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

**Your name:**

Read the information on pages 87-106 for Activity H, complete the strengths, weaknesses and mitigation for Sasha’s case and then prepare a strategy for the upcoming meeting using the nine points below. **Please email this sheet to your tutor before online session 3.**

Watch the *Side effects* video: <https://www.youtube.com/watch?v=wN5BqCKO9DY>

Read pages 108 and 109.

Sasha Payne case – strengths and weaknesses

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| --- | --- | --- |
| **Strengths of member’s case** | **How risky?** | **How to maximise this point** |
| For example:Incorrect allegationsProcedural issuesPolicies/agreements/rulesEmployment lawPrecedent from previous cases.Looking for reps to identify;Review period not followedInsufficient action from employer following on from the occupational health adviceNo regular meetings with Sasha after the operations/checking in Incorrect allegations* Member’s work is not below the required quality standards but is at a reduced speed compared to colleagues due to disability which is protected under Equality Act and backed up by OH report

Procedural issues* Performance management procedure has not been followed, no support for member following first written warning (which arguably did not require to be issued as this is an OH problem where reasonable adjustments are required from the employer)

Employment law* Equality Act applies

Precedent from previous cases* Two witnesses have been dismissed previously following periods of sickness absence under this manager
 | Assess the risks of everything that you see as a strength to make sure it can’t backfire against your member.Following their own policy – low riskCould be high risk as said to be heresay | Think about how you can get the best out of a strong point. When and how are you going to raise it? |
|  |  |  |
| **Weaknesses of member’s case** | **How to minimise this point** |
| Make sure you list all areas that are possible problems for your member.Ensuring reps add some content to weaknesses in order to full prep their member. Seems to have accepted issues earlier in the procedure – had grounds to appeal first decision re. written warning which would have flagged the LM to an independent decision maker. | Think about the best way to deal withthe weaknesses.Referring to the procedure and where it was not complied with |
|  |  |  |
| **Mitigating circumstances of member’s case** | **What effect could they have had?** | **Where can they be brought up?** |
| Make sure you list all possible reasons for your member’s conduct.Ill health / disability backed up by medical notes and company OH providerGood standard of work, only issue is speed which can be directly linked to disabilityImprovement in work over the time since the last operation. | Not all measures put in place so work will still be slow | Asking questions at the meeting of the manager |

**Preparing for the meeting**

Plan, plan, plan!

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

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

* Reasonable adjustments under equality act required – these have not all been implemented – key to case
* If under 12 month sustained performance period should be monthly reviews with LM- if performance is improved then the performance management stops – LM has accepted performance has improved so previous poor performance management should have ceased at this time - key to case

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

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

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

Procedure key points:

* “critical for managers to check that employees are aware of the level of performance required of them” – has this been done?
* “managers will provide all reasonable help, support and encouragement to assist employees to reach and maintain the performance expectations required” – has this been done?
* “Initial deterioration in an employee’s performance should be identified and addressed promptly as part of day-to-day management conversations.” – OH referral not made until after performance management process started, not a good indication.
* Meeting invites for previous meetings should include sufficient info about allegations and possible consequences– do they? Not available to TU rep
* Reasonable adjustments under equality act required – these have not all been implemented – key to case
* Post 2018 meetings – were any letters provided to member – not available to TU rep?
* Written warning should have included assistance to be provided – was this done?
* Review period of 1 month up to 3 months, this does not appear to have been followed, has LM jumped to 12 month sustained performance period? Check
* If under 12 month sustained performance period should be monthly reviews with LM- if performance is improved, then the performance management stops – LM has accepted performance has improved so previous poor performance management should have ceased at this time. Key to case
* On flow chart at stage 2 meeting re final written warning, however as reviews not followed should not be having this meeting.

**3. Opening statement**

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

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

Member is dedicated and capable employee whose work is at a good standard

Member thought the process had ended as the review time was missed.

Member has suffered ill health and is left with a long-term condition as described in medical notes / OH report

Member’s condition means that workloads should have been reviewed as a reasonable adjustment – this has not been done. Other reasonable adjustments have also not been implemented.

Following previous performance management meetings and first written warning, member expected to be supported by LM in line with company policy, this has not happened

**4. Questions for the investigating officer**

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

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

1. Reasonable adjustments – refer to OH report – please explain what reasonable adjustments have been made and why not all were taken, such as reducing targets?
2. The OH report says workload should be discussed with member – when did this discussion happen?
3. Were there any meetings with member after the OH report was received? If so what was discussed?
4. What correspondence was there with the member between the May meeting and this one? What records have been kept?
5. Procedure, especially flow chart – are you aware of LM duties under the procedure?
6. What attempts were made to support member informally?
7. When did you refer member to OH?
8. Was the member put on 12 month plan and when did you inform them of this?
9. When did you meet with member to discuss performance over the 12 months?

**5. Presenting the member’s case**

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

Timeline:

* Jan 2018 member under performance management but this is suspended pending OH input
* April and May 2018 performance management meetings occur
* June 2018 OH confirms disability and impact on work, reasonable adjustments recommended including reducing overall workload
* Some reasonable adjustments then implemented – workload not one of them. No voice recognition software as not compatible. No reference to pwk being provided instead of reading on screen.
* No further input until member asked for support in June 2019 – also asked about status of procedure
* Meeting 30 June LM accepted work had improved, quality not an issue only speed
* 21 July poor performance meeting invite sent; meeting scheduled for 31st July – outcome potentially final written warning.
* Procedure not followed, reasonable adjustments not made, member left very much unsupported during what has been a testing time due to diagnosis of long-term ill health
* Mitigating circumstances as above
* Concerns that two previous employees with sickness absence working for same line manager have been dismissed

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

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

Member is disabled may need breaks during the meeting to rehydrate eyes or wear sunglasses depending on light in the room.

Refer to opening statement and reiterate OH report, member has disability and is not being supported with reasonable adjustments e.g. reduction in workload

**7. Adjourn to review notes**

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

Potentially – voice recognition software may not be reasonable if cost of replacement bespoke business software which is compatible is extreme, also potentially an issue across the company. However, are copy / paste workarounds available e.g. Most MS office applications have voice control and read back functions? Could this be explored with IT support?

**8. Closing statement/summary**

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

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

Member has had life altering diagnosis, despite this is trying to keep up high standards of work to which they have always held themselves, if the required works needs to be completed quicker, standards would slip and that is something the member is not prepared to accept as part of their work ethic.

Highlight that constantly stopping to rehydrate eyes means that the Sasha will have less time to do the job than an able bodied person.

**9. Statements to disciplinary hearings**

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

Challenge evidence that is inaccurate or could be interpreted differently.

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

Include arguments in mitigation, if relevant.

­­Use witness evidence if available re manager’s expectations of workload, lack of support, potentially history of managing people out where sickness absence is a perceived issue

**10. Next steps as the rep?**

Definite potential to appeal outside of LM chain.

Grievance submit? Explain process to member

As Equality Act provisions apply, discuss with FTO as potentially company is in legal breach. If employee is dismissed grounds for tribunal?