with the tutor
* if this is not practicable, or if the complaint is not dealt with to the satisfaction of the member, it should be raised with Prospect’s education officer or the education and skills manager
* if a member is not satisfied, the matter should be referred to the General Secretary.

## Session 1: Let’s get started

### Activity A: Introductions

The tutor will split you into pairs. Please gather the following information about your partner and fill in the form overleaf:

* their name
* the company/organisation they work for
* the most common issues in their workplace (so far as they know)? Are they mainly about conduct or performance?
* what they would they like to know before returning to their workplace.

The tutor will then ask you to introduce your 'partner' to the rest of the course participants.

**Please complete this form for the person you interview, not yourself.**

|  |
| --- |
| Name |
|  |
| **Company** |
|  |
| **Common issues** |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
| **What they want from the course** |
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|  |

## Session 2: Personal cases and members’ rights

### What is a personal case?

A personal case is when a member has a problem at work. This could be almost any issue that affects them as an individual, including:

* a problem with another member of staff
* their working terms and conditions
* a problem with the employer
* someone they interact with who is not employed by the same employer eg public, contractor, etc.

These problems can sometimes involve formal procedures and may have implications for other members.

### Workplace rights

All employees have rights in the workplace. Trade unions exist to uphold those rights and provide assistance when their members, who pay subscriptions, need it.

Some of the legal rights at work are:

* to be paid according to the contract of employment
* not to be unfairly dismissed (after two years’ service)
* not to be penalised other than through correct use of disciplinary procedure
* not to be unlawfully discriminated against

Workers will also have rights under their employers’ procedures.

|  |  |  |
| --- | --- | --- |
| Statutory rights | **Time in service**  **before entitled**  **to the right** | **Time limit for taking a claim to a tribunal** |
| **Contracts and pay** | | |
| **Unlawful deduction of wages** | **None** | **3 months** |
| **Statement of particulars of employment within two months** | **None** | **3 months** |
| **National minimum wage** | **None** | **3 months** |
| **Request for flexible working ¹ *changes to none from the 6/4/24*** | **26 weeks ¹** | **3 months** |
| **Working time** | | |
| **No detriment for refusing to work more than**  **48 hours a week average** | **None** | **3 months** |
| **Uninterrupted rest period of 11 hours per day,**  **24 hours per week** | **None** | **3 months** |
| **5.6 weeks paid annual leave** | **None** | **3 months** |
| **Equal rights** | | |
| **Discrimination on grounds of a protected characteristic** | **None** | **3 months** |
| **Equal pay between men & women** | **None** | **6 months** |
| **Equal treatment for part-time work** | **None** | **3 months** |
| **No detriment for trade union membership or activities** | **None** | **3 months** |
| **Equal rights for Fixed–Term Contract (FTC) workers** | **None** | **3 months** |
| **Family rights** | | |
| **Parental leave** | **1 year** | **3 months** |
| **Time off dependents** | **None** | **3 months** |
| **52 weeks’ maternity/shared parental leave** | **None** | **3 months** |
| **Paternity leave** | **26 weeks** | **3 months** |
| **Adoption leave** | **26 weeks** | **3 months** |
| **Termination of employment** | | |
| **Notice of termination** | **1 month** | **3 months** |
| **Unfair dismissal** | **2 years** | **3 months** |
| **Unfair dismissal on the grounds of:** | | |
| **• Trade union activities or membership**  **• Asserting a statutory right**  **• Making a protected disclosure\***  **• Being an employee representative**  **• Pregnancy/childbirth**  **• Health and safety activities**  **• Being a pension trustee** | **None** | **3 months** |
| **Interim relief applications** | **None** | **7 days** |
| **Statutory redundancy payment** | **2 years** | **6 months** |
| **Written reasons for dismissal** | **2 years** | **3 months** |
| **Breach of contract arising or outstanding on**  **termination of employment** | **None** | **3 months** |

\* A qualifying disclosure, which is made by a worker and fulfils certain requirements under the Public Interest Disclosure Act 1998 (known as the whistleblowing legislation). Workers who make a protected disclosure are protected against dismissal and victimisation in respect of the disclosure.

### Employment rights



### The trade union approach

Pay, conditions, racism or sexism and harassment of staff are all central issues for union and management to resolve.

Complaints about fellow workers may be sorted out through a discussion with those involved. If this does not work, the member may want to take the issue to management.

Problems outside the workplace such as debts, childcare and relationship problems are just a few of the things members may want to talk to you about. Sometimes they may need advice – or just someone to talk to. Try to be helpful and point them to sources of help.

Remember that what might appear to be an individual problem might be an indication of something that is affecting many more people. If so there might be a collective issue that needs a collective approach through negotiation.

You will need to determine this through meeting people and asking them, holding a meeting, conducting a survey – that is to say, searching for a collective issue that involves our members.

### Prospect/Bectu’s role in a personal case

Prospect/Bectu’s role is to advise and support **all** members with issues at work.

That said, workplace and other legal assistance is offered at the union’s discretion and is decided on the facts and merits of each case. We therefore reserve the right not to provide assistance on pre-existing issues ie before somebody joined the union. If a non-member asks you for help and you’re not sure how to respond, speak to your branch secretary or your full-time officer.

You do not have to agree with the member – your role is to see that their rights are upheld and they are treated fairly.

Lay reps (you) make the best case handlers as you know the working landscape, have a (hopefully good) relationship with your management and usually know the member.

Prospect/Bectu tries to resolve all issues as swiftly as possible and use the legal route if all fails.

### Code of practice for Prospect/Bectu representatives

In November 2021 a code of practice was created for Prospect/Bectu representatives. It had the aim to:

* Provide you with clarity about your responsibilities to ensure the respect of others.
* Inform you about your rights if you feel you are not being treated with respect.

**It places the following responsibilities**

Representatives must:

* Act honestly, responsibly and with integrity.
* Communicate respectfully and honestly.
* Treat others with fairness, dignity, and respect.
* Encourage the open expression of views at meetings but accept collective responsibility for all decisions and policies once finalised.
* Not behave in ways that may cause physical or mental harm or distress to another person, such as verbal abuse, physical abuse, assault, bullying, or discrimination or harassment.

In representing Prospect/Bectu, representatives must:

* Only speak or act on behalf of Prospect/Bectu when authorised to do so and clarify the capacity in which you are speaking.
* Always be mindful of their responsibility to maintain and develop Prospect/Bectu’s ethos and reputation.
* Declare any interests that may conflict with their role in Prospect/Bectu, for example in a professional or political capacity.
* Respect confidentiality and ensure GDPR compliance in dealing with any documents, material, or devices containing confidential information.
* Not bring Prospect/Bectu into disrepute, including through the use of email, social and mainstream media and other internet sites.

### The skills and knowledge a rep needs

**Skills**

* Listening Advising Interviewing
* Empathy Note taking Report writing
* Diplomacy Representation Negotiation.

**Knowledge**

* how things get done in your workplace
* your employer’s procedures
* Prospect/Bectu’s current concerns with your employer
* a basic grasp of employment law.

## Session 3: Help for members

### Activity B: How you can help

In your group, study the information on page 18 about members seeking help from Prospect/Bectu. Your tutor will tell you which members you need to answer the following questions about:

**Would you help the member?**

* If the answer is “yes”, why and what would your next steps be?
* If the answer is “no”, why and what would you tell the member?

You have five minutes to answer these questions.

Once you have done this, there is further information about these members on page 20. For each of your cases, you should answer the following questions:

**Would you still take the same course of action you decided above?**

* If so, what made you decide to carry on this way?
* If not, what made you change your mind and what would you do now?

You have five minutes to answer these questions.

Once you have completed the task, we will have a whole group discussion on what you decided to do.

|  |  |  |
| --- | --- | --- |
| **Problem** | **Yes/ no?** | **Advice** |
| **Member 1**  A female member wants to talk about the possibility of taking out a grievance against her manager but is afraid of the repercussions she might get |  |  |
| **Member 2**  A member wants you to pursue a grievance on their behalf as they failed to gain a promotion. You know that another case handler has advised them they don’t have a case. |  |  |
| **Member 3**  A member has approached you about expense fiddling going on in their team. They ask you if everything they tell you is confidential. |  |  |
| **Member 4**  A member has been accused of racial harassment and has come to you for help. |  |  |
| **Member 5**  A person you know is not a member asks you to represent them. |  |  |
| **Member 6**  A member from an ethnic minority asks you to direct them to a case handler from the same religious background as them. |  |  |

**Notes**

|  |  |  |
| --- | --- | --- |
| **More information** | **Yes/no?** | **Advice** |
| **Member 1 –** Yasmin Shea has a complaint that she is not being treated equally. At meetings being asked to sort out the catering rather than male members of staff. She feels she is rarely asked for her opinion in discussions. Yasmin does not know how to raise the issue. |  |  |
| **Member 2 –** You have spoken to the other case handler who tells you that they investigated the allegations and found that the correct recruitment and selection procedures were followed and believe that Brian Johnson hasn’t got a case to pursue since, although he has been with the company for five more years than the person who got the job, the successful candidate had the specific technical skills that were a requirement of the job and Brian doesn’t. Brian now tells you that his neighbour, a solicitor with the notorious no-win-no fee lawyers, Sue, Grabbit and Run, has told him he has a cast-iron case |  |  |
| **Member 3 –** Elspeth Trussle tells you that she too is about to be accused of fiddling her expenses, but wants to blow the whistle on the whole scam after a row with several other team members. She believes she won’t face any punishment if she blows the whistle. |  |  |
| **Member 4 –** Joe Spiteri now realises that he did upset his colleague and is very sorry for what he said. In the meantime, Paul Bonici has approached you saying he wants to take a case of racial harassment against Joe. |  |  |
| **Member 5 –** Jerry Huntman tells you the only reason he isn’t a member is he has never been asked to join and if you do a good job representing him now, he’ll not only join himself but persuade his whole team of 25 to do so too. |  |  |
| **Member 6 –** Shahrukh Khan tells you he has been accused of falsifying his timesheet in order to attend Friday prayers at the mosque and he doesn’t think you will understand what he sees as a Muslim issue. |  |  |

**Session 4 contents**

**Handling cases: pre-work**

The initial request – is the person asking for help a member; is there another Prospect/Bectu member involved; everything has to be treated as confidential; are you the right person to handle the case? Members with pre-existing issues.

Establish the facts

Pro-forma

Key decisions

It’s all about the policy

Next steps

Assessing potential for success

**Putting the case**

Prepare a written document

Attend the hearing

Hearings – ground rules

The outcome

**Examples of issues/cases reps deal with**

Grievance cases

Disciplinary/performance cases

Dismissal – potentially fair reasons

Requests for flexible working

Discrimination – protected characteristics

Legal cases

Activity C: Ground rules for casework

Extract from Acas code

Activity D: The right to be accompanied

Extract from Acas code

## Session 4: Handling cases: the basics

### The initial request

There are some basics you should cover when approached by someone who wants help.

**Is the person asking for help a member?**

Confirm that they are in membership and exactly when they joined – check their details against the branch database or by phoning HQ. Many reps have had experience of non-members getting free advice and even support on the back of assumed membership.

Prospect/Bectu has no obligations to non-members. You may come across colleagues or friends who are not members but want your help. Just tell them that Prospect/Bectu’s insurance policy only covers advice for members.

If you help non-members, everyone else will think they don’t need to pay to be in Prospect/Bectu. It also ruins your credibility as a rep.

**Is there another Prospect/Bectu member involved?**

Prospect/Bectu may have to represent members, so they will need separate representation. It also has to be the same level of representation, two reps or two officers, not a rep for one and a Prospect officer for the other.

**Everything has to be treated as confidential**

A personal case can have some very embarrassing information and reps have a duty to keep the details confidential. The same goes for the management – if details of a personal case became office gossip, we would raise this as unfair treatment.

**Are you the right person to handle the case?**

You may want to consider your own position in relation to the member. Deciding whether or not you are the right person to handle the case can depend on many factors, eg if you are a close friend or relation you are probably not the right person.

You will be too close to the member and they will expect you to take their side, whatever the merits of their case. Personal feelings could also cloud your judgment in helping them through the process.

It may turn out that you are uncomfortable with the key issue in a case, such as a bereavement or divorce. In this situation, you can hand the case on to another rep, and would probably be wise to do so. Similarly, the case could involve someone you know (a friend or your boss), and you would be equally entitled to pass the case on.

If you need to hand a case on to another branch rep or full-time officer, you must advise the member and tell them why. It may be that the case is too close to you, outside your experience or is a potential dismissal case – in which case seek advice from your full-time officer.

If you do hand a case on, you must ensure that the member is happy with the situation, and that the rep taking over knows about the case and is content to take it over. You should manage the transfer so that the member is not left in limbo. Give your notes and papers to the rep taking over.

If a case appears to involve harassment or discrimination, contact your full-time officer early in the process.

**Members with pre-existing issues**

Prospect/Bectu has a policy of not supporting members on issues which arose before they joined the union.

Our membership application form states: “Prospect/Bectu will not usually provide personal assistance in respect of any matter arising before an application for membership.”

The form also states that “legal advice and assistance is offered at the discretion of the union”.

Reps need to be aware that the ability to join online is providing non-members facing an issue at work with an opportunity to bypass initial engagement with the local rep who would rightly point out that, while they may join, their pre-existing case may not be covered.

This is significantly increasing the workload on reps and officers. It damages recruitment and retention if non-members believe they don’t need to join until they get into trouble. It also diverts resources from dealing with long-standing members’ issues.

This section explains what representatives need to do when approached by a member looking for Prospect/Bectu support. It is not intended to put reps in an awkward position or to bar genuine members from the support they have paid for and are entitled to.

It is aimed at ensuring reps ask the right questions at the appropriate time to ensure that either they, a more senior rep or the dedicated branch official can ensure that Prospect/Bectu’s policy is followed.

if you are in any doubt about whether you should provide assistance, please discuss the situation with a full-time officer. Do not commit to giving any advice before doing so.

For more information, please download our guidance drawn up by reps in the Ministry of Defence at <https://library.prospect.org.uk/download/2018/00229>

### Establish the facts

Discuss the case directly with the member. You will need to meet in a confidential environment. You will need to make the member feel comfortable enough to open up to you and you will need to allow enough time for this to happen.

Get them to provide relevant documents eg disciplinary letter, procedures, policies.

Get member to draw up a ‘timeline’ including relevant evidence about events.

Establish relevant background, eg member’s past record.

Use the personal case pro-forma on the following page to do this.

You can download the form from our library for future use: <https://library.prospect.org.uk/download/2008/00478>

A picture containing drawing

Description automatically generated

## Personal case pro-forma

|  |  |  |
| --- | --- | --- |
| **1. Basic details** | | |
| **Name:** | **Membership number:** | |
| **Does this issue pre-date membership?** (tick one) | **YES** | **NO** |
| **Employer name and work address (including postcode):**  As known | | |
| **Work telephone number:** | | |
| **Email address:**  As known – check you have another email just in case the member is off work | | |
| **Mobile:** | | |
| **Home contact details:**  As known | | |
| **Preferred contact details:** (tick one) | **HOME** | **WORK** |
| **Employer contact details:**  (ie HR Advisor or Line Manager as appropriate) | | |
| **Type of case:**  (eg grievance, disciplinary, discrimination, capability, absence-management etc) | | |
| **Has the member kept a diary of events?** (tick one) | **YES** Request a copy | **NO** Suggest they  start one |
| **Has anyone else been involved in advising the member?** (tick one) | **YES** | **NO** |
| **If yes, who?** | | |
| **Has member been provided with appropriate contact details for the Rep or Prospect/Bectu official/Full-time officer who will deal with their enquiry?**  **YES**  Name/contact details provided | | |
| **2. 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?** | | |
| **When did the issue arise?** | | |
| **What has happened?** | | |
| **Who is involved?** | | |
| **Why has it happened?** | | |
| **Are there any mitigating circumstances?** | | |
| **Is it still going on?** | **YES** | **NO** |
| **Mitigation to be taken into account?** | **YES** | **NO** |
| **Timescale/key dates:** | | |
| **Have any meetings taken place or are any future meetings arranged?** | **YES** Give dates and details of any planned meetings | **NO** |
| Ask member for copies or any letters, emails or notes relating to the case; attach them to pro-forma. | | |
| **Are there any witnesses you  need to speak to?** | **YES** | **NO** |
| **If yes, what are the names of the key witnesses?**  **REMEMBER:** It is not your role to undertake an investigation; your role is to  support the member | | |
| **What does the member expect/look for as a solution?** | | |
| **Make a note of any guidance you have given to the member.** | | |
| **Make a note of any Prospect/Bectu materials given/signposted to the member.**  E.g. applicable member guides, etc | | |
| **What are your next steps as the rep?** | | |
| **3. Reassure the member…**  …that the case will be dealt with confidentially  …that 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. | | |

## 

### Key decisions

When you have filled in the form, you will be able to decide how best to proceed.

**Is there a formal process?**

Has it started? If so, refer to the procedure and check the deadlines.

**Is there a potential legal issue?**

Do you expect to be able to resolve the problem internally? If not, or if you don’t know, check employment tribunal deadlines (see Appendix 1) with your Prospect/Bectu full-time officer.

**Is there a potential collective issue?**

It might be possible to deal with some issues through negotiation. If in doubt – check with another rep or an officer.

**What to advise**

Very often, you as the rep will have to take a view on the case and decide what course of action you recommend the member to take.

Remember you are there to see that the member is treated fairly; procedures are followed and the member’s rights are observed.

### Next steps

Advise the member of your view; this may not be what they want to hear. You need to include:

* the merits of the case
* the potential for success
* how best to proceed.

You should always try to get the issue resolved informally and if this possible:

* identify appropriate people to discuss the problem with
* decide who will pursue it – you want encourage the member to do it in the first instance.

If the problem has already got to the formal process:

* identify what stage in the procedure the case is at
* prepare relevant documentation.

Remember, it is the member’s case. It is not the rep’s role to carry on a crusade against the management.

### Assessing potential for success

For a case to succeed, it must be valid, credible and supported by the relevant laws, procedures and rules.

To advise a member on how a case should proceed you will therefore need to check its validity and credibility.

Find out if the issues raised are covered by the member’s contract of employment, job description, a procedural agreement, relevant legislation, code of conduct or by referring to the appropriate Prospect/Bectu guide.

A case’s credibility will depend largely on the availability of written evidence, independent witnesses or circumstantial evidence.

Even if a case meets these criteria, a decision to proceed still needs to be thought through and should take other factors into account eg evidence of success with previous similar cases; precedents and records of judgement and union policy.

In a disciplinary case, the decision to support the member through internal procedures is virtually automatic. You can do that by making the best of the case, by ensuring that procedures are followed fairly or by pleading mitigating circumstances.

If you decide to take the case, you will need to advise the member on the routes available. Some issues can be referred to HR or occupational health departments, others to specialist advisers within the union or the full-time officer.

Some issues can be dealt with informally, eg by a joint visit with the member to the line manager. Others will have to follow the formal procedures. You will need to find out where the procedures are set out and may need to seek advice from a branch officer about how they operate in your workplace.

Decisions on taking a case to an employment tribunal, or other appeal panels, are taken by the full-time officer, based on your recommendation and the circumstances of the case.

### Putting the case

* Agree a hearing date with the employer.
* The member has to inform the employer you are representing them.
* There is usually some flexibility over date and time. Refer to your employer’s procedures, the ACAS code of practice 1 and section 10 of the Employment Relations Act 1999 (ERA).

### Prepare a written document

* Set out the member’s grievance/defence.
* Explain the relevance of any documentary evidence.
* Put the documents in the order you are going to talk about them.

### Attend the hearing

* Agree with the member who will put the case.
* Make sure they are prepared for questions.

### Investigation meetings: ground rules

Employer procedures should make the role of union rep clear:

* to be allowed to accompany the member
* to speak on behalf of the member
* to be able sum up the member’s point of view

The rep needs to check before the meeting, what the procedure states.

### Hearings: ground rules

Employer procedures should make the role of union rep clear:

* to speak on behalf of the member
* to highlight missing or conflicting evidence
* to be able sum up the case
* **not** to answer questions on behalf of the member.

You may request an adjournment

* if the member is confused or distressed
* if you hear something that is new to you!

The Employment Relations Act refers to the right to accompany, not the right to represent.

### The outcome

The employer will inform the member of the outcome.

If successful:

* make sure member understands that!
* tell the member how they can show their appreciation e.g. recruiting colleagues, helping out in the branch

If not successful:

* consider whether to appeal
* if you think there is potential for a legal case, consult your Prospect/Bectu full-time officer.

### It’s all about the policy

A company may have lots of policies – they clarify how things are done between the employee and the employer. An example of this is; an employer may have a separate procedure to deal with poor performance, normally known as a capability procedure.

### Examples of problems/issues that reps deal with

### Grievance cases

Although the member may be upset, reps have to be honest about the chances of winning. The ACAS code of practice on disciplinary and grievance procedures describes grievances as “concerns, problems or complaints that employees raise with their employers.”

It is normally in everyone’s interest to try to resolve a grievance informally.

Issues that may cause grievances include:

* terms and conditions of employment
* health and safety
* work relations
* bullying and harassment
* new working practices
* working environment
* organisational change
* discrimination.

### Disciplinary/performance cases

The member you are representing may well have done what they are accused of. Reps have to work out if it is better to advise them to defend or mitigate.

If the member was totally unaware that they had broken a rule or they were never trained properly to do a task, defending them would be the best option. This means we are trying to get the employer to agree that the member should not be punished.

If someone knowingly broke the rules, mitigation is the better option. This is where we are looking for the lowest sanction possible.

### Dismissal – potentially fair reasons

Provided the employer acted reasonably, potentially fair reasons for dismissal include:

* a reason related to a person’s conduct
* a reason related to their capability
* because of redundancy
* because a statutory duty or restriction prohibits employment continuing (loss of a licence/ custodial sentence)
* some other substantial reason of a kind which justifies dismissal.

**Possible arguments in mitigation**

* a previous good employment record
* lack of information or training
* unclear or unwritten rules
* domestic pressures
* medical reasons
* poor or lack of investigation.

### Requests for flexible working

Members who want to ask for some sort of variation in their working conditions must put forward how this can be achieved. The rep needs to look at the following:

* Is the member’s request practical?
* What is the employer’s likely response?
* The member must have worked for the employer for at least 26 weeks.
* If the member is seeking a temporary change, then it is worth pointing out that a statutory request may not be best course of action as the employer may not want to change back!

**Acceptable business reasons for refusing a request for flexible working:**

* the burden of additional costs
* an inability to reorganise work among existing staff
* an inability to recruit additional staff
* a detrimental impact on quality
* a detrimental impact on performance
* detrimental effect on ability to meet customer demand
* insufficient work for the periods the employee proposes to work
* a planned structural change to your business.

In all situations where a formal process has not been started, the first consideration should be whether the issue can be resolved informally.

### Discrimination – protected characteristics

Watch out for possible discrimination within the case. It is unlawful discrimination if it falls within one of the Equality Act’s ‘protected characteristics’:

* age
* disability
* gender reassignment
* race
* religion or belief
* sex
* sexual orientation
* marriage and civil partnership
* pregnancy and maternity.

Members must seek to resolve the issue through the employer’s own grievance procedure in the first instance. Alternatively, if the issue is a collective one affecting all members or a group of members, the branch can seek resolution by negotiating with the employer.

This is so they can demonstrate that they have given the employer the opportunity to resolve the issue. (This applies even if the employer is in breach of the timescales within their own procedures.)

### Legal cases

Only the legal officer, deputy general secretary or general secretary can authorise a legal case. (Employment Tribunal’s) The rep **must** discuss and inform any potential legal cases to full-time officer well before any deadlines.

Prospect/Bectu will not take any legal case where the member has taken legal advice elsewhere.

Members have the right to take employment tribunal or other legal cases on their own account and you must inform them of this.

### Activity C: Ground rules for casework

In your groups decide how you would respond to the following situations. Use the Acas guidance overleaf to explain the reasons for your answers.

|  |
| --- |
| A member has received a written warning as a decision from a disciplinary hearing about their attendance that states that if the offence is repeated in the next 12 months they will receive a final written warning. Is this reasonable |
|  |
|  |
|  |
| **A member has been disciplined for violent behaviour and the management refuses to accept any mitigating or explanatory circumstances. Can they do this and still be fair?** |
|  |
|  |
|  |
| **The management team refuses to disclose the full evidence against a member because it has been given confidentially and they don’t want to betray a promise** |
|  |
|  |
|  |
| **A manager refuses permission for a member with a grievance to appeal to the next level of management, as it would undermine their authority in the department. Is this allowed?** |
|  |
|  |
|  |
|  |

### Extract from the ACAS guide to discipline and grievances at work

**Preparing for the meeting**

You should:

* Ensure that all the relevant facts are available, such as disciplinary records and any other relevant documents (for instance absence or sickness records) and, where appropriate, written statements from witnesses.
* Where possible arrange for someone who is not involved in the case to take a note of the meeting and to act as a witness to what was said.
* Check if there are any special circumstances to be taken into account. For example, are there personal or other outside issues affecting performance or conduct?
* Be careful when dealing with evidence from a person who wishes to remain anonymous. Take written statements, seek corroborative evidence and check that the person’s motives are genuine.
* Consider what explanations may be offered by the employee, and if possible check them out beforehand.
* Allow the employee time to prepare their case. Copies of any relevant papers and witness statements should be made available to the employee in advance.
* If the employee concerned is a trade union representative discuss the case with a trade union full-time official after obtaining the employee’s agreement. This is because the action may be seen as an attack on the union.
* Arrange a time for the meeting, which should be held as privately as possible, in a suitable room, and where there will be no interruptions. The employee may offer a reasonable alternative time within five days of the original date if their chosen companion cannot attend. You may also arrange another meeting if an employee fails to attend through circumstances outside their control, such as illness.
* Try and get a written statement from any witness from outside the organisation who is not prepared to or is unable to attend the meeting.
* Allow the employee to call witnesses or submit witness statements.
* Consider the provision of an interpreter or facilitator if there are understanding or language difficulties (perhaps a friend of the employee, or a co-employee). This person may need to attend in addition to the companion though ideally one person should carry out both roles.
* Make provision for any reasonable adjustments to accommodate the needs of a person with disabilities.
* Think about the structure of the meeting and make a list of points you will wish to cover.

**What should be considered before deciding any disciplinary penalty?**

* When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:
* Whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct.
* The penalty imposed in similar cases in the past.
* Whether standards of other employees are acceptable, and that this employee is not being unfairly singled out.
* The employee’s disciplinary record (including current warnings), general work record, work experience, position and length of service.
* Any special circumstances which might make it appropriate to adjust the severity of the penalty.
* Whether the proposed penalty is reasonable in view of all the circumstances.
* Whether any training, additional support or adjustments to the work are necessary.

It should be clear what the normal organisational practice is for dealing with the kind of misconduct or unsatisfactory performance under consideration. This does not mean that similar offences will always call for the same disciplinary action: each case must be looked at on its own merits and any relevant circumstances taken into account.

Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

**Time limits for warnings**

Except in agreed special circumstances, any disciplinary action taken should be disregarded for disciplinary purposes after a specified period of satisfactory conduct or performance. This period should be established clearly when the disciplinary procedure is being drawn up.

A decision to dismiss should not be based on an expired warning but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction.

Normal practice is for different types of warnings to remain in force for different periods. For example, a first written warning might be valid for up to six months while a final written warning may remain in force for 12 months (or more in exceptional circumstances). Warnings should cease to be ‘live’ following the specified period of satisfactory conduct.

There may be occasions where an employee’s conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee’s disciplinary record should be borne in mind in deciding how long any warning should last.

**Provide employees with an opportunity to appeal**

The opportunity to appeal against a disciplinary decision is essential to natural justice, and appeals may be raised by employees on any number of grounds, for instance new evidence, undue severity or inconsistency of the penalty. The appeal may either be a review of the disciplinary sanction or a re-hearing depending on the grounds of the appeal.

An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and it should not result in any increase in penalty as this may deter individuals from appealing.

**What should an appeals procedure contain?**

It should:

* Specify a time-limit within which the appeal should be lodged (five working days is commonly felt appropriate although this may be extended in particular circumstances).
* Provide for appeals to be dealt with speedily, particularly those involving suspension or dismissal.
* Wherever possible provide for the appeal to be heard by someone senior in authority to the person who took the disciplinary decision and, if possible, someone who was not involved in the original meeting or decision.
* Spell out what action may be taken by those hearing the appeal.
* Set out the right to be accompanied at any appeal meeting.
* Provide that the employee, or a companion if the employee so wishes, has an opportunity to comment on any new evidence arising during the appeal before any decision is taken.

**Small organisations**

In small organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If this is not possible, consider whether the owner or, in the case of a charity, the board of trustees, should hear the appeal. Whoever hears the appeal should consider it as impartially as possible.

**How should an appeal hearing be conducted?**

Before the appeal ensure that the individual knows when and where it is to be held, and of their statutory right to be accompanied. Hold the meeting in a place, which will be free from interruptions. Make sure the relevant records and notes of the original meeting are available for all concerned.

**At the appeal meeting**

You should:

* Introduce those present to each other, explaining their presence if necessary.
* Explain the purpose of the meeting, how it will be conducted, and the powers the person/people hearing the appeal have.
* Ask the employee why he or she is appealing.
* Pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.
* Once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision.
* Change a previous decision if it becomes apparent that it was not soundly based – such action does not undermine authority but rather makes clear the independent nature of the appeal. If the decision is overturned consider whether training for managers needs to be improved, if rules need clarification, or are if there other implications to be considered?
* Inform the employee of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear, if this is the case, that this decision is final.

[Acas guide to discipline and grievances at work | Acas](https://www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work)

### Activity D: The right to be accompanied

In your groups decide how you would answer the questions below using the information on the following pages.

|  |
| --- |
| You have been asked to represent a member accused of racial harassment, but you feel very uncomfortable about it and are reluctant to accompany the member to the hearing. Can you refuse to be their ‘workers companion’? |
|  |
|  |
|  |
|  |
|  |
| **A member wants you to be with her at an informal discussion with her manager to discuss her poor attendance. However, the manager says that legislation does not apply at informal discussions. What do you do?** |
|  |
|  |
|  |
|  |
|  |
| **At the hearing, the management team are asking searching questions that are putting your member under pressure and may lead them to incriminate themselves unwittingly. You cannot answer questions directly – what else can you do (based on the rights of the companion in the code** |
|  |
|  |
|  |
|  |
|  |

**Notes**

### Extract from ACAS code of practice on disciplinary and grievance procedures

**Allow the employee to be accompanied at the meeting**

13. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

* a formal warning being issued; or
* the taking of some other disciplinary action; or
* the confirmation of a warning or some other disciplinary action (appeal hearings)

14. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative, who is not an employed official, must have been certified by their union as being competent to accompany a worker.

Employers must agree to a worker’s request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.

15. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe.

However, a worker should provide enough time for the employer to deal with the companion’s attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

16. If a worker’s chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

17. The companion should be allowed to address the hearing to put and sum up the worker’s case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker’s behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

**Extract from discipline and grievances at work: the ACAS guide**

Informal discussions, counselling sessions or investigatory meetings do not attract the right to be accompanied. Meetings to investigate an issue are not disciplinary meetings. If it becomes apparent that formal disciplinary action may be needed then this should be dealt with at a formal meeting at which the employee will have the statutory right to be accompanied.

However, a worker should provide enough time for the employer to deal with the companion’s attendance at the meeting. Workers should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

Reasonable adjustment may be needed for a worker with a disability (and possibly for their companion if they are disabled). An example would be the provision of a support worker or advocate with knowledge of the disability and its effects.

Workers may ask an official from any trade union to accompany them at a disciplinary or grievance hearing, regardless of whether or not the union is recognised.

Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.

The companion can also confer with the worker during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing including asking witnesses questions. The employer is, however, not legally required to permit the companion to answer questions on the worker’s behalf, or to address the hearing if the worker does not wish it, or to prevent the employer from explaining their case.

**Adjournments**

It is possible that the disciplinary meeting may not proceed smoothly – people may be upset or angry. If the employee becomes upset or distressed allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and reconvene at a later date – however, the issues should not be avoided. Clearly during the meeting there may be some ‘letting off steam’, and this can be helpful in finding out what has actually happened. However, abusive language or conduct should not be tolerated.

A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing.

<https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures>

**Session 5: Interview skills contents**

Interview skills

Interviewing members

Before the interview

During the interview

Get the facts

At the end of the interview

Listening and persuading

Activity E: Carrying out an interview

Feedback from the activity

Keeping safe at face-to-face meetings

Data protection and record keeping

## Session 5: Interview skills

### Before the interview

* Check that they are a member.
* Arrange a time to meet and set aside enough time. You need to be in a position to give them your full attention. Don’t listen to worries or give advice ‘on the hop’.
* Ask them to write up what has happened before you meet. This gives them the chance to pre-process things and hopefully tells you about them in a more structured and complete way.
* Select a suitable meeting room, some people will want to meet you face-to-face, make sure there is sufficient privacy. Others will be happy with a phone call; if interviewing on the phone use a headset, call from somewhere quiet and speak discretely.
* Get relevant documents such as agreements and policies if you know something of the issue already.
* Take a copy of the Prospect pro-forma and a pen.

### During the interview

* Reassure the member and put them at ease – they may be upset or angry.
* Ask if you can take notes; tell them that everything that is said in the interview will be in complete confidence; you will only share information with another rep or Prospect officer, who will also respect confidentiality where possible.
* Ask the member to say what has happened and then go through the proforma.
* Ask the member what they hope to get out of the interview.
* Ask questions to clarify your understanding or get more information.

### Use positive body language

* Face the person.
* Adopt an open posture.
* Lean slightly towards the person you are listening to.
* Keep good eye contact.
* Try to be relaxed.

### Get the facts

* What: is the problem?
* When: the date(s) and time(s) of the incident
* Who: was involved?
* Where: did the incident(s) take place?
* Why: has come to this?
* How can you help?
* Explain possible outcomes.
* Listen actively – commit yourself to receiving accurately the other person’s ideas, facts and opinions.

You have two ears and one mouth – when you are interviewing you should listen twice as much as you talk.

### At the end of the interview

* Check that you are clear on the facts.
* Explain possible outcomes – manage their expectations.
* Tell the member what will happen next and what you want them to do; check they have understood.
* Involve the member – where possible allow the member to assist in planning.
* Set a date to meet the member again.

**Confirm key points of the meeting by email afterwards.**

Members will approach you on all kinds of issues. Sometimes they want advice. Sometimes a small issue can be a symptom of a bigger problem affecting many people.

Not all problems should be taken up with management. It is your job to make a judgement and decide with the member how to deal with their concerns.

### Listening and persuading

Link to video: <https://www.youtube.com/watch?v=D6-MIeRr1e8>

Communication is a two-way process. It involves not only getting our views across to other people, but also listening to what they say.

Active listening involves seeking to establish a rapport with the person we are talking to. We try to see what they are saying from their point of view. We need to give our full attention not only to what they say, but also how they say it and to their gestures and expressions.

Besides showing interest, we need also to encourage. This can be done by asking open questions, seeking clarification as well as being sympathetic.

This does not mean that you have to agree with what is said, simply that you understand the other person’s point of view.

Once you understand, you can proceed with the second step: seeking to be understood. Because the other person’s need to be understood has been satisfied, we are much more likely to have influence and be understood ourselves.

What this means for union organising is that we must listen to members and seek to understand them – to put ourselves in their shoes, before we seek to have them understand our view.

To influence members, we need to allow them to influence us, so that they know that what they are saying is not only being listened to, a real attempt is made to understand as well.

One of the most important skills for an effective Prospect/Bectu rep is having a good relationship with those you represent and those you wish to influence.

We need to be persuasive and a good communicator. We judge the effectiveness of communication on the basis of whether it achieves the intended result.

The main components of effective communication are:

**Words:** what you say. The most significant elements are words, which convey images, energy, experiences, and associations; the least influential is the content.

**Tone of voice:** the way you sound. The significant elements are the tone (or pitch) of your voice, your tempo (the speed at which you speak), the timbre (the quality of your voice), and the volume.

**Physiology:** the way you look or appear. The significant elements are posture and facial expression. The other elements are gesture and breathing.

So you establish rapport by means of what you say and how you say it. Non-verbal communication – body language – is significant. How you communicate has an immediate bearing upon what you communicate.

**Steps to effective listening**

* Keep calm and attentive throughout.
* Show respect for what the other person is saying, even if you disagree.
* Use body language which shows you are interested: lean slightly forward, maintain appropriate eye contact.
* Don’t interrupt.
* Establish a rapport by listening with sympathy.
* Clarify by asking open questions.

**Techniques for active listening and questioning**

**Attention** – Give the member your full attention without any distractions. Find a quiet space or, if you are on the phone, don’t do anything else.

**Open questions** – Questions that can encourage the member to give you information: What? When? Where? Who? How? Why?

**Acknowledging** – Acknowledge what the member is saying by using such phrases as “I understand”, “I see” or “That sounds really important to you”.

**Responding** – Offer empathy and understanding when the member seems to need it – this will build rapport and help you find out the facts.

**Reflecting** – Repeating back a word or phrase the member has used lets them know you are listening and that you understand what they are saying, especially if they seem to be finding it hard to explain things to you.

**Encouraging** – If they get stuck, prompt them with words like “Carry on” or “Tell me some more” to encourage them to open up.

**Clarifying** – Sometimes the member glosses over an important point. Saying “Tell me more about …..” or “Am I right in thinking that you said…” can help the member clarify these points get you the information you need.

**Funnelling questions** – Once you’ve got the big picture, you’ll need more specific information about some aspects. Use phrases like: “When you said earlier that…”, “Which are the most important issues…?” to focus on key issues.

**Summarising** – Repeating a summary of what the member has said helps to ensure that they know that you have listened and that you have understood what they have said. It also means that they can correct anything that you might have misinterpreted.

## Keeping safe at face-to-face meetings

Meeting members face-to-face is an important part of dealing with personal cases, especially if the issues involved are traumatic or stressful for the member or if you need to clarify the facts.

In most cases, members will be grateful for your assistance. However, very occasionally members behave inappropriately towards you.

Prospect/Bectu takes reps’ personal safety seriously and will support you in the event of aggressive, offensive or threatening behaviour on the part of any member.

Here are some good practice guidelines for setting up meetings:

* Use your work phone number/email address, not a personal one.
* If possible, contact the member using their work phone number/email address rather than a personal one.
* Meet the member during normal working hours.
* Arrange to meet at your place of work or the member’s place of work if possible. Alternatively, meet in a public place such as a café. Don’t meet in a pub, bar or the member’s home.
* Record who you are meeting and where you will be in your calendar or diary.
* Tell another rep or a colleague/family member who you are meeting and when you expect to return.
* If you are concerned about meeting the member, arrange for another rep to go with you as a ‘second opinion’ on the case.
* Trust your instincts. If you think that the member is behaving inappropriately, close down the meeting and take advice from your branch or a Prospect/Bectu officer as soon as you can.

If you want to know more about personal safety, contact The Suzy Lamplugh Trust – [info@suzylamplugh.org](mailto:info@suzylamplugh.org) or visit [www.suzylamplugh.org](http://www.suzylamplugh.org/).

## Activity E: Carrying out an interview

To conduct an interview between a rep and a member and analyse what contributes to a successful interview.

The tutor will split the course participants into groups of two:

* rep
* member

You will undertake a role play of an interview, based on your work experience or a scenario given to you by the tutor.

Your role is simply to get the facts of the case as understood by the interviewee, via the following techniques:

* establishing a friendly but professional atmosphere
* sympathetic questioning
* open questions
* supporting the individual to be clear and accurate
* agreeing a course of action.

Alex Roe Mr I. Black

Technician Line Manager

13 Lonely Ave Main Office

London London

7th March

Dear Alex

Invitation to disciplinary hearing

Following recent events where you have abused members of the management team, we have no alternative but to proceed to deal with these incidents at a formal level through the discipline procedure. We are using the formal procedure because of the serious nature of the offence and I must inform you that if the hearing concludes that the allegations are proven then this may result in a final written warning or even dismissal.

In particular, you are accused of:

* Irregular attendance with considerable absence due to ‘stress’ during the past year
* Serious insubordination towards a senior colleague and in particular telling your Head of Department Roger Plum to f..k off on the 22nd January this year
* You have not responded to requests to work flexibly and this has caused difficulties for your managers and colleagues

I have therefore concluded that you may be guilty of gross misconduct, an offence I will remind you that could result in your dismissal from your current position in the company. However, I would be interested to hear your side of the story at the hearing in my office this coming Friday.

You have the right to be accompanied by a union representative but please note that they will not be able to speak on your behalf and are present as a witness.

We look forward to seeing you at the disciplinary hearing in my office on the 16th March at 9:00am. I trust this will be convenient.

Yours sincerely

I Black

Line manager

**Copy of email evidence to be discussed at the meeting**

Email

To: Mr I Black Line Manager

From: Mr R Plum Head of Department

Date 10 February

Dear Ian, As you know we have been under considerable pressure of late and I have had to ask staff to ‘push the boat out’ in order to make sure we are up and running on the latest project. As you will know, everyone needs to contribute and show willing.

Unfortunately, I have had a problem with Alex Roe who has been off sick a great deal. Letting all of us down at key times and has also been unwilling to work late to help get things done. Alex claims that there are family issues and needs some flexibility but Alex knows that ‘deadlines do not wait’ and everyone has to fit in with that. I think the illness is a bit dubious.

When I tried to raise this with Alex the other day (January 22nd I think) Alex told me to just f..k off and leave them alone, Alex burst into tears and I thought Alex was going to be violent but ran off instead. Alex did not return for the rest of the shift.

This behaviour is wrong and just came ‘out of the blue’ but needs to be dealt with. In my opinion this is gross misconduct and I would like you to pursue the case on my behalf.

Many thanks

Roger Plum

A picture containing drawing

Description automatically generated

## Personal case pro-forma

|  |  |  |
| --- | --- | --- |
| **1. Basic details** | | |
| **Name:** | **Membership number:** | |
| **Does this issue pre-date membership?** (tick one) | **YES** | **NO** |
| **Employer name and work address (including postcode):**  As known | | |
| **Work telephone number:** | | |
| **Email address:**  As known – check you have another email just in case the member is off work | | |
| **Mobile:** | | |
| **Home contact details:**  As known | | |
| **Preferred contact details:** (tick one) | **HOME** | **WORK** |
| **Employer contact details:**  (ie HR Advisor or Line Manager as appropriate) | | |
| **Type of case:**  (eg grievance, disciplinary, discrimination, capability, absence-management etc) | | |
| **Has the member kept a diary of events?** (tick one) | **YES** Request a copy | **NO** Suggest they  start one |
| **Has anyone else been involved in advising the member?** (tick one) | **YES** | **NO** |
| **If yes, who?** | | |
| **Has member been provided with appropriate contact details for the Rep or Prospect/Bectu office/Full-time officer who will deal with their enquiry?**  **YES**  Name/contact details provided | | |
| **2. 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?** | | |
| **When did the issue arise?** | | |
| **What has happened?** | | |
| **Who is involved?** | | |
| **Why has it happened?** | | |
| **Are there any mitigating circumstances?** | | |
| **Is it still going on?** | **YES** | **NO** |
| **Mitigation to be taken into account?** | **YES** | **NO** |
| **Timescale/key dates:** | | |
| **Have any meetings taken place or are any future meetings arranged?** | **YES** Give dates and details of any planned meetings | **NO** |
| Ask member for copies or any letters, emails or notes relating to the case; attach them to pro-forma. | | |
| **Are there any witnesses you  need to speak to?** | **YES** | **NO** |
| **If yes, what are the names of the key witnesses?**  **REMEMBER:** It is not your role to undertake an investigation; your role is to  support the member | | |
| **What does the member expect/look for as a solution?** | | |
| **Make a note of any guidance you have given to the member.** | | |
| **Make a note of any Prospect/Bectu materials given/signposted to the member.**  E.g. applicable member guides, etc | | |
| **What are your next steps as the rep?** | | |
| **3. Reassure the member…**  …that the case will be dealt with confidentially  …that 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. | | |

**To be read by those playing members in Activity E**

You are a union member called Alex Roe. You work in a short-staffed department as a technician. Because of this everyone is feeling under pressure. There is a growing problem with sickness absence.

You have asked for a discussion with your union rep about an invitation to an interview you have received. You are accused of aggressive behaviour towards your supervising Head of Department (HOD) to the extent that you have been accused of insubordination.

You have received a letter inviting you to a disciplinary hearing with the possibility that you might be found guilty of ‘gross misconduct’ and this could lead to dismissal. Due to the serious nature of the offence the letter tells you that the company’s formal procedure will apply and a final written warning may result.

You are also accused of being un-cooperative because you fail to work overtime even though there is a shortage of staff. You have fallen out with some of your colleagues because they feel you have not been pulling your weight.

From your point of view this is really unfair because you feel that far from being aggressive, it is you who is being singled out and treated unfairly by your supervisor. In fact, you feel that he is bullying you.

You have recently separated from your partner and you have two young children of school age. You have to take them to school and also collect them when you can although you have now managed to get a neighbour to collect them three afternoons during the week. Due to the separation, you find yourself short of money and you are falling behind on the mortgage.

All this has been stressful and you are taking anti-depressants as prescribed by your doctor. You have had a couple of absences due to stress and this has been recorded in your certificates from the doctor. Your sicknesses have been significant between April and June of last year, with absences occurring regularly to the present time.

You asked your HOD whether you could take time out to collect the kids but he refused and even began putting you under pressure to work extra hours even though he knew you were under such pressure. He has taken to pestering you about working overtime and regularly confronts you about whether you are making it all up to get out of helping out.

On one occasion he just kept on and on until you exploded by telling him to ‘f..k off’ and leave you alone. You refused to stay on for a short period and simply went home. Now you have been asked to answer charges of gross insubordination at a formal disciplinary meeting next week and you feel more stressed than ever. This event happened over a month ago in January.

You think they should be more sympathetic given your circumstances and that an informal discussion would have been more appropriate. However, you feel that your HOD has been bullying you and ridiculing your situation as a single parent under great pressure.

You feel that he is picking on you and bullying you – in fact you think that you should be able to take out a grievance against him bullying you. You are not the only victim (and he is not the only bully) and you have witnesses except they are too frightened to say anything. You are hoping your union rep can help you.

You are worried about the hearing because nobody has asked you about the incident and the actual interview is set for a time that clashes with having to take the kids to school. You would like to move the meeting to later in the day.

### Disciplinary and grievance procedures for Activity E

**Overview purpose and scope**

The Disciplinary Procedure is designed to help and encourage all Individuals to achieve and maintain standards of conduct, attendance and job performance and set out the Manager’s framework for dealing with disciplinary matters. The same procedure applies to all Individuals and the aim is to ensure consistent and fair treatment for all.

The Grievance Procedure enables all Individuals to bring to the Manager’s attention any grievance relating to their engagement and to try to resolve such matters satisfactorily. Grievance proceedings will, so far as is reasonably practicable, be kept confidential.

**Principles**

No disciplinary action will be taken until the matter at issue has been fully investigated.

The Individual will not normally be dismissed for a first breach of discipline except in the case of gross misconduct or very serious breach of discipline when the sanction will be dismissal without notice or payment in lieu of notice.

The Individual will have the right to appeal against any disciplinary sanction imposed or the decision of any grievance meeting.

**General provisions**

So far as applicable to a particular circumstance, the following requirements apply to the Disciplinary and Grievance Procedures.

**Timetable**

Each step and action under the Disciplinary and Grievance Procedures must be taken without unreasonable delay.

**Right to be accompanied**

The Individual has the right to be accompanied at any disciplinary or grievance meeting by a fellow Individual or trade union representative who may make representations on his behalf provided the Individual expressly authorises this at the beginning of the relevant meeting. However, the Individual’s companion will not be able to answer questions put to the Individual during the course of the meeting. This right applies to all stages of the disciplinary and grievance process including appeals.

**Meetings**

The timing and location of meetings must be reasonable.

Meetings must be conducted in a manner that enables both the Manager and the Individual to explain their case.

The Manager will endeavour to ensure that the meeting is in a private location and that there are no interruptions.

The Manager should advise the Individual of the right to be accompanied in the written notification of the meeting.

The length of time between the written notification and the meeting should be long enough to allow the Individual to prepare for the meeting. The Individual must take all reasonable steps to attend the meeting and if they or their companion cannot attend on the date suggested they must notify their head of department and propose an alternative date for the meeting to be held within 5 working days of the original proposed date.

No meeting will take place unless the complainant has informed the other party in writing of the cause of the complaint and the other party has had the opportunity to consider a response to the complaint.

**Records**

During the disciplinary or grievance process the Manager will keep written records which may include: the nature of the complaint or the grievance raised; a copy of the written complaint or grievance; the Individual’s defence; the Manager’s response; findings made; any action taken or sanction imposed and the reasons for it; any grievances raised during a disciplinary process; whether there was an appeal and if so the outcome; any subsequent developments.

Such records will be kept on a confidential basis so far as is reasonably practicable and in accordance with the Data Protection Act 1998.

**Potential disciplinary sanctions**

Formal disciplinary action may result in the following disciplinary sanctions being imposed:

* **Verbal warning** – If conduct or performance does not meet acceptable standards the Individual may be given a formal verbal warning. A note of the verbal warning will be kept on the Individual’s personnel file but will usually be disregarded for disciplinary purposes after three months subject to satisfactory conduct and performance.
* **Written warning** – If the misconduct or poor performance is more serious, a formal written warning may be given to the Individual. This will give details of the complaint, the improvement or change in behaviour required and the timescale allowed for this, and state that a final written warning may be considered if there is no sustained satisfactory improvement or change. A copy of this written warning will be kept on the Individual’s personnel file but will usually be disregarded for disciplinary purposes after six months subject to satisfactory conduct and performance.
* **Final written warning** – If the offence is serious or there is a failure to improve performance or conduct during the currency of a prior warning, a final written warning may be given to the Individual. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal. A copy of this written warning will be kept on the Individual’s personnel file but will be disregarded for disciplinary purposes after twelve months (although in exceptional cases the period may be longer) subject to satisfactory conduct and performance.
* **Dismissal or other sanction** – In certain circumstances, for example a failure to improve conduct or performance where a previous warning has been given or where there is an act of gross misconduct or a serious failure to perform, the disciplinary sanction may be dismissal or the Manager may take some other action short of dismissal such as disciplinary suspension without pay for up to a maximum of five working days.
* If some sanction short of dismissal is imposed, the Individual will receive details of the complaint, and will be warned that dismissal could result if there is no satisfactory improvement. A copy of this written warning will be kept on the Individual’s personnel file but will be disregarded for disciplinary purposes after twelve months (although in exceptional cases the period may be longer) subject to satisfactory conduct and performance.

**Gross misconduct**

The following list provides examples of offences which are normally regarded as gross misconduct. This list is not exhaustive and other serious misconduct may also lead to summary dismissal:  theft, fraud, deliberate falsification of records, dishonesty, fighting, assault, violence, unauthorised possession of property belonging to the Manager, damage to the Manager’s property, incapacity for work due to being under the influence of alcohol or illegal drugs, serious negligence which causes unacceptable loss, damage or injury, serious act of insubordination, misuse of confidential information, unauthorised entry to computer records, conviction for a criminal offence arising from or relating to the Individual’s work for the Manager, conduct whether inside or outside working hours which may bring the Manager’s reputation into disrepute, serious or persistent neglect of duties or any material breach or non-observance of those duties – in particular refusal to obey reasonable instructions, unauthorised absence from work (including conduct inconsistent with an alleged sickness, injury or other incapacity).

If the Individual is accused of an act of gross misconduct, the Individual may be suspended from work on full pay while the Manager investigates the alleged offence. If, on completion of the investigation and the Disciplinary Procedure, the Manager is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice

**General**

Following a disciplinary meeting, before making the decision on what disciplinary sanction it should impose, the Manager will take into account the Individual’s disciplinary and general engagement records, length of service and the explanation given by the Individual at the disciplinary meeting.

Before implementing any of the formal sanctions set out above, including after a review of the Individual’s conduct or performance, the Disciplinary Procedure set out below will normally be followed.

At the time of advising the Individual of any sanction to be imposed the Manager should also advise the Individual of the right of appeal.

**DISCIPLINARY PROCEDURE**

**Investigation**

Where a potential disciplinary matter arises, the Manager will endeavour to make necessary investigations to establish the facts promptly. Having carried out such preliminary investigations the Manager will decide whether to take no further action or deal with the matter informally or arrange for the matter to be handled on a formal basis. The Manager may choose to hold an investigatory meeting (as opposed to a disciplinary meeting) with the Individual solely to establish the facts of the case.

**Suspension**

In instances which the Manager considers to be particularly serious (e.g. in cases involving alleged gross misconduct, where relationships have broken down or there is a risk to the Manager’s responsibilities to third parties or the Manager’s property), the Individual may be suspended from work temporarily whilst an unhindered investigation is carried out. Any precautionary suspension of this kind will be reviewed as soon as possible and will not normally exceed 10 working days. Any suspension on this basis should not be considered as a disciplinary sanction or an indication of prejudgement of the matter. The Individual will be paid for all rostered hours and all calls that they would normally be expected to work were they not suspended. There should be no financial detriment to an Individual during suspension or, except where a financial disciplinary sanction is subsequently imposed, on their return to work following suspension.

**Formal procedure**

If the Manager decides to take formal action, the following procedure will be followed:

**Statement of grounds for action and invitation to meeting**

The Manager will prepare a written statement setting out the Individual’s alleged conduct or capability or poor performance, or other circumstances, which may result in a disciplinary sanction (including dismissal) being imposed. The statement will be sent to the Individual who will be invited to attend a meeting to discuss the matter. The statement will contain sufficient detail and any relevant accompanying evidence to enable the Individual to prepare for the meeting. In the event that the Individual is a Union representative, the Manager will send a copy of the statement to a Union full-time official.

**Meeting**

The complaint will be fully explained to the Individual at the meeting and the Manager will go through the evidence that has been gathered. The Individual can make representations and explain his view of the situation and answer any allegations that have been made. The Individual will be allowed to ask questions and present evidence. If appropriate the Individual can call witnesses and will be given an opportunity to raise points about any information provided by witnesses. No disciplinary sanction will be imposed until the meeting has taken place.

Notification of Decision After the meeting the Individual will be informed of the Manager’s decision. This will be communicated to the Individual in writing within 10 working days of the meeting and the Individual will be notified of their right to appeal against the decision if they are not satisfied with it. If the decision taken is dismissal the Individual will also be provided with written reasons for dismissal, the date on which the engagement will terminate and the appropriate period of notice (if applicable). If it is not possible for the Manager to respond with their decision within 10 working days, the Manager will give an explanation to the Individual for the delay and inform them when a response can be expected.

**Appeal**

The Individual has the right to appeal against any disciplinary sanction imposed on them.

**ACAS**

By mutual consent of the Manager and the Union, the services of ACAS may be sought and/or used at any stage of the disciplinary procedure.

**GRIEVANCE PROCEDURE**

**Informal resolution of grievances**

The Manager recognises that misunderstandings or grievances may sometimes occur. It is most important that these grievances are brought out into the open and resolved as fairly, consistently and speedily as possible. In most cases this can be done on an entirely informal basis.

Any grievance should, in the first instance, be raised with the Individual’s head of department (or, where that person is the subject of the grievance, that person’s line manager) who should discuss the matter with the Individual informally within two working days of it being raised.

**Formal resolution of grievances**

Where the grievance cannot be resolved informally and the Individual has a complaint, concern or problem about action which the Manager has taken or is contemplating taking in relation to the Individual or the Individual has a personal grievance or a complaint about any work-related matter which affects their efficiency at work, it should be dealt with under the formal Grievance Procedure below.

**Formal grievance procedure**

Statement of Grievance  The Individual must set out, in a written statement, their grievance and send the statement to their head of department (or, where that person is the subject of the grievance, that person’s line manager). The Individual will be invited to attend a meeting in order to discuss the grievance.

**Meeting**

The Individual will be permitted to explain his complaint and then say how they believes it should be settled.

**Notification of decision**

After the meeting the Individual will be informed of the Manager’s decision. This will be communicated to the Individual in writing within 10 working days of the meeting and the Individual will be notified of their right to appeal against the decision if they are not satisfied with it. If it is not possible for the Manager to respond with their decision within 10 working days the Manager will give an explanation to the Individual for the delay and inform them when a response can be expected.

**Appeal**

The Individual has the right to appeal against the findings of a grievance meeting.

**Appeals**

The Individual has a right to appeal against the finding of a disciplinary or grievance meeting.

If the Individual wishes to appeal, they must inform the Manager in writing within 5 working days of receiving the decision. The Individual will then be invited to attend another meeting.

Where possible the person who made the original disciplinary or grievance decision will not be involved in the decision-making process of the appeal. The appeal will be heard by an appropriate member of senior management. If the appeal relates to a dismissal it will be heard by a member of the Manager’s Board other than the Chairperson.

After the appeal meeting the Individual will be informed of the Manager’s final decision and this will be communicated to the Individual within 10 working days of the meeting. If it is not possible for the Manager to respond with their decision within 10 working days the Manager will give an explanation to the Individual for the delay and inform them when a response can be expected.

Where the Individual appeals against any disciplinary sanction imposed on them, the original disciplinary decision (including a decision to dismiss) will be implemented pending the appeal meeting and its outcome.

**Notes**

### Feedback from Activity E

|  |
| --- |
| **Have they got the procedures right?** |
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| **Are there any mitigating circumstances?** |
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| **What about the behaviour and actions of the management team?** |
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### Notes

## Session 6: Data protection and record keeping

### Data Protection Act 1998 and the General Data Protection Regulation (GDPR) 2018

The EU data protection regulations came into force on 25 May 2018. While these are underpinned by the DPA 1998, they introduce a new suite of rights and enhance existing ones.

**Enhanced rights**

* Right of access – right to request access to personal information, eg data subject access request (DSAR).
* Right of rectification (right to request correction of incomplete or inaccurate personal information).

**New rights**

* Right to portability – allows individuals to obtain and reuse personal data for their own purposes across different services.
* Right to be informed – providing people with clear and concise information about what we do with their data.
* Right to erasure – the ‘right to be forgotten’.

More information can be found at <https://library.prospect.org.uk/id/2016/01617>

The following is a list of common sense dos and don’ts for ensuring compliance with data protection legislation

**DO:**

* Mark all correspondence, electronic or otherwise, as private and confidential.
* Be aware that the Act applies to paper files, information held electronically, records of telephone conversations, audiotapes, photographs and social networking media (Facebook, twitter, LinkedIn etc).
* Think of personal data held about individuals as though it were held about you.
* Tell people you hold personal data about them and tell them why you need to do so (fair processing). Be open with people about information held about them.
* Be open with people about information held about them.
* Respect confidentiality and the rights of the member.
* Review personal data in on-going cases from time to time and at least annually.
* Ensure all personal data is disposed of as confidential waste.
* When writing reports, minutes etc, bear in mind that the member has a right to see information relating to them. Even deleted emails may be retrieved and revealed to those about whom they are written.
* Refer all requests for access to a Prospect/Bectu full-time official.
* Familiarise yourself with Prospect/Bectu’s data destruction policy (reproduced overleaf).

**DON'T:**

* Worry about the complexities of the Act – the Data Protection principles are simple.
* Reveal personal data to third parties without the data subject's permission or justification.
* Disclose any personal data over the telephone.
* Put personal data about a member on the Internet without his/her permission.
* Send personal data outside the European Economic Area without taking advice from Prospect/Bectu.
* Leave personal data insecure in any way, whether it is physical files or information held electronically.
* Take personal data home without ensuring that it can be securely stored.
* Use personal data held for one purpose for a different purpose without permission from the member.

**Prospect/Bectu’s data destruction policy**

Destroy closed case files after:

* six years – equal pay cases
* seven years – employment related cases
* seven years – personal injury cases
* 12 years – industrial disease.

If you no longer handle personal cases, you must pass all files to your Prospect/Bectu full-time official.

**A top tip for a rep would be to create a separate email that was not connected to work for union correspondence.**

### Optional session 6A

### Performance management – good practice

Different organisations do performance management differently, so always refer to your employer’s procedures when advising members in detail. But the principles below should hold good for all performance management policies and procedures – if yours differ from them, you might want to get the Branch to take this issue up with HR.

Performance management is about improving performance, not punishing employees.

Performance reviews should be clear about what good performance would look like in that job and in that organisation.

At each performance review meeting the person and their manager should agree standards/objectives/goals/targets for the period until the next review; if these change for operational reasons during the period such changes should be subject to discussion and agreement.

The assessment of performance should take into account that person’s actual performance against their job content and standards and any goals agreed – not the general performance of their team or unit.

Performance issues identified in the previous review should have been addressed during the intervening period.

Day-to-day performance issues should be tackled as and when they arise, not saved up for the performance review meeting.

No surprises – the person being appraised should already have an idea of the level to which they are performing, e.g. from their previous appraisal, or from an interim review.

Performance reviews should focus on training needs and career aspirations as well as achievement in the person’s current job.

People should not be penalised for having a legitimate training need or for being on a ‘learning curve’ in a new job – standards should be defined taking such situations into account and reviewed at appropriate intervals.

People should not be penalised for having taken sick leave (absence/attendance issues should be dealt with separately from job performance and in a timely manner).

People should not be penalised for having taken maternity, paternity, parental or adoptive leave – performance should be assessed for the period when the person was at work, not adjusted down to average out through the full year.

### Watch the video Supporting Elaine

<https://vimeo.com/showcase/prospect-ed> Password: education

**Notes**

### Optional session 6B

### Pre-termination negotiations or ‘Protected Conversations’

When the employer has decided that things are not working with an employee or cannot satisfy the employee, then some sort of agreement has to be reached that terminates the contract between them to both sides satisfaction. This is normally known as a settlement agreement, which used to be a compromise agreement.

In 2013 rules were introduced to make it easier for employers and employees to have open and risk-free discussions about possible termination of employment when things are not working out.

Whilst settlement agreements can be a useful way to resolve a dispute, before 2013 confidentiality would only apply where there are without prejudice discussions in relation to an existing dispute.

The problem with the 2013 rules is that employers could decide to completely by-pass existing disciplinary or capability procedures. They would be able to identify that they want to dismiss a particular worker and can make them an offer to leave without having gone through any proper investigation or procedure.

While the worker would not have to accept the offer, they may feel that there is no option but to do so. It would be up to the rep to make sure that the member was aware that there could be other options than accepting an offer they don’t want.

What that effectively means is that ‘pre-termination negotiations’ are not admissible at an Employment Tribunal hearing; i.e. cannot be referred to in any subsequent unfair dismissal claim.

These negotiations can be known as a ‘Protected Conversation’. There are still legal limitations on what can be said and done in these negotiations.

If the reason for the unfair dismissal claim is an automatic unfair claim relating to pregnancy, whistleblowing, union membership or asserting a statutory right, then evidence of the conversation can be presented to a tribunal. It also can be heard on any discrimination claim.

If ‘improper behaviour’ or ‘undue pressure’ is used during the pre-termination discussions then this could then be allowed to be a heard at a tribunal and the tribunal would consider them to be fair or unfair.

**Examples of ‘improper behaviour’**

* all forms of harassment, bullying and intimidation, including through the use of offensive words or aggressive behaviour
* all forms of victimisation and discrimination
* physical assault or threats of physical assault, or other criminal or wrongful behaviour
* putting ‘undue pressure’ on a party.

**Examples of ‘undue pressure’**

* not giving the employee a minimum of 10 calendar days to consider the offer;
* an employer reducing the value of offer over the course of the 10 days
* an employer saying dismissal is inevitable
* an employee threatening to undermine the organisation’s public reputation

**What is not ‘improper behaviour’**

* setting out in a neutral manner the reasons that have led to the proposed settlement agreement
* factually stating the alternatives if agreement cannot be reached, including the possibility of disciplinary action if relevant or the employee having to leave on less favourable terms
* not agreeing to pay for legal advice
* refusing to provide a reference.

ACAS recommends that an employee who is asked to attend any meeting in connection with pre-termination negotiations be given the right to be accompanied.

It is Prospect/Bectu policy that a rep must discuss and inform their full time Officer of any potential settlement agreement, before a member signs the final written agreement.

Library document on new case law around settlement agreement wording (December 2022) for Reps’ information.

<https://library.prospect.org.uk/download/2022/01150>

## Session 7: Investigations

ACAS describe an investigation in their guide as: “An investigation is a fact-finding exercise to collect all the relevant information on a matter. A properly conducted investigation can enable an employer to fully consider the matter and then make an informed decision on it.”

Making a decision without completing a reasonable investigation can make any subsequent decisions or actions unfair, and leave an employer vulnerable to legal action.

The role of the investigator is also described in the ACAS guide as:

“The role of an investigator is to be fair and objective so that they can establish the essential facts of the matter and reach a conclusion on what did or did not happen. An investigator should do this by looking for evidence that supports the allegation and evidence that contradicts it.”

In potential disciplinary matters, it is not an investigator’s role to prove the guilt of any party but to investigate if there is a case to answer.

### Using CCTV and other personal data as evidence...

Policies and employee contracts should clarify whether or not an employer may use CCTV recordings and/or personal employee data as evidence in disciplinary and grievance matters.

Where this is not the case, an employer should only use such evidence where it is not practicable to establish the facts of the matter through the collection of other evidence only.

### Considerations if searching personal possessions

A search should only be conducted in exceptional circumstances where there is a clear, legitimate justification to search an employee or their possessions. Even if an employee’s contract allows an employer to conduct a search, they will usually need an employee’s consent for it to be lawful.

Where an investigator needs to search a desk or cupboard that an employee uses, the employee should be invited to be present. Where they are unable to be present, a manager should be present to witness the search.

If an employee refuses to be searched when their contract allows this, it might amount to unreasonable behaviour and/or jeopardise evidence that could potentially be used to exonerate them.

However, an employee may have a legitimate reason to refuse and an investigator should be sensitive to other factors that may explain a refusal. An investigator should therefore explore why an employee has refused to be searched and seek to resolve this rather than assume that a refusal implies guilt.

Where it is believed that a criminal offence may have been committed, an employer may call the police as they have wider powers to search individuals.

All requests and refusals should be recorded

### Consider the health and well-being of staff involved

An investigation can be stressful for everyone involved. Sometimes it can lead to significant distress, and negatively impact the mental health of an employee.

Where concerns about the mental health of an employee are raised, an investigator should treat the issue seriously and consider whether the process can be adjusted in some way. For example, by allowing the employee to be accompanied at any investigation meetings by a support worker, personal friend or family member who is aware of their mental health issues.

Sometimes it might be appropriate to seek (with the agreement and involvement of the employee) professional medical help or guidance as to how the investigation can proceed fairly in recognition of the impact the process may have on the employee's mental health.

To ensure the employee is able to receive help, an investigator should highlight where they can seek further support. This might include:

* the organisation's employee assistance programme
* mental health first aiders or champions
* local GP or doctor
* a mental health charity.

An investigator should also liaise with the employee’s line manager to ensure there are regular catch-ups to check on how the employee is doing and provide further support where necessary.

Even where there is no statutory right to be accompanied at an investigation meeting, workers may still be allowed to be accompanied under:

* their own discipline and grievance procedures
* the Equality Act 2010 – as a reasonable adjustment for a disabled worker.

**Benefits of allowing a companion**

In many cases, it will benefit an investigation to allow an interviewee to be accompanied by a workplace colleague or trade union representative, even where there is no statutory right or organisational policy to allow a companion. It can be particularly helpful for the following reasons:

English may not be their first language and a companion may be in a position to help facilitate the discussion

having a companion can make an interviewee feel more comfortable and more willing to talk openly about the matter

a companion may be able to help an investigator manage the process more effectively by explaining steps being taken to an interviewee

a procedure that allows a companion can increase the confidence staff have in a credible process

it can help support the workers well-being as investigations can be stressful.

Source: ACAS guidance on conducting workplace investigations.

## Activity F: The rep’s role

Read the invitation to the meeting and then watch the video (link on following page). In a big group discuss how the rep handled the situation.

Official Sensitive Personal

Date 6th November

Andy Green, Section Manager

Dear Andy

Investigation

I am writing to advise you that Sarah Grey has been appointed to investigate the possible gross misconduct of yourself by not following health and safety protocols during the tasks performed by staff under your guidance on the week starting the 22nd October. The following accusations will be investigated:

* there were insufficient risk assessments done before the task was undertaken
* staff were asked to cut corners by you that went against company safety procedures.

The purpose of the investigation is to gather and present evidence. The investigation report will show whether, on the balance of probability, there is a case to answer.

Relevant witnesses will normally be interviewed and statements obtained where appropriate. If there are a large number of witnesses, it will be for the Investigation Manager to decide which witnesses to interview.

Sarah will be in touch with you shortly to arrange a date when they can interview you (at which you will have a right to be accompanied by a work companion or trade union representative). If you would like to name any witness to Sarah at this meeting please do so.

You should be aware that any information that emerges from this investigation might be used in any misconduct proceedings against you. If it is decided to instigate misconduct action, the procedures outlined in the companies Misconduct Policy will be followed. You may also find the section ‘Frequently asked questions – Employees’ helpful.

It has been designed to support employees who are subject to misconduct procedures. The Investigation Manager’s report and any other information used in determining whether to proceed with misconduct action will be made available to you. As the accusations are very serious, this may lead to dismissal.

I am giving you this information at this stage so that you are fully aware of the possible consequences of the current process, but obviously this does not mean that I have come to any conclusion yet about the alleged misconduct or what the appropriate sanction would be if the misconduct were proven.

Yours sincerely

Sean Blue, Decision Manager

### Watch Andy’s investigation meeting video

<https://vimeo.com/showcase/prospect-ed> Password: education

|  |
| --- |
| Did Elaine listen to Andy? |
|  |
|  |
|  |
| **Did Elaine understand what the management wanted at the meeting?** |
|  |
|  |
|  |
| **Do you think she represented the member correctly?** |
|  |
|  |
|  |
| **Do you think it was appropriate for Elaine to attend?** |
|  |
|  |
|  |
| **What would have you done differently?** |
|  |
|  |
|  |

## Session 8: Formal disciplinary process

Once it has been decided that a personal case is going down a formal route, the procedure being used will need to be followed.

### Preparing a case

* have a copy of the local procedure being followed
* have written presentations prepared by the member, with assistance from the rep
* review the supporting evidence, where they support or do not support the member’s case
* look at similar cases
* work out a strategy.

### Activity G: Prepare a strategy

Do this activity in pairs.

This was a real case. Sam was accused of using extreme foul and abusive language in his workplace. He was called to a disciplinary meeting. He had been off work with stress-related anxiety and depression. A pro-forma was filled in (see overleaf) before Sam went off sick by a union rep who has since left the company.

The company has submitted two pieces of evidence for the disciplinary meeting.

The procedure used is the same one as the one used in the Alex Roe case, page 61 and was followed.

Look at the transcripts of the two witness interviews given during the investigation, review the evidence and propose a strategy for the meeting.

**Transcript of an interview with Darren Blue**

Investigator: “Have there been instances recently where you have heard your colleague, Sam, use extreme foul and abusive language?”

Darren: “Ha ha, you’re @&\*?@\*$ joking aren’t you? Sam never @&\*?@\*$ stops swearing.”

Investigator: “Darren can you think of any specific occasions where this has happened?”

Darren: “I suppose last week. Sam had just got off the phone with some suppliers and they were giving us the run around about the delivery date. Sam was saying they were a bunch of @&\*?s for not honouring the original delivery date. He said that we all agreed they were a bunch of @&\*?s as we can’t complete our job without the delivery.”

**Transcript of an interview with Pauline Sapphire**

Investigator: “Have there been instances recently where you have heard your colleague Sam use extreme foul and abusive language?”

Pauline: “Well that is just Sam’s character isn’t it?”

Investigator: “Pauline can you think of any specific occasions where this has happened?”

Pauline: “When John complained about the rota, Sam gave him a right @&\*?@\*$ mouthful. I thought John deserved it personally he was being @&\*?@\*$ selfish.”

### Sam’s personal case pro-forma

|  |
| --- |
| Basic details |

|  |
| --- |
| **Name:** Sam Jones |
| **Membership number:** 777888 |
| **Does this issue pre-date membership?** Yes No |
| **Employer name and work address (including postcode)** |
| **Work telephone number:** |
| **Email address:** *Sam.Jones@yahoo.com* |
| **Mobile:** 07888 999 999 |
| **Home contact details:** 1 Bull Drive, Kiddlington, Essex |
| **Preferred contact details:** |
| **Home:** |
| **Work:** |
| **Employer contact details:** (ie HR advisor or line manager as appropriate) |
| **Type of case:** (eg grievance, disciplinary, discrimination, capability, absence-management etc.)  Disciplinary |
| **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)** Previous rep, Bernard Chance (he has since retired and no contact details are available) |
| **Has the member been given appropriate contact details for the rep or Prospect/Bectu office/ full-time officer who will deal with their enquiry?** Yes No |
| **Name /contact details provided:** Yes |
| **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?** |
|  |
| **What, if any, advice was given or action taken?**  Issues were raised with me about my bad language but that has always been the way. I’ve not changed. The first I knew about it was when I received a letter about an investigation because of a complaint made. |
| **When did the issue arise?**  More than 12 months ago. |
| **Who is involved?**  Me (Sam), two witnesses (Darren Blue and Pauline Sapphire,) HR. |
| **Why is it happening?**  I’ve no idea – to be honest the whole thing has been a nightmare. The worry of it and the thought I may lose my job when I’ve put the best of my years into this job. I’ve worked here since I left school and I’ve never had any problems about my language before. In fact, when I first started the job, I was sworn at, it has never changed. We work in a dangerous environment so if you swear, people know not to mess around. It’s part of the day-to-day. |
| **What has happened?**  Two witnesses have apparently come forward and said I’ve been using extremely foul language. I’ve been under investigation and the stress has made me sick. I’ve been off work for almost a year – thankfully I’ve been on full pay as I’m in a senior role and my work record and length of service. That’s why I find this all so hard to swallow as I’ve been a good worker and surely that is the most important thing. Not whether or not I use the F word. |
| **Is it still going on?** |
| Yes EH No EH Timescale/key dates? |
| Yes – I think they want to fire me. |
| **Have any meetings taken place or are any future meetings arranged?** |
| Yes (give dates and details of any planned meetings). With the rep and with HR off the record before initial meeting. |
| **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?** (Remember it is not your role to undertake an investigation, your role is to support the member). If yes, please give the names of key witnesses:  As part of the process – Pauline Sapphire and Darren Blue |
| **What does the member expect/look for as a solution?**  Due to the stress, the toll it has taken and the fact the trust has gone within the workplace, Sam is looking for a settlement. |
| **Make a note of any guidance you have given to the member.**  Advised of next meeting and asked Sam to provide any other documents or anything else he can remember. |
| Doctor’s notes for sickness record. |
| **Make a note of any Prospect/Bectu materials given/signposted to them. (eg applicable member guides etc.)** |
| **Make a note of relevant management guidelines.** |
| **Reassure the member that:** the case will be dealt with confidentially and 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.** |

|  |  |  |
| --- | --- | --- |
| **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 these weaknesses** | |
| *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** | | |
| *Make sure you list all possible reasons for your member* | *What affect could they have had?* | *Where can they be brought up?* |

## Preparing for the meeting

Plan, plan, plan!

|  |
| --- |
| **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 |
|  |
| **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 |
|  |
| **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 |
|  |
| **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. |
|  |
| **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. |
|  |
| **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 |
|  |
| **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 |
|  |
| **Closing statement/summary** |
| Repeat key points, (highlighting any backed-up points from statements/evidence heard at the meeting) make it clear of any mitigating reasons, create empathy, putting in them in the member’s shoes) |
|  |
| **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. |
|  |

## Activity H – Sasha Payne case pro-forma

|  |  |  |
| --- | --- | --- |
| **Basic details** | | |
| Name: **Sasha Payne** | Membership number: **123** |
| Does this issue pre-date membership? Yes No **P** | |
| 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: **P** | |
| 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 **P**  No *(If not, suggest they do, if yes, request a copy)* | |
| Has anyone else been involved in advising the member? Yes **P**  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/Bectu office /full-time officer who will deal with their enquiry? Yes P  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/Bectu member; line manager (also a Prospect/Bectu 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 workstation 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 **P** 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 **P** *(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 **P**  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/Bectu materials given/signposted to them. *(e.g. applicable member guides etc.)* | |
| Make a note of relevant management guidelines. | |
| Make a note of any Prospect/Bectu 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 adjourned 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 2023. 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 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.

### Sasha Payne case – strengths and weaknesses

|  |  |  |
| --- | --- | --- |
| **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 these weaknesses** |
| *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** | | |
| *Make sure you list all possible reasons for your member* | *What affect could they have had?* | *Where can they be brought up?* |

## Preparing for the meeting

Plan, plan, plan!

|  |
| --- |
| **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 |
|  |
| **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 |
|  |
| **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 |
|  |
| **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. |
|  |
| **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. |
|  |
| **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 |
|  |
| **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 |
|  |
| **Closing statement/summary** |
| Repeat key points, (highlighting any backed-up points from statements/evidence heard at the meeting) make it clear of any mitigating reasons, create empathy, putting in them in the member’s shoes) |
|  |
| **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. |
|  |

## Recap: attending a hearing

* Be calm, professional and assertive.
* Have all the relevant documents with you, including a written statement of the member’s case with a spare copy to hand to the hearing manager.
* Clearly mark any documents you intend to refer to in the hearing.
* Ask questions of the hearing manager if something is said that you do not understand.
* Ask questions of the member if you think they could express themselves more clearly or advantageously.
* Clarify what the member has said, if you think the point has not come across.
* Ask for an adjournment if the member is distressed, or if things are not going as you expected, or if you hear something from the member or the hearing manager that you hadn’t anticipated.

And finally, wrap up by confirming:

* That the hearing manager has all the information they need.
* When you will receive the notes/recording of the hearing.
* When the hearing manager expects to reach a decision (remind them of timescales set down in the procedure if necessary).

## Dos and don’ts for dealing with difficult people

* Do speak assertively and positively.
* Do say no, if no is the answer – a reply they don’t like won’t become easier for them to accept if you beat about the bush.
* Do stay calm and rational even when you feel your temperature rising.
* Do try to avoid taking things personally – this will help keep the member focused on the issue too.
* Do consult your branch secretary or your Prospect/Bectu full-time official about how to deal with persistently unreasonable members. Difficult people are the exception, not the rule. Typically, members will be polite and will be grateful for your advice. But some issues at work are emotive and sometimes things just get on top of people – happens to the best of us!
* Don’t get sucked into their emotion around the issue at hand.
* Don’t put up with rude or aggressive behaviour – point out that this is unacceptable and wait for them to calm down or call a halt to your conversation and offer to see them at another time.
* Don’t try to avoid them, they won’t go away – each time they come back, the problem will seem larger to both you and them.
* Don’t make yourself available on demand.

### Dealing with distressed members

Members who are being disciplined, or who have grievances against their employers, are often frightened, hurt, angry or a mixture of all three. Your role is to:

* help them set aside their emotional responses so that they are in a better position to deal with the situation
* assess their case and look for the best achievable outcome, and
* help them take a realistic view of their case and how it will progress.

**Tough love –** It’s part of your role to empathise and provide a degree of emotional support for your member. But to deal with their case effectively, you need to get them to give you the facts. You may have to ask tough questions, challenge their perceptions or assumptions and get them to think about the situation from another’s perspective.

**You are not a counsellor –** Some members’ need for emotional support will be beyond your capabilities or what could reasonably be expected of you. In such cases, advise the member that it may be helpful for them to seek support from the employer’s occupational health or employee assistance programme.

**Look after yourself –** Prospect/Bectu takes its duty of care to all reps very seriously. You are not expected to respond to unreasonable demands on your time and emotional well-being. Set clear parameters with the member about when they may contact you.

If you need help with a case, or need to talk through some aspect of a case, or believe that you should be stepping back from a case, contact another rep in your branch or your Prospect/Bectu officer. This is part of Prospect/Bectu’s support for you and does not involve any data protection issues.

### Watch side effects video

<https://vimeo.com/showcase/prospect-ed> Password: education

## Session 9: Managing members’ expectations

Managing expectations helps members to understand what you can and can’t do to help them.

* Not every problem or complaint will be justified – if you know theirs isn’t, say so.
* Use workplace procedures, Prospect/Bectu communications or policies, or precedents from other members’ cases to back up the advice you are giving.
* Be clear with the member if you will need to refer their issue on to someone else – if you can tell them who you are passing it to that should help.
* Never give a member hope of a cast-iron, guaranteed outcome on an issue, particularly if you don’t know the answer or are passing it on – don’t tie someone else’s hands or raise false expectations.
* The member will only be looking at things from their own point of view – if they’ve got the wrong end of the stick or if there’s another possible angle, tell them.
* If you need to go away and investigate an issue further, tell the member when they can next expect to hear from you. Contact them when you said you would, even if you haven’t got a definitive answer yet.
* If you discover that an issue is more serious than you first thought, don’t be afraid to tell the member that your judgement has changed and why that is.
* Union agreements cannot be breached for an individual case – this could compromise the integrity of the union. Remind them that agreements are finalised in consultation with members and so represent the view of the majority.
* Remember that you do not have to be on call 24-hours a day, no matter how anxious or upset your member is – tell them when you will and when you won’t be available and stick to that.

### Activity I: Managing members’ expectations

Members aren’t always realistic about what Prospect/Bectu can do for them – or indeed should do! Sometimes members will come to you asking for your help and then you find they not only want the moon but the stars, the universe too...You need to be prepared to deal with such expectations and devise strategies for managing them while not making the member feel let down or defeated.

The email below is from a longstanding member who wants your help. You have 10 minutes to come up with a bullet point list of how you would deal with their problem.

**From: Ike Shouting**

**Sent: 5 January 2023**

To: Mae Nurep, Branch secretary

Subject Company communication monitoring

I have just seen the company’s announcement that there is a new agreed policy on use of internet use and social networking and I am definitely not happy about this.

I suspect that the company is monitoring my correspondence on Slack. I think they are looking for instances I complain or moan about management and will try to discipline me for it.

Surely they can’t do this? Can you please tell me how I can get this ridiculous policy overturned and why hasn’t the union intervened?

Regards, Ike

**Internet use policy**

This Internet Usage Policy is applicable to each employee, which requires computer and Internet access for their work.

Accepted and supported computer and Internet usage:

* The Internet usage is supported as long as it helps in increasing productivity and it is conducted responsibly;
* All the data shared, posted and received via the company equipment belongs to the company. It should be managed appropriately and accordingly to the legal policies of the company;
* The equipment available for employees at the working place belongs to the company, and its management has all the rights to monitor the Internet activity of all workers. The data transmitted, created and received via the company’s equipment can be monitored as well;
* Electronic mail exchanged via the company Internet should not include any offensive and/or harmful content. Such content involves language and imagery that could be considered as harassment or vulgarity;
* Any website and downloaded content can be monitored by the company. They can be banned and blocked by the company if considered harmful to productivity and business as a whole.

Unacceptable ways of using the Internet at the working place:

* Distributing harassing, violent, discriminating or hateful messages and imagery by the means of company equipment;
* Utilizing the Internet and computers at the working place in order to commit any kind of illegal activity, including piracy of music, movies, and other content;
* Appropriating someone’s login information and using it without permission;
* Illegally downloading, managing or uploading copyrighted content via the company computers;
* Distributing secret company information outside the company;
* Posting derogatory information regarding the company, its owners or other employees;
* Installing inappropriate software that could be harmful to the equipment and network at the working place;
* Distributing spam emails and posts via the company equipment and the Internet;
* Posting information based on your personal beliefs and presenting it as those shared by the whole company.

Each employee should consult with their manager or supervisor in the event of not knowing or being unsure about which actions and information are considered unacceptable.

You have 10 minutes to come up with a bullet point list of how you would deal with their problem.

For an example [Are your work messages as private as you think? - BBC Worklife](https://www.bbc.com/worklife/article/20210813-are-your-work-messages-as-private-as-you-think)

## Session 10: Grievances

If it is not possible to resolve a grievance informally, employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

### Formal casework documentation

These are some guidelines on what to include and what to leave out of grievance letters, formal requests for changes to working arrangements (eg flexible working requests, applications for home-based working) and written statements to disciplinary hearings.

**In general:**

* Get the member to write the first draft.
* Make sure you have cleared the final draft before the member sends it.
* Include references to the appropriate procedure and other policies or procedures relevant to the issue at hand.
* Include all relevant facts – if necessary append a separate timeline of events.
* Exclude irrelevant issues – they will detract from the case.
* Explain why this is important to the member.
* Make sure it is addressed to the correct person, according to the procedure.

**Grievance letters**

* State how the informal stage was addressed and why it needs to go further.
* Propose potential solutions that would be acceptable to the member.

**Requests for changes to working arrangements**

* Make a business case for the desired resolution, taking account of impact on customers/clients and colleagues.
* Cite precedents, if possible from within the same department.

### Letter or email template for an employee raising a grievance

Insert and delete the words\* that are appropriate for your case.

Dear ....... [name of your employer / HR manager/ line manager],

I am writing to raise a formal grievance.

I have a problem/complaint\* with/about\*....... [give details].

I have evidence in the form of ....... [give details if appropriate].\*

I would be grateful if you could let me know when I can meet you to talk about my grievance.

I would like to be accompanied at the meeting by ....... [name].

Yours sincerely,

....... [your name]

## Activity J: Sharon’s grievance

In groups, look at the information that Sharon has brought to you and assess a plan to go forward with a formal grievance (see page 107/108 for guidance).

Sharon’s department has a policy that shifts can be swapped in line with the policy below:

**Shift swap policy**

*This policy is designed to allow shift workers to trade shifts with each other, enabling them the flexibility to meet both their work responsibilities and personal needs without having to sacrifice one or the other.*

*Existing organisation policies and guidelines must still be followed by shift swappers.*

*This policy applies to all full-time or part-time shift work employees*

*Shift swapping can be suspended or terminated if it does not comply with business needs or it affects employees’ performance, having worked long hours for a stretched period without rest.*

*The timeframe for the application of shift swapping, in order to facilitate proper resource planning, is up to three days after the shift roster is issued.*

The normal way the shift swapping is done is by texting a colleague that they wish to swap and asking if they can swap with them. The texts are sent through a large whatsapp group.

Sharon’s colleague Dave is fairly new, and she has started receiving unwanted texts from him. Sharon has asked him to stop, which seems to have worked but he has moved on to texting Mandy now.

She had a word with her manager, and he said: “Well he stopped. If it starts again, I will say something.”

Sharon believes that the system should be changed so that staff don’t have to share phone numbers or have to be Whatsapp at all, eg a Google docs calendar.

She shows you Dave’s texts.

Graphical user interface, text, application, chat or text message

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Graphical user interface, text, chat or text message

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### Grievance letter about personal phone number use

Dear Hannah, HR manager

I am writing to raise a formal grievance.

I have a problem with the insecure use of my and others personal phone numbers for company procedure to swap shifts by using Whatsapp.

Last week I raised the issue with my line manager Philip that my co-worker Dave has been sending me unwanted texts. He gained my phone number through the company Whatsapp group for swapping shifts. I did speak to Dave informally and he stopped texting me.

Although Philip feels the issue is resolved, I feel that the company is failing to protect personal data from being misused.

I have evidence in the form of the attached screen shots.

I would be grateful if you could let me know when I can meet you to talk about my grievance.

I would like to be accompanied at the meeting by my Prospect/Bectu rep.

Yours sincerely,

Sharon

### Action plan for Sharon’s case

|  |
| --- |
|  |

## Internet use at work

Prospect/Bectu representatives have had to deal with many cases of disciplinary action against members because of their use of email, internet or social media at work. Offences range from excessive personal use of email to downloading pornographic material from the internet.

Employers should make clear what constitutes an acceptable use of facilities and the standards expected of employees. For this reason, Prospect/Bectu representatives should try to ensure that their organisation has an agreed policy on the use of technology and social media

Issues that may give rise to an employer bringing disciplinary action and/or dismissal for internet or technology misuse include:

* unauthorised personal use of facilities
* excessive use of facilities
* using facilities for outside business purposes
* unauthorised access to company information
* loading software without authority
* disclosing confidential information
* using the internet for illegal or inappropriate purposes, eg accessing pornography or discriminatory material
* harassing other staff.

### Guidance on the use of email, internet and social media at work

**Do:**

* find out if your employer has a policy on acceptable use
* familiarise yourself with the policy
* encourage your Prospect/Bectu representative to negotiate a policy if one does not exist
* ensure that you stay within the terms of the policy
* respect other colleagues at work
* remember that emails and internet access can be traced
* remember that social media sites are public so anything you write may be brought to the employer’s attention
* remember that posting on social media, even in a personal capacity, may lead to disciplinary action against you.

**Don’t:**

* use email or internet facilities for personal use if this is not allowed
* use the facilities excessively for personal use
* access pornographic or offensive materials
* send or forward offensive or harassing  messages
* load unauthorised software
* access parts of the computer to which you do not have official access.

Extract from Prospect’s guide to email and the internet at work

## Activity K: Assisting a member with a formal letter.

A member, Nick Porton, who wishes to stay home-based working, has approached you. He has already discussed this with his manager, Caroline White, who has tried to discourage him from making a formal request but has said that the current company stance is three days in the office and two days at home.

Nick wishes to work from home because on most days he has to attend client meetings at different sites – he takes the view that these should be counted as not home working days.

His managers objections are that this will mean that there is insufficient collaboration with queries and leads coming into the office.

She has also pointed out that Nick also needs to attend the office Friday morning for the weekly team meeting, where important updates on the weeks ahead are provided.

No other members of the team work exclusively from home, although most of them do not attend as many off-site meetings as Nick.

**This is an extract from the employer’s policy on flexible working arrangements**

**“*Management seeks to support employees in managing their work-life balance and will try to be flexible about working hours and attendance arrangements provided that these are compatible with organisational efficiency, team-working and the needs of our clients.***

***Possible flexible working options include: part-time working, early/late hours of attendance, split-shifts, home-based working.***

***The budgetary costs and impact on staffing levels of any flexible working arrangements agreed must be absorbed by the employee’s team and business unit.***

***Employees wishing to avail themselves of a flexible working arrangement should apply in writing to their line manager in the first instance*.”**

**As Nick’s representative, what information would you want him to include in his written request?**

### Activity K bullet points

### 

## Session 11: There must be a law against it...?

Members often think that the best way to resolve their issues at work will be through an employment tribunal case. They may ask you how they can get legal assistance through the union.

The rule of thumb with workplace queries is, keep it simple. For a start, it is seldom possible to bring a successful employment tribunal claim without first having attempted to resolve an issue through the employer’s formal procedures.

It is difficult to envisage a situation where Prospect/Bectu could support a member who wanted to completely by-pass normal procedure and take an issue directly to a tribunal.

If a member has been researching their question online they may have got a false idea of how useful the law really is.

It takes a long time to get an employment tribunal complaint heard. Further, there are few cases where a win is guaranteed and – contrary to what members may read in the press – compensation is usually modest.

In 2019/2020\*, employment tribunal applications made were a total 103,984, with only 740 cases awarded compensation. However, this does not include out-of-court settlements.

If it’s possible to resolve the issue internally with the employer, that’s nearly always best for the member.

|  |  |  |
| --- | --- | --- |
| **Nature of claim** | **Number of claims awarded compensation** | **Median  award (£)** |
| **Unfair Dismissal** | **580** | **6,646** |
| **Sex Discrimination** | **46** | **14,073** |
| **Race Discrimination** | **28** | **8,040** |
| **Disability Discrimination** | **71** | **13,000** |
| **Religious Belief Discrimination** | **0** | **0** |
| **Sexual Orientation Discrimination** | **5** | **9,245** |
| **Age Discrimination** | **10** | **11,791** |

*Published resources on the legal figures. \* Latest tribunal figures available as of Jan 2023.*

### The legal successes for Prospect and Bectu members

In the year Oct 22 -Oct 23 there has been the following legal activity:

* There were over 1,000 enquiries to our legal helpline.
* There were 261 new cases for personal injury considered by our lawyers.
* There were 45 claims submitted to the employment tribunal on behalf of members.

Here are some of the successes during that period:

* A total of over £3.1 million recovered in damages for personal injury claims.
* A double win for a Prospect/Bectu member who settled her claims of disability discrimination, constructive unfair dismissal and personal injury following the failure of her employer to deal with her complaints of bullying and harassment.
* A successful Preliminary Hearing held in a claim for equal pay brought by 37 members, against Natural England.
* A member who brought a tribunal claim of sex discrimination when she was not promoted to a new job reached a good settlement for compensation and an agreement that the employer undertakes a policy review of their recruitment and promotion procedures in consultation with workers.
* Two ‘freelance’ members settled their long-standing tribunal claim with an agreement on new permanent employee contracts and backdated payments.
* A member receives a five-figure compensation following a finding in the employment tribunal of unfair dismissal by reason of redundancy.
* The Government agreed to pay public servants £1,500 following disputes over pay. Prospect/Bectu Legal played a key role in ensuring that strike action taken by thousands of members is lawful, including checking over 50 ballots and delivering picket line training.
* A Prospect member Julie Thackray settles her claim of sexual harassment for a five-figure sum.
* A Member secures compensation for her tribunal claim of online sexual harassment.
* A judge finds that our member was automatically unfairly dismissed and awards compensation. Out of the blue, our member was told he was being dismissed. On challenging this, he was reinstated, but at the same time he was told he was being made redundant. The tribunal found that the redundancy was not a genuine one and in fact, our member was dismissed for asserting his right not to be unfairly dismissed.
* After a vigorously fought tribunal claim of disability discrimination, involving two preliminary hearings and a listing for a 7-day hearing later this year, a member with complex disabilities, settles his claim of disability discrimination in promotion gaining compensation for injury to feelings and an agreement to review procedures in the future.

A close up of a sign

Description automatically generatedA picture containing logo

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### Putting what you’ve learnt into practice

Spend a few minutes thinking about what you would like to do when you get back to your workplace and what you need to achieve this.

|  |
| --- |
| **Task** |
| Find out about your GDPR requirements and which resources you’ll have access  to as a case handler. |
| * Do you feel ready to take on your first case? **Y / N**   If not, what else can we do to support you? |
| Ensure you’re familiar with the grievance/disciplinary procedures of your workplace.  Do you have access to/know where to find your workplace policies? **Y / N**  Are you able to be present in investigation meetings? **Y / N**  What kind of case would you always need to raise with your negotiation officer? |
| After attending this course, what will you stop doing? |
| After attending this course, what will you continue to do? |
| Based on your new knowledge, what will you start to do? |

Training: Organisers’ follow-up

## And finally

I hope this training has been useful for you? Don’t forget the following:

You will always be nervous when you start to represent members with their personal issues, just do your best.

If you are not sure, ask a more experienced rep or a full-time officer – that is what they are there for.

You are there to see fairness is done in the workplace and policies are followed.

If you reach an agreement with a manager in a meeting back it up in writing. An example of the wording would be: Thank you for meeting me today and just to clarify the following course of action was agreed.

Remember, there is other training that you can do such as negotiating skills and employment law – see <https://members.prospect.org.uk/courses/national-education-programme>

Good luck! And remember, if you only help one member, that would be worthwhile.

## Further information

**Acas code of practice on disciplinary and grievance procedures**

<https://www.acas.org.uk/media/1047/Acas-Code-of-Practice-on-Discipline-and-Grievance/pdf/Acas_Code_of_Practice_on_Discipline_and_Grievance.PDF>

**Discipline and grievance - ACAS Code of practice and guide**   
[Acas guide to discipline and grievances at work | Acas](https://www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work)

**Guidance on conducting workplace investigations**

<https://www.acas.org.uk/media/4483/Conducting-workplace-investigations/pdf/Conducting_Workplace_Investigations.pdf>

**Prospect reps’ guide to handling personal cases**

<https://library.prospect.org.uk/download/2004/00012>

**Prospect Factcards**

[https://www.prospect.org.uk/resources/guides-factcards/factcards](https://members.prospect.org.uk/resources/guides-factcards/index)

**Prospect personal case pro forma**

<https://library.prospect.org.uk/download/2008/00478>

**Settlement agreements – code of practice 4**

[Acas Code of Practice on settlement agreements | Acas](https://www.acas.org.uk/acas-code-of-practice-settlement-agreements)

## Appendix 1

### Deadlines for employment tribunal and personal injury claims

Prospect/Bectu members have the right to take their case to an employment tribunal even without the union’s support. But there are strict timescales for tribunal claims. It is therefore vital that Prospect/Bectu does not cause members to miss employment tribunal deadlines.

If a personal case involves, or may possibly involve, an issue that might go to a court or an employment tribunal, you must advise the member of the deadline for submitting a claim even if you know that Prospect/Bectu would not support the claim (for example, because it is not sufficiently robust).

Since 6 May 2014, it is compulsory to make an application for early conciliation to ACAS before presenting a claim to the tribunal. ACAS will then contact both parties to see if the case can be resolved. A time limit of six weeks is allowed for a resolution to be negotiated before it moves forward to a tribunal. It can be less than six weeks if either party says they do not want to conciliate. In Northern Ireland it is a month, with a possible extension of a further two weeks.

**Deadlines for submitting ET1 form**

|  |  |
| --- | --- |
| **Breach of contractual right – failure to pay wages, unlawful deductions, statement of particulars, failure to give notice** | Within three months of the breach taking place |
| **Discrimination cases** | Within three months of the incident being complained of |
| **Violation of statutory entitlement e.g. working hours, paid holidays, family rights etc.** | Within three months of the employee becoming aware of the issue |
| **Unfair dismissal** | Within three months of the date of dismissal (this is from the date the member officially receives the decision if it is without notice or the end of notice period) |
| **Statutory redundancy pay** | Within six months of redundancy |

### Personal injury case deadlines

A personal injury case must normally be submitted within three years of the injury occurring. Some occupational or industrial diseases have different deadlines.

Personal injury claims are not dealt with by reps. Members can make a claim via LegalLine on 0808 28 193 28. See our guide to legal advice for more information – <https://library.prospect.org.uk/download/2015/01155>

If in doubt, check with other reps in the branch or your Prospect/Bectu officer.

## Appendix 2

### Problem, Information, Plan

### 1 Problem

The first step is to identify the real problem, which may not at first be obvious.

You will need to talk to the member(s) concerned to get all the facts. Make sure the facts are correct – some complaints may not be justified.

Some issues can at first seem like personal problems. For example, sickness and time – off might appear to be personal. But if illness is due to stress or chemicals, other people will be affected.

You need to identify the cause of the problem. This will help you decide how to take the issue up.

If a member has a problem, there is often an underlying reason. You may have to deal with the urgent problem, while considering a longer- term strategy to deal with the root cause. For example, a member with symptoms of repetitive strain injuries has an immediate need for attention. The second part – how to prevent this happening again – will need a separate strategy.

### 2 Information

The second stage of PIP is about investigating and getting information. What you find out will help you decide what you do.

Sources of information you try to obtain should include agreements, contracts of employment, collective agreements and policy statements.

You will need to look at what your local agreements and the employer’s policies say to see if it is being applied. If it’s not, then you should raise it with management.

**Custom and practice** – there may be an agreement which management has accepted for years, and suddenly wants to ignore or change. This may cover tea breaks, flexible working and visits to the doctor and so on.

**Legal rights** – if a member brings a complaint check to see if the issue is covered by law. The Employment Law section of the course, gives more information on this. Members’ legal rights include a written statement of terms of employment, a minimum wage, time-off for union rep duties protection against unfair dismissal, health and safety standards and paid maternity leave.

**Union policies** – these set out union aims in negotiations. They could be national union policies or more local ones. They could include national policy on wages, local policy on overtime working, bargaining aims for equal opportunities, rights to education and training. You will need to be aware of union policies as they will help you to decide your bargaining aims.

Union policies are often set out in union journals and websites and in union and TUC booklets.

Even when you deal with an individual problem, try to work collectively if you can. Other reps may have dealt with similar issues in the past, and their experience could be valuable. If the problem is serious, approach a senior rep, Branch Secretary or Full Time Officer for advice and guidance.

Remember to check:

* local agreements
* employer’s policies
* ‘custom and practice’
* legal rights
* union policies.

### 3 Plan

The third stage of PIP is to work out a plan of action. Use the information you have collected to look at the problem and decide the appropriate action.

Your union aims will depend on the type of problem, the merits of the case and the extent of membership support. Is the problem a personal one? A grievance? A disciplinary? About health and safety? An equality or fairness issues? Does it involve other workers – could it be taken up a collective matter?

Don’t forget the role of your members. Knowing what they want and keeping them in touch will give them confidence in the union and strengthen your ability to represent their interests effectively.

## Appendix 3 – for Activities E, G & J

### Disciplinary and grievance procedures

**Overview purpose and scope**

The Disciplinary Procedure is designed to help and encourage all Individuals to achieve and maintain standards of conduct, attendance and job performance and set out the Manager’s framework for dealing with disciplinary matters. The same procedure applies to all Individuals and the aim is to ensure consistent and fair treatment for all.

The Grievance Procedure enables all Individuals to bring to the Manager’s attention any grievance relating to their engagement and to try to resolve such matters satisfactorily. Grievance proceedings will, so far as is reasonably practicable, be kept confidential.

**Principles**

No disciplinary action will be taken until the matter at issue has been fully investigated.

The Individual will not normally be dismissed for a first breach of discipline except in the case of gross misconduct or very serious breach of discipline when the sanction will be dismissal without notice or payment in lieu of notice.

The Individual will have the right to appeal against any disciplinary sanction imposed or the decision of any grievance meeting.

**General provisions**

So far as applicable to a particular circumstance, the following requirements apply to the Disciplinary and Grievance Procedures.

**Timetable**

Each step and action under the Disciplinary and Grievance Procedures must be taken without unreasonable delay.

**Right to be accompanied**

The Individual has the right to be accompanied at any disciplinary or grievance meeting by a fellow Individual or trade union representative who may make representations on his behalf provided the Individual expressly authorises this at the beginning of the relevant meeting. However, the Individual’s companion will not be able to answer questions put to the Individual during the course of the meeting. This right applies to all stages of the disciplinary and grievance process including appeals.

**Meetings**

The timing and location of meetings must be reasonable.

Meetings must be conducted in a manner that enables both the Manager and the Individual to explain their case.

The Manager will endeavour to ensure that the meeting is in a private location and that there are no interruptions.

The Manager should advise the Individual of the right to be accompanied in the written notification of the meeting.

The length of time between the written notification and the meeting should be long enough to allow the Individual to prepare for the meeting. The Individual must take all reasonable steps to attend the meeting and if they or their companion cannot attend on the date suggested they must notify their head of department and propose an alternative date for the meeting to be held within 5 working days of the original proposed date.

No meeting will take place unless the complainant has informed the other party in writing of the cause of the complaint and the other party has had the opportunity to consider a response to the complaint.

**Records**

During the disciplinary or grievance process the Manager will keep written records which may include: the nature of the complaint or the grievance raised; a copy of the written complaint or grievance; the Individual’s defence; the Manager’s response; findings made; any action taken or sanction imposed and the reasons for it; any grievances raised during a disciplinary process; whether there was an appeal and if so the outcome; any subsequent developments.

Such records will be kept on a confidential basis so far as is reasonably practicable and in accordance with the Data Protection Act 1998.

**Potential disciplinary sanctions**

Formal disciplinary action may result in the following disciplinary sanctions being imposed:

* **Verbal warning** – If conduct or performance does not meet acceptable standards the Individual may be given a formal verbal warning. A note of the verbal warning will be kept on the Individual’s personnel file but will usually be disregarded for disciplinary purposes after three months subject to satisfactory conduct and performance.
* **Written warning** – If the misconduct or poor performance is more serious, a formal written warning may be given to the Individual. This will give details of the complaint, the improvement or change in behaviour required and the timescale allowed for this, and state that a final written warning may be considered if there is no sustained satisfactory improvement or change. A copy of this written warning will be kept on the Individual’s personnel file but will usually be disregarded for disciplinary purposes after six months subject to satisfactory conduct and performance.
* **Final written warning** – If the offence is serious or there is a failure to improve performance or conduct during the currency of a prior warning, a final written warning may be given to the Individual. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal. A copy of this written warning will be kept on the Individual’s personnel file but will be disregarded for disciplinary purposes after twelve months (although in exceptional cases the period may be longer) subject to satisfactory conduct and performance.
* **Dismissal or other sanction** – In certain circumstances, for example a failure to improve conduct or performance where a previous warning has been given or where there is an act of gross misconduct or a serious failure to perform, the disciplinary sanction may be dismissal or the Manager may take some other action short of dismissal such as disciplinary suspension without pay for up to a maximum of five working days.
* If some sanction short of dismissal is imposed, the Individual will receive details of the complaint, and will be warned that dismissal could result if there is no satisfactory improvement. A copy of this written warning will be kept on the Individual’s personnel file but will be disregarded for disciplinary purposes after twelve months (although in exceptional cases the period may be longer) subject to satisfactory conduct and performance.

**Gross misconduct**

The following list provides examples of offences which are normally regarded as gross misconduct. This list is not exhaustive and other serious misconduct may also lead to summary dismissal:  theft, fraud, deliberate falsification of records, dishonesty, fighting, assault, violence, unauthorised possession of property belonging to the Manager, damage to the Manager’s property, incapacity for work due to being under the influence of alcohol or illegal drugs, serious negligence which causes unacceptable loss, damage or injury, serious act of insubordination, misuse of confidential information, unauthorised entry to computer records, conviction for a criminal offence arising from or relating to the Individual’s work for the Manager, conduct whether inside or outside working hours which may bring the Manager’s reputation into disrepute, serious or persistent neglect of duties or any material breach or non-observance of those duties – in particular refusal to obey reasonable instructions, unauthorised absence from work (including conduct inconsistent with an alleged sickness, injury or other incapacity).

If the Individual is accused of an act of gross misconduct, the Individual may be suspended from work on full pay while the Manager investigates the alleged offence. If, on completion of the investigation and the Disciplinary Procedure, the Manager is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice

**General**

Following a disciplinary meeting, before making the decision on what disciplinary sanction it should impose, the Manager will take into account the Individual’s disciplinary and general engagement records, length of service and the explanation given by the Individual at the disciplinary meeting.

Before implementing any of the formal sanctions set out above, including after a review of the Individual’s conduct or performance, the Disciplinary Procedure set out below will normally be followed.

At the time of advising the Individual of any sanction to be imposed the Manager should also advise the Individual of the right of appeal.

**DISCIPLINARY PROCEDURE**

**Investigation**

Where a potential disciplinary matter arises, the Manager will endeavour to make necessary investigations to establish the facts promptly. Having carried out such preliminary investigations the Manager will decide whether to take no further action or deal with the matter informally or arrange for the matter to be handled on a formal basis. The Manager may choose to hold an investigatory meeting (as opposed to a disciplinary meeting) with the Individual solely to establish the facts of the case.

**Suspension**

In instances which the Manager considers to be particularly serious (e.g. in cases involving alleged gross misconduct, where relationships have broken down or there is a risk to the Manager’s responsibilities to third parties or the Manager’s property), the Individual may be suspended from work temporarily whilst an unhindered investigation is carried out. Any precautionary suspension of this kind will be reviewed as soon as possible and will not normally exceed 10 working days. Any suspension on this basis should not be considered as a disciplinary sanction or an indication of prejudgement of the matter. The Individual will be paid for all rostered hours and all calls that they would normally be expected to work were they not suspended. There should be no financial detriment to an Individual during suspension or, except where a financial disciplinary sanction is subsequently imposed, on their return to work following suspension.

**Formal procedure**

If the Manager decides to take formal action, the following procedure will be followed:

**Statement of grounds for action and invitation to meeting**

The Manager will prepare a written statement setting out the Individual’s alleged conduct or capability or poor performance, or other circumstances, which may result in a disciplinary sanction (including dismissal) being imposed. The statement will be sent to the Individual who will be invited to attend a meeting to discuss the matter. The statement will contain sufficient detail and any relevant accompanying evidence to enable the Individual to prepare for the meeting. In the event that the Individual is a Union representative, the Manager will send a copy of the statement to a Union full-time official.

**Meeting**

The complaint will be fully explained to the Individual at the meeting and the Manager will go through the evidence that has been gathered. The Individual can make representations and explain their view of the situation and answer any allegations that have been made. The Individual will be allowed to ask questions and present evidence. If appropriate the Individual can call witnesses and will be given an opportunity to raise points about any information provided by witnesses. No disciplinary sanction will be imposed until the meeting has taken place.

Notification of Decision After the meeting the Individual will be informed of the Manager’s decision. This will be communicated to the Individual in writing within 10 working days of the meeting and the Individual will be notified of their right to appeal against the decision if they are not satisfied with it. If the decision taken is dismissal the Individual will also be provided with written reasons for dismissal, the date on which the engagement will terminate and the appropriate period of notice (if applicable). If it is not possible for the Manager to respond with their decision within 10 working days the Manager will give an explanation to the Individual for the delay and inform them when a response can be expected.

**Appeal**

The Individual has the right to appeal against any disciplinary sanction imposed on them.

**ACAS**

By mutual consent of the Manager and the Union, the services of ACAS may be sought and/or used at any stage of the disciplinary procedure.

**GRIEVANCE PROCEDURE**

**Informal resolution of grievances**

The Manager recognises that misunderstandings or grievances may sometimes occur. It is most important that these grievances are brought out into the open and resolved as fairly, consistently and speedily as possible. In most cases this can be done on an entirely informal basis.

Any grievance should, in the first instance, be raised with the Individual’s head of department (or, where that person is the subject of the grievance, that person’s line manager) who should discuss the matter with the Individual informally within two working days of it being raised.

**Formal resolution of grievances**

Where the grievance cannot be resolved informally and the Individual has a complaint, concern or problem about action which the Manager has taken or is contemplating taking in relation to the Individual or the Individual has a personal grievance or a complaint about any work-related matter which affects their efficiency at work, it should be dealt with under the formal Grievance Procedure below.

**Formal grievance procedure**

Statement of Grievance  The Individual must set out, in a written statement, the grievance and send the statement to their head of department (or, where that person is the subject of the grievance, that person’s line manager). The Individual will be invited to attend a meeting in order to discuss the grievance.

**Meeting**

The Individual will be permitted to explain their complaint and then say how they believes it should be settled.

**Notification of decision**

After the meeting the Individual will be informed of the Manager’s decision. This will be communicated to the Individual in writing within 10 working days of the meeting and the Individual will be notified of their right to appeal against the decision if they are not satisfied with it. If it is not possible for the Manager to respond with their decision within 10 working days the Manager will give an explanation to the Individual for the delay and inform them when a response can be expected.

**Appeal**

The Individual has the right to appeal against the findings of a grievance meeting.

**Appeals**

The Individual has a right to appeal against the finding of a disciplinary or grievance meeting.

If the Individual wishes to appeal, they must inform the Manager in writing within 5 working days of receiving the decision. The Individual will then be invited to attend another meeting.

Where possible the person who made the original disciplinary or grievance decision will not be involved in the decision-making process of the appeal. The appeal will be heard by an appropriate member of senior management. If the appeal relates to a dismissal it will be heard by a member of the Manager’s Board other than the Chairman.

After the appeal meeting the Individual will be informed of the Manager’s final decision and this will be communicated to the Individual within 10 working days of the meeting. If it is not possible for the Manager to respond with their decision within 10 working days the Manager will give an explanation to the Individual for the delay and inform them when a response can be expected.

Where the Individual appeals against any disciplinary sanction imposed on them, the original disciplinary decision (including a decision to dismiss) will be implemented pending the appeal meeting and its outcome.

**Notes**

### Extract from the ACAS guide to discipline and grievances at work

**Preparing for the meeting**

You should:

* Ensure that all the relevant facts are available, such as disciplinary records and any other relevant documents (for instance absence or sickness records) and, where appropriate, written statements from witnesses.
* Where possible arrange for someone who is not involved in the case to take a note of the meeting and to act as a witness to what was said.
* Check if there are any special circumstances to be taken into account. For example, are there personal or other outside issues affecting performance or conduct?
* Be careful when dealing with evidence from a person who wishes to remain anonymous. Take written statements, seek corroborative evidence and check that the person’s motives are genuine.
* Consider what explanations may be offered by the employee, and if possible check them out beforehand.
* Allow the employee time to prepare his or her case. Copies of any relevant papers and witness statements should be made available to the employee in advance.
* If the employee concerned is a trade union representative discuss the case with a trade union full-time official after obtaining the employee’s agreement. This is because the action may be seen as an attack on the union.
* Arrange a time for the meeting, which should be held as privately as possible, in a suitable room, and where there will be no interruptions. The employee may offer a reasonable alternative time within five days of the original date if their chosen companion cannot attend. You may also arrange another meeting if an employee fails to attend through circumstances outside their control, such as illness.
* Try and get a written statement from any witness from outside the organisation who is not prepared to or is unable to attend the meeting.
* Allow the employee to call witnesses or submit witness statements.
* Consider the provision of an interpreter or facilitator if there are understanding or language difficulties (perhaps a friend of the employee, or a co-employee). This person may need to attend in addition to the companion though ideally one person should carry out both roles.
* Make provision for any reasonable adjustments to accommodate the needs of a person with disabilities.
* Think about the structure of the meeting and make a list of points you will wish to cover.

**What should be considered before deciding any disciplinary penalty?**

* When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:
* Whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct.
* The penalty imposed in similar cases in the past.
* Whether standards of other employees are acceptable, and that this employee is not being unfairly singled out.
* The employee’s disciplinary record (including current warnings), general work record, work experience, position and length of service.
* Any special circumstances which might make it appropriate to adjust the severity of the penalty.
* Whether the proposed penalty is reasonable in view of all the circumstances.
* Whether any training, additional support or adjustments to the work are necessary.

It should be clear what the normal organisational practice is for dealing with the kind of misconduct or unsatisfactory performance under consideration. This does not mean that similar offences will always call for the same disciplinary action: each case must be looked at on its own merits and any relevant circumstances taken into account.

Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved or inconsistent treatment in the past.

**Time limits for warnings**

Except in agreed special circumstances, any disciplinary action taken should be disregarded for disciplinary purposes after a specified period of satisfactory conduct or performance. This period should be established clearly when the disciplinary procedure is being drawn up.

A decision to dismiss should not be based on an expired warning but the fact that there is an expired warning may explain why the employer does not substitute a lesser sanction.

Normal practice is for different types of warnings to remain in force for different periods. For example, a first written warning might be valid for up to six months while a final written warning may remain in force for 12 months (or more in exceptional circumstances). Warnings should cease to be ‘live’ following the specified period of satisfactory conduct.

There may be occasions where an employee’s conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee’s disciplinary record should be borne in mind in deciding how long any warning should last.

**Provide employees with an opportunity to appeal**

The opportunity to appeal against a disciplinary decision is essential to natural justice, and appeals may be raised by employees on any number of grounds, for instance new evidence, undue severity or inconsistency of the penalty. The appeal may either be a review of the disciplinary sanction or a re-hearing depending on the grounds of the appeal.

An appeal must never be used as an opportunity to punish the employee for appealing the original decision, and it should not result in any increase in penalty as this may deter individuals from appealing.

**What should an appeals procedure contain?**

It should:

* Specify a time-limit within which the appeal should be lodged (five working days is commonly felt appropriate although this may be extended in particular circumstances).
* Provide for appeals to be dealt with speedily, particularly those involving suspension or dismissal.
* Wherever possible provide for the appeal to be heard by someone senior in authority to the person who took the disciplinary decision and, if possible, someone who was not involved in the original meeting or decision.
* Spell out what action may be taken by those hearing the appeal.
* Set out the right to be accompanied at any appeal meeting.
* Provide that the employee, or a companion if the employee so wishes, has an opportunity to comment on any new evidence arising during the appeal before any decision is taken.

**Small organisations**

In small organisations, even if there is no more senior manager available, another manager should, if possible, hear the appeal. If this is not possible, consider whether the owner or, in the case of a charity, the board of trustees, should hear the appeal. Whoever hears the appeal should consider it as impartially as possible.

**How should an appeal hearing be conducted?**

Before the appeal ensure that the individual knows when and where it is to be held, and of their statutory right to be accompanied. Hold the meeting in a place, which will be free from interruptions. Make sure the relevant records and notes of the original meeting are available for all concerned.

**At the appeal meeting**

You should:

* Introduce those present to each other, explaining their presence if necessary.
* Explain the purpose of the meeting, how it will be conducted, and the powers the person/people hearing the appeal have.
* Ask the employee why he or she is appealing.
* Pay particular attention to any new evidence that has been introduced, and ensure the employee has the opportunity to comment on it.
* Once the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider the decision.
* Change a previous decision if it becomes apparent that it was not soundly based – such action does not undermine authority but rather makes clear the independent nature of the appeal. If the decision is overturned consider whether training for managers needs to be improved, if rules need clarification, or are if there other implications to be considered?
* Inform the employee of the results of the appeal and the reasons for the decision and confirm it in writing. Make it clear, if this is the case, that this decision is final.

## Appendix 4: Talon Engineering Ltd v Smith – legal case showing importance of following procedures

The Employment Appeal Tribunal has upheld that an employee who was dismissed after she called one of her colleagues a ‘knobhead’ on her workplace email was unfairly dismissed.

The case highlighted the importance of procedure in dismissal cases.

**Background**

The claimant, Mrs Smith, had worked for Talon Engineering in motorcycle product and systems manufacturing for over 20 years, before being dismissed for gross misconduct after sending a series of emails to a contact in another trading partner company, in which she referred to the colleague as a ‘knob’ and a ‘knobhead’.

Mrs Smith was unable to attend the first scheduled disciplinary hearing because she was unwell.

She was then invited to a rearranged hearing which was to take place 10 days later, but her trade union representative was unavailable until two weeks later.

Talon Engineering refused to postpone the hearing for a second time, arguing that further delay would create additional strain on Mrs Smith and the staff covering her work.

She subsequently refused to attend the hearing and so Talon Engineering summarily dismissed Mrs Smith, a decision which the Bristol Employment Tribunal found to be unreasonable, holding that this rendered the dismissal “unfair procedurally and fatally flawed”.

Although an appeal hearing occurred, this was only to see if there were good reasons to interfere with the decision, which the organisation decided against.

The employment tribunal concluded that no reasonable employer would have dismissed Mrs Smith and that Talon Engineering should have taken steps to postpone the disciplinary hearing.

Mrs Smith was, however, found to have contributed to her dismissal, and a 15 per cent Polkey reduction and 15 per cent contributory fault reduction were applied to her award, which comprised a basic award of £11,554.69 plus a compensatory award of £10,702.59.

Talon Engineering appealed, arguing that the tribunal had substituted its own views for that of a reasonable employer and had failed to take account of employment relations legislation, which stated that an alternative time for postponed hearings must be “reasonable, and fall before the end of the period of five working days, beginning with the first working day after the day proposed by the employer”.

The EAT, however, ruled that the tribunal had “properly directed” itself and Talon Engineering should not have taken the union representative’s inability to attend the disciplinary to mean it had no obligation to consider a postponement and could proceed with the date without further consideration.

The EAT ruled that the tribunal was correct in its conclusion that the company had behaved in an “entitled and hasty” way in reaching its decision.

Commentators have warned that cases like this “must be taken as a warning to employers that failures in respect of the right to be accompanied at disciplinary hearings carry a much more significant risk than simply a fixed monetary award”.

Case law around an employee’s rights when it comes to their choice of companion has developed significantly – and positively – in recent years.