DELIVERING COMPASSIONATE CASE WORK

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ACAS Code

Whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should carry out any necessary investigations, to establish the facts of the case.
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
- Employers should allow an employee to appeal against any formal decision made.
ACAS Guidance

Conducting workplace investigations

STEP 1: Organisational preparation
- Decide if an investigation is necessary
- Establish terms of reference – the rules that the investigation will follow, including precisely what needs to be investigated
- Choose an appropriate investigator

STEP 2: An investigator’s preparation
- Draft an investigation plan
- Identify who might need to be called to an investigation meeting
- Identify what evidence might need to be gathered – and how to get it
- Contact parties involved in the matter

STEP 3: Handling an investigation meeting
- Establish who can accompany employees at the meeting
- Plan what questions need to be asked
- Interview the parties involved and any relevant witnesses
- Handle reluctant witnesses or refusals to meet appropriately

STEP 4: Gathering evidence
- Arrange and agree witness statements
- Collect any relevant written records and documents e.g. timesheets
- Collect any relevant and appropriate physical evidence e.g. CCTV

STEP 5: Writing an investigation report
- Plan the structure of the report – remember there is a free Acas template available to use or adapt
- Report what is likely to have happened – the balance of probabilities
- Make a recommendation where requested

STEP 6: After an investigation is completed
- Submit the report and conclude the investigator role
- Retain the report for an appropriate period of time
- Ensure any recommendations unrelated to the matter are considered

October 2015

Slide Deck 2
How does Employment Law fit in?

• Some of the key UK employment law principles are a very good fit with a just culture

• Employment law operates above all in accordance with the principle of reasonableness. The commitment to treating employees in a reasonable and fair way is embedded in the concept of a just culture in the workplace.

• When considering if an employer has treated an employee fairly there is a strong emphasis in UK case law on the importance of a full proper and fair investigation. For example if you have not carried out a full proper and fair investigation and dismiss an employee it is very likely indeed that the dismissal will be unfair.

• **Intention** - the deliberate harm test in just culture is also a key concept relating to fairness. When looking at conduct issues the question of whether someone has acted deliberately is very important

• **Training**, or rather appropriate and sufficient training is also another key requirement in a just culture and very important when considering issues of fairness for employees in relation to conduct or performance
Employment Law and Just Culture – the same Aims

• The requirement to see whether there are any mitigating circumstances before taking any action in relation an individual employee is also central to both a just culture and employment law.

• Even if someone has committed misconduct or gross misconduct employment law always requires a full consideration of all of the circumstances and this is central to the whole idea of a just culture
Employment Law Benefits of a Just Culture

- If an employer follows the just culture guide it is a given that as well as having happier employees they will have fewer disputes and employment tribunals. Just culture also gives paramount importance to key considerations that employment law requires and in many instances helps to deploy those considerations at the earliest stage and as fully as possible.

- Therefore as well as having a happier and more engaged workforce a just culture should save its organisation money as it should reduce significantly the money spent on legal costs
A just culture guide

Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a communication framework to help determine whether a staff member is involved in a patient safety incident. It is intended to help guide staff on how to evaluate the circumstances and actions of a staff member to determine whether they should be involved in an investigation. The guide provides a framework to help ensure there is consistency in the way incidents are evaluated and that staff are treated fairly and with integrity.

Q1. Deliberate harm test
1a. Was there any intention to cause harm?

Q2. Health test
2a. Are there indications of substance abuse?
2b. Are there indications of physical ill health?
2c. Are there indications of mental ill health?

Q3. Foresight test
3a. Are there agreed protocols/accepted practice in place that apply to the actions in question?
3b. Were the protocols/accepted practice workable and in routine use?
3c. Did the individual knowingly depart from these protocols?

Q4. Substitution test
4a. Are there indications that other individuals from the same peer group would behave in the same way in similar circumstances?
4b. Did the individual miss out when relevant training was provided to peer group?
4c. Did more senior members of the team fail to provide supervision that normally should be provided?

Q5. Mitigating circumstances
5a. Were there any significant mitigating circumstances?
Decision tree we piloted in 2017
Case Study 1

Allegation

Ben, a qualified nurse went to borrow mugs from another ward.

Another staff member called him the mug thief and he made a homophobic comment.
Case Study 2

Allegation

Karen, a qualified nurse made an inappropriate comment on social media about a patient in another Trust. Trust A informed Trust B (Karen’s employer) and stated it brought the Trust into dispute and breached NMC Code of Conduct.
Case Study 3

Allegation

Sandra a HCA had taken contraband (prohibited) items into a secure environment, which is a breach of the security regulations and Trust policy procedures.
Case Study 4

Allegation

John, a Finance Officer authorised a supply change on the finance system, which enabled the inappropriate payment of (£0.904m) to a third party, breaching the trust policy and procedure.