### 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 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 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.** |

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| **Strengths of member’s case**  | **How risky?**  | **How to maximise this point** |
| For exampleIncorrect allegationsProcedural issuesPolicies/agreements/rulesEmployment lawPrecedent 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**Make sure you list all areas that are possible problems for your member | **How to minimise these weaknesses**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’s  | 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.