



## The HR Edit

### Series 1, Episode 1: DISCIPLINARY 101

[Music]

#### Helen:

Hello and welcome to the HR Edit. South East Employers brand new podcast taking a look at those common and often tricky HR questions.

The podcast is free to listen to, you can find it on Apple Podcast or wherever you get your podcast and on our website at [www.seemp.co.uk/thr-edit](http://www.seemp.co.uk/thr-edit), which is also where members will find any related resources mentioned in our episodes.

This podcast is not just at HR experts, but it can be a useful refresher. We have created it with managers in mind as well to help them navigate through some of the complexities of people management and reduce some of the potential pitfalls.

In Series 1, the HR edit will cover a variety of topics including TUPE, Modification Order and Continuous Service and much more.

With me today we have our favourite HR expert and Employment and People Insight Manager at SCE Michelle. Hi Michelle!

#### Michelle:

Hello and SEE's Business Development Manager Sarah. Hiya Sarah.

#### Sarah:

Hello!

#### Helen:

So, for our first episode we have Disciplinary 101. A slightly scary sounding topic for someone like myself who can confidently claim to be an HR un-expert. But something HR teams may have to deal with on a fairly regular basis I imagine Michelle?

#### Michelle:

Absolutely.

#### Helen:

Okay so jumping right in, what are the most important things about a disciplinary?

#### Michelle:

For me there are two fundamental things to remember when conducting any disciplinary action. The first is the purpose of disciplinary and the second is the way you go about it.

The word discipline originates from the Latin meaning instruction or knowledge,



which means the purpose of any disciplinary action should be to educate and improve the conduct of the employee.

Unfortunately, disciplinary action is often used or seen to be a method of punishment. While disciplinary action may result in sanctions, that shouldn't be the primary goal. The other fundamental thing for successfully managing disciplinary action is the way you go about it. There are several steps that must be followed, but provided these are conducted in a fair and reasonable manner, given all the circumstances. Any disciplinary decisions made should be defensible.

**Sarah:**

So, what are the steps Michelle? And do you have any examples of when a disciplinary procedure should be used or would perhaps be the most appropriate course of action?

**Michelle:**

The first step is to have a policy in place, even if you simply refer to the ACAS code of practice on managing disciplinary action.

Any disciplinary policy should link to a robust code of conduct as well. This is where you set out the expected standards of behaviours for your employees and indicate what level of misconduct, particular inappropriate behaviours would be treated as.

For example, repeatedly arriving late for work without good reason would be misconduct, falsifying time sheets and claiming to be working for longer than you actually are, would be gross misconduct as it's essentially fraud.

**Helen:**

Okay, so let me make sure I understood. You need policies in place so employees are explicitly aware of what is expected and then if the expectations aren't met, you have grounds for action.

**Michelle:**

That's correct, yes.

**Helen:**

Okay, great. So, you mentioned levels of misconduct. Why are the levels so important?

**Michelle:**

The level of misconduct will generally inform the way you manage the case and what the potential outcomes might be.

Persistent lateness would initially be dealt with informally and if no improvement seen then move on to a formal action which may result in a first written warning.

Fraud or theft, however, could result in suspension during the investigation and possibly dismissal after just the first offense.



**Sarah:**

So, like most things in HR Michelle, it's a case by case judgment and potentially, as you said, a case can start with an informal warning but could soon escalate if required.

**Michelle:**

Yep, absolutely.

**Sarah:**

You've mentioned suspension could be involved. How do you decide whether to suspend somebody?

So, suspension should only be used when there is a genuine belief that the alleged misconduct has taken place and that there is a risk to people, evidence, or property. It must be carefully considered before implementation, clearly communicated to the individual, specifying that it is not in itself a sanction, but is to enable a fair and thorough investigation to be conducted.

It must also be kept under regular review to determine whether the initial risk identified to person evidence or property remains a concern. And if it is no longer a concern, the suspension should be lifted. This minimises the impact of a suspension on both the individual and the organisation.

It also means that the suspension does not tip over into a form of sanction. It is important to remember that while suspension is not a sanction itself, it will feel like it is to the individual and there needs to be very clear messaging back to the team that does not break any confidentiality.

**Helen:**

So, am I right that a suspension is not a punishment, but to enable an investigation to be carried out?

**Michelle:**

Where the suspension is in place while the investigation is carried out, yes. Suspension can be used as a penalty once the investigation has been concluded.

**Helen:**

Thanks, Michelle. That's a great overview about disciplinary in general. Let's get into the details now. What would you suggest are the key steps to take in a disciplinary case?

**Michelle:**

So, as I've hinted already, this will depend on what the misconduct is. In the case of persistent lateness, the first step would be to have an informal conversation between the individual and their line manager. This is the opportunity for the manager to remind the employee of the expected standards of behaviour and ask the employee if there are any reasons preventing them from attending work on time. If there are genuine reasons such as caring



responsibilities, the line manager should seek to provide support by allowing some level of flexibility, perhaps in start times or some other reasonable adjustment.

Where there is no genuine reason, the employee should be advised that they need to improve. Suggestions to support this can be offered such as setting an alarm clock earlier. And a warning issued that if lateness continues, this may result in formal disciplinary action being taken.

**Helen:**

What about in more serious cases?

**Michelle:**

Where more serious allegations of misconduct arise, the manager should, through an initial set of inquiries, seek to understand whether there is a credible concern of misconduct. Once there is a genuine belief in the credibility, the line manager should inform the employee that a concern has been raised about their conduct.

This should be done as soon as possible, preferably face to face or on a video call and should provide the individual with the specific allegations that will be investigated. A rough indication of timelines and what will happen next should be given. If the individual is to be suspended, the details and terms of that suspension need to be communicated too.

**Sarah:**

So once the initial inquiries are then completed and the individual has been formally notified, what happens next?

**Michelle:**

Next comes the investigation itself. An investigating officer should be appointed who should interview any witnesses to the alleged misconduct and then the employee who should be given the opportunity to defend themselves against the allegations and provide evidence of their own.

The investigating officer should then compile the evidence into a report and depending on local policy, either make recommendations as to whether there is sufficient evidence to move to a disciplinary hearing or simply present the evidence for the commissioning manager to draw their own conclusions from.

While investigation interviews are informal meetings and therefore there is no statutory right to be accompanied by trade union representative or workplace colleagues, most policies do allow for this.

Where there is sufficient evidence to support moving to a disciplinary hearing, this should be communicated to the individual as soon as possible and a date set for the hearing giving at least five working days' notice.



**Helen:**

Can you tell us a little bit about the actual hearing itself?

**Michelle:**

Yes, so the hearing itself is a formal meeting and therefore the employee will have the right to be accompanied by a trade union representative or workplace colleague. There may be limited occasions where an employee requests for a family member or other advocate to accompany them.

This should be considered on a case-by-case basis and generally only agreed where there are other factors such as mental health concerns or disability to consider. The hearing manager or members of the panel should not have been previously involved in the case and the hearing is an independent review of the evidence presented by the manager with the investigating officer called as a witness. Once all the evidence has been presented, the hearing manager or panel should give it due consideration and determine whether it is more likely than not that the individual carried out the misconduct.

**Helen:**

Are you allowed to request a Solicitor to be present in the hearing?

**Michelle:**

Requests to be accompanied by a legal professional should really be denied in all cases but those where the decision of the organisation itself will be career ending. That is that the decision of the disciplinary panel rather than a professional body will prevent the individual ever working in their field again.

**Helen:**

Okay, so what happens in a case where the misconduct is proven in the hearing? What does the organisation need to ensure they do?

**Michelle:**

So, where the misconduct is deemed proven, this should be communicated to the individual as soon as possible along with details of any sanctions to be put in place such as a first or final return warning, a period of suspension without pay, demotion or termination.

The outcomes must be communicated in writing and the individual must be notified of their right to appeal the formal sanction.

While the employee can appeal just because they don't like the outcome in general, they should really be able to appoint to a failure to follow policy or lack of consideration of some of the evidence.

**Sarah:**

Career ending sanctions sounding incredibly serious. Can you explain what this means in practical terms Michelle?

**Michelle:**

Absolutely. A career ending sanction generally dismissal is one that means that the individual will no longer be able to work in that field. There are very few situations where a decision to dismiss by the employing organisation will amount to a career ending sanction.

Generally speaking, it is a professional body that removes the right to practice. For example, social workers, solicitors and medical professionals all have to be registered with a professional body in order to practice. Therefore, it would be that body that makes the decision that might be career ending, albeit based on the referral from their employer.

**Sarah:**

So, it is as serious as it sounds and essentially it's like being struck off if you're a solicitor. Can you tell I watch a lot of serious crime drama?!

All of this, the disciplinary process of potentially a hearing can cause untold stress to those involved. So, what happens if the employee goes off on sick leave?

**Michelle:**

This is quite often the case. An individual being told that they are about to be investigated will more often than not cite stress as a reason that they are not fit to work. As the manager, you accept the fit note from the GP and treat the individual as being sick. Alongside this, the individual should be referred to occupational health for a decision as to whether they are actually fit to participate in the disciplinary process as this is different. More often than not, occupational health will state that they are fit to participate, and it is in their best interest to do so as it is the investigation hanging over them that causes the stress.

**Helen:**

So, with that in mind, how can this be dealt with in a sensitive manner so as not to cause more stress to the person in question?

**Michelle:**

Participation may look different in these situations. For example, the investigating officer may supply a set of written questions allowing the individual to respond in writing. The investigation meeting may take place at a neutral venue. The individual may nominate a representative to communicate their evidence on their behalf. But the investigation should still take place in a timely fashion.

**Helen:**

Right, so there are allowances that can be made to whatever an employee doesn't turn up to the hearing.

**Michelle:**

To some extent, this depends on the reason why they're not turning up. But, generally speaking, if they don't attend the first arranged date, it is reasonable to adjourn the hearing, set a new date for the hearing and offer the employee the opportunity to attend on that date.



This would be the employee can be given the option of sending a representative in their place rather than attending themselves. If they fail to attend the second hearing date, without good reason, the hearing can proceed in their absence with the outcome communicated as soon as possible by telephone and confirmed in writing.

**Sarah:**

As you will know all too well, Michelle, as our HR guru, we often get asked how to manage a disciplinary case where a police investigation is ongoing. What would you advise in this instance?

**Michelle:**

Firstly, it's important to establish whether the police matter directly impacts on the ability of the individual to continue to carry out their role with you. For example, does an allegation of GBH after a night at the pub mean that the employee is no longer fit to work in an accounting role? If there's no direct impact, then it may not be necessary to undertake any disciplinary action at all. But where behaviour outside of work impacts on a person's ability to continue their role, then this is a tricky area as you don't want your internal disciplinary investigation, jeopardising the police's criminal investigation. The Association of Chief Police Officers recognises the importance for employers to conduct their own internal investigations as soon as possible. It is therefore important to remain in contact with the police team to understand when it is possible to conduct your own investigation. It may also be worth discussing whether the police interview notes can be shared with the employer with appropriate permissions from the interviewees to avoid re-interviewing and delays to the internal process.

Just remember the burden for proof for criminal cases is much higher than that required for disciplinary purposes.

**Sarah:**

Yes, actually that's a really good point to remember. I can imagine the managing of a disciplinary for the employees in the HR team or the managers themselves, and other people concerned can be really stressful too after all we are emotional beings.

**Michelle:**

Yes, absolutely. And as HR, we have to remember that the line managers or the investigating managers will also be under a lot of stress, and we need to support them as well. So, making sure that they are aware that EAP schemes are available to them if they need extra support from occupational health. That can be made available to them as well.

**Helen:**

Amazing Michelle. Thank you so much for talking us through that brief but very insightful look at the disciplinary process and an overview of what's involved.

If you are a member of SEE and have any questions or queries related to disciplinary, you can always contact us at [advice@seemp.co.uk](mailto:advice@seemp.co.uk) and we have a whole host of information,



resources and various details about the services SEE offers available on our website at [www.seemp.co.uk](http://www.seemp.co.uk)

Thank you for joining us. As I said, The HR edit will be available on the SEE website at [www.seemp.co.uk/thehredit](http://www.seemp.co.uk/thehredit), on Apple Podcasts or wherever you get your podcasts and we hope to see you back next time when we will be discussing modification orders and continuous service.

Thank you very much and we'll see you then.

[*Music*]

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