

# Formal hearing training

for union reps



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January 2022

Welcome to Prospect's formal hearing training.

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

By the end of this course, we hope this will give you the extra confidence to tackle a formal hearing in your workplace.

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.

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# Learning outcomes

- Learn more about the laws, policies and agreements that work around online formal hearings.
- Learn more about how to represent individual members effectively.
- Make some plans for when you return to work.

## Course timetable

### Session 1

- Introductions and objectives and a recap since you attended the Reps part 2 training.
- Activity A: Getting to know you

### Session 2

- Attending a formal hearing
- Activity B: Pre-planning for hearing
- Activity C: The disciplinary hearing
- And finally...
- Action plan

# 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:info@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 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 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'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 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 education events.

We will seek to ensure that all Prospect 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 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:**

## **Recap of what has happened since the Reps' part 2 course**

### **Activity A: Introductions**

The tutor will ask you to introduce yourself and answer the following:

- Your name
- The company/organisation you work for
- Have you represented anyone since the training at any stage, informal or formal?
- If you have, had did it go?

## Prospect's role in a personal case

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

## Code of practice for Prospect representatives

In November 2021 a code of practice was created for Prospect 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, representatives must:

- Only speak or act on behalf of Prospect 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's ethos and reputation.
- Declare any interests that may conflict with their role in Prospect, 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 into disrepute, including through the use of email, social and mainstream media and other internet sites.

# **The skills and knowledge a rep will need**

## **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's current concerns with your employer
- A basic grasp of employment law.

## **Putting the case**

- Agree a hearing date with the employer.
- The member must 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 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; an employer may have a separate procedure to deal with poor performance, normally known as a capability procedure

## **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.

## 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).

## **Session 2:**

# **Attending a disciplinary hearing**

In the case study, involving Alex Roe, we are trying to create a situation which you could come across in the workplace so you can practise dealing with members and their problems in a safe environment. You have already interviewed Alex and written up a proforma. This was your homework for the first session.

## **Scenario**

In your discussions with Alex you originally determined that the company had not dealt with Alex very well and was not following its own policies. The company have acknowledged this but have determined that they wish to continue with the disciplinary hearing regardless. You will need to speak to Alex to determine a strategy for the hearing and then represent them at that hearing, which has been moved to the later time of 13:30 on the 16<sup>th</sup> March

## **Prep**

Spend some time re-reading the background material and the proforma that was used on the original course. There is also some new information included.

## Copy of invitation to disciplinary hearing

Alex Roe  
Technician  
13 Lonely Ave  
London

Mr I. Black  
Line Manager  
Main office  
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**

To: Mr I Black Line Manager

From: Mr R Plum Head of Department

Date: 10th 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



## 1. Basic details

Name: Alex Roe

Membership number:

Does this issue pre-date membership? (tick one)

☐ YES

☒ NO

Employer name and work address (including postcode):

Main Office, London

Work telephone number:

Email address:

As known – check you have another email just in case the member is off work

Mobile:

Home contact details:

13 Lonely Avenue, London

Preferred contact details: (tick one)

☐ HOME

☒ WORK

Employer contact details:

(ie HR Advisor or Line Manager as appropriate)

Mr I Black, Line Manager

Type of case: Disciplinary

(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 do

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 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?
- The first Alex knew about the issue is on receiving the invitation letter on the 7th March
- Alex's HOD has not spoken to you before the letter was sent

### When did the issue arise?

- The main issue happened on the 22<sup>nd</sup> Jan, Alex asked to leave to pick up kids and the HOD refused, and an argument ensued.

### What has happened?

Alex has sent an invitation to a disciplinary meeting on the 16<sup>th</sup> March to answer the following accusations:

- Irregular attendance with considerable absence due to 'stress' during the past year
- Serious in subordination towards a senior colleague and in particular telling your HOD Roger Plum to f\*\*k off on the 22nd January
- Not responding to requests to work flexibly

Alex feels that Roger has been bullying them during the last year.

### Who is involved?

Alex, Roger Plum (HOD), Ian Black (Line manager) possibly other members of the team?

### Why has it happened?

- Alex has had a change in home life becoming a single parent for their two school children. Alex has needed to change his working hours on his return to work in June of last year. This meant Alex could not do overtime because of caring commitments.
- Stress and pressure is on the whole department is under and is understaffed this has led to Roger (HOD) pressuring Alex to do overtime.
- Roger's lack of duty of care as a manager to take Alex's changes in their homelife and the impact on work seriously.
- This came to a head on the 22<sup>nd</sup> Jan when Alex went to see Roger to ask to go to pick the children up from school. Roger refused leading to an argument and Alex swearing at Roger and leaving.

**Are there any mitigating circumstances?**

- Alex's changed circumstances and has been off work with stress, taking anti-depressants.
- Alex is the main carer for two young children and has arranged for a neighbour to pick the children up from school three afternoon's a week enabling Alex to do their contracted hours.
- There has been no investigation prior to Alex being invited to a disciplinary hearing.
- The whole case has not been dealt well and not in keeping with the spirit of the policy to deal with things speedily.

**Is it still going on?**

☒ **YES**

☐ **NO**

**Mitigation to be taken into account?**

☒ **YES**

☐ **NO**

**Timescale/key dates:**

- May to June last year: a long period of illness and came back with a verbal agreement to different hours
- Other periods off work due to illness
- 22nd Jan incident of swearing happening
- 10th Feb email complaint from Roger Plum
- 7th March invitation letter sent

**Have any meetings taken place or are any future meetings arranged?**

☒ **YES**

☐ **NO**

Give dates and details of any planned meetings

Ask member for copies or any letters, emails or notes relating to the case; attach them to pro-forma.

Attached invitation letter and email from Roger Plum

**Are there any witnesses you need to speak to?**

☐ **YES**

☒ **NO**

**If yes, what are the names of the key witnesses?**

Possible witnesses but may be fearful to come forward.

**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?**

- Alex doesn't want to lose their job
- Drop the disciplinary process
- Wishing the company to learn from how they've dealt with Alex and change attitude.

- Looking to take out a grievance against Roger/Employer.
- To put in place a formal agreement for Alex to pick the kids up around the childcare

**Make a note of any guidance you have given to the member.**

Ask Alex to bring doctor notes etc to next meeting, draft grievance letter.

**Make a note of any Prospect materials given/signposted to the member.**

E.g. applicable member guides, etc

**What are your next steps as the rep?**

Advise Alex re the stages of grievance and start this process.

Speak to Ian regarding the timing/date of the meeting and ask for a delay/move to informal given grievance/cite no investigation has taken place.

Employer in breach of their own policy.

As a new rep they may wish to speak to their officer/more experienced rep re the advice.

### 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.

## Original information on the Alex Roe case study

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.

## Additional information on the Alex Roe case study

The information below is some additional information you gathered when you and Alex last spoke.

Alex made you aware that the timing of the original hearing meeting clashed with taking children to school. The company have agreed to move the hearing to later in the day. You also spoke to them about the company procedures not being followed but they decided that, due to the serious nature of the allegation the disciplinary hearing will be held as planned.

Alex has a temporary childcare arrangement with a neighbour and since the incident Alex has made some improved arrangements for childcare that will allow them to stay later three evenings a week, if necessary, but they will still struggle on other days.

Alex is still adjusting from the aftermath of the separation and the children are also finding it difficult to adjust which is leading to additional stress and some sleepless nights. The children have been referred to a family counsellor, but it will be 6 weeks until the first appointment. Alex is also facing financial difficulties but has recently got some help on this using the Financial Advisors recommended by the union.

Alex is taking anti-depressants as prescribed by a GP. Alex has also ordered some additional medication from an online pharmacy in the hope it would help. This medication may have contributed to the mood swings and irritability.

Everyone in the department is under pressure and short staffed, other people have also taken sickness absences.

The supervisor (HOD) has made unkind remarks about Alex being unreliable due to having children. They have suggested that Alex is exaggerating the family difficulties and made disparaging remarks about single-parent families. They keep asking Alex to work overtime. When other colleagues have informally complained that they must pick up extra overtime instead of Alex, the supervisor has sided with them.

Both Alex and you as a rep have spoken informally to colleagues about bullying but although they have (confidentially) mentioned the names of a few different individuals no one else is prepared to say anything, they want the union to try and tackle the culture of bullying at work.

Alex had a some long sick absences around the time of their separation but more recently the absences have been due to work-related stress. Periods of sick leave are as follows if you need to refer to them:

- January this year – 3 weeks
- September last year – 1 week
- June last year – 2 weeks
- Apr to May last year – 2 months

After Alex last returned from sickness absence, they sent a copy of the GP's letter to their line manager but have heard nothing more about it – they don't know if the manager ever did anything with it. The GP diagnosed work related stress and set out the causes in a report as:

“Short-staffing. Everyone at work is under pressure and continued sickness absences are making it worse.

Bullying. There is a bullying culture in the workplace.

Separation. This is a stressful scenario for anyone, and it is important to also understand the worries about the impact on the children and financial pressures.”

Alex's performance on the job is, and has always been, first rate. They have been highly rated in the last three appraisals even though they have had a lot of time off sick. Alex feels that they would have been promoted by now if it were not for the impact of the separation and the ongoing stress faced at work.

### **Notes re: Roger Plum HOD**

- Roger Plum is a bully.
- He likes to show people up in team meetings and he shouts at people.
- Alex is completely terrified of him, and this is a significant factor in their sickness absences.
- He also goes flying off the handle for no reason from time to time.
- He has a reputation for getting rid of anyone whose performance undermines his own bonus and this is one reason why the department is short staffed.
- Other people copy Roger's behaviour and bully colleagues which is contributing to a lot of sickness absence.



# **Disciplinary and grievance procedures for Activity B**

## **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 he or his companion cannot attend on the date suggested he must notify his 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 he would normally be expected to work were he not suspended. There should be no financial detriment to an Individual during suspension or, except where a financial disciplinary sanction is subsequently imposed, on his 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 his right to appeal against the decision if he is 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 his decision within 10 working days, the Manager will give an explanation to the Individual for the delay and inform him when a response can be expected.

## **Appeal**

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

## **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 his 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, his grievance and send the statement to his 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 he 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 his right to appeal against the decision if he is not satisfied with it. If it is not possible for the Manager to respond with his decision within 10 working days, the Manager will give an explanation to the Individual for the delay and inform him when a response can be expected.

## **Appeals**

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

If the Individual wishes to appeal, he 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 his decision within 10 working days, the Manager will give an explanation to the Individual for the delay and inform him when a response can be expected.

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

## Activity B: Pre-planning for hearing

We will break into groups of two or three and work out a strategy for the upcoming hearing meeting.

Using the planning sheet to get ready for the meeting.

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 effect could they have had?

Where can they be brought up?

### 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 how's. Identify closed questions that highlight the key points of your case e.g. 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 e.g. testimony from colleagues, good performance/conduct.

Include arguments in mitigation, if relevant.

## **Feedback from Activity B**

As a group we will discuss as a group how the interviews went, check all the relevant information has been identified and decide on the strategy for the hearing.

**What is your plan for the hearing?**

**Who is saying what at the hearing?**

**What is your acceptable outcome?**

**How are the rep and the member going to speak to each other at the online meeting?**

## Hearings online

The sort of things to consider when management suggest conducting disciplinary and grievance meetings online are:

- Are there any accessibility issues for yourself and member? These range from being able to read and understand all the evidence presented. The ability the question witnesses properly
- Can the rep and the member communicate properly and are able to arrange for a pre-meeting of some sort?
- Is everyone in agreement that the meeting can be recorded?
- How is the privacy being considered as to where the participants are connecting for the meeting, can it be overheard?

## ACAS guidance for online hearings

The employee should not be disadvantaged by the hearing being held online.

### **The employer should:**

- explain the employee's alleged misconduct or performance issue
- explain that if the allegations are proven then this may result in a final written warning or even dismissal
- go through the evidence
- make sure someone takes notes.

### **The employee should be given the chance to:**

- set out their case
- answer any allegations
- ask questions
- show evidence
- call relevant witnesses (with good notice)
- respond to any information given by witnesses
- choose if their companion can speak for them at the hearing.

### **The employee's companion should be allowed to:**

- set out the employee's case
- respond for the employee to any comments or points made at the meeting
- talk with the employee during the hearing
- take notes
- sum up the employee's case at the end of the hearing.

## Recording video meetings

Employers should keep a written record of any disciplinary or grievance cases they deal with. Disciplinary or grievance meetings held by video may be digitally recorded with the agreement of everyone involved.

If there's agreement to digitally record a meeting, this must be done in line with data protection law.

[Disciplinary and grievance procedures during coronavirus \(COVID-19\) - Acas](#)

## Activity C: The disciplinary hearing

We will practice accompanying the rep to an online hearing using role play. In pairs one will play the rep and the member. **The management and HR will be played by the tutors.** The hearing will be run twice to give you chance to take on the roles and observe the other group. We will then discuss as a group the outcome of the hearing and reflect on whether it could have gone better.

## 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?

## And finally...

We really 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](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**

[https://archive.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG\\_Guide\\_Feb\\_2019.pdf](https://archive.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf)

### **Guidance on conducting workplace investigations**

[https://www.acas.org.uk/media/4483/Conducting-workplace-investigations/pdf/Conducting\\_Workplace\\_Investigations.pdf](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>

### **Prospect personal case pro forma**

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

### **Settlement agreements – code of practice 4**

[http://m.acas.org.uk/media/pdf/f/k/11287\\_CoP4\\_Settlement\\_Agreements\\_v1\\_0\\_Accessible.pdf](http://m.acas.org.uk/media/pdf/f/k/11287_CoP4_Settlement_Agreements_v1_0_Accessible.pdf)



# Appendix 1

## Deadlines for employment tribunal and personal injury claims

Prospect 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 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 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

<b>Breach of contractual right – failure to pay wages, unlawful deductions, statement of particulars, failure to give notice</b>	Within three months of the breach taking place
<b>Discrimination cases</b>	Within three months of the incident being complained of
<b>Violation of statutory entitlement e.g. working hours, paid holidays, family rights etc.</b>	Within three months of the employee becoming aware of the issue
<b>Unfair dismissal</b>	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)
<b>Statutory redundancy pay</b>	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 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

### 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: A legal case showing the 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 as 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.