

# A Useful Guide to Managing Conduct

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# A Useful Guide to Managing Conduct

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## Why should I read this Useful Guide?

This Useful Guide has been written with the primary objective of providing you with guidance to help you deal with conduct issues. It is suitable for all line managers and new internal HR consultants.

The aims of this Useful Guide are to ...

- Provide you with a general understanding of managing employee conduct issues.
- Stimulate you to think about how you might manage conduct issues.
- Give you some ideas about how to manage conduct issues.

If you are part of an organisation with its own Conduct Policy please read this Useful Guide in conjunction with the policy.

*The information provided in this Useful Guide is based on good practice and for general guidance only. It does not constitute nor is it a substitute for legal advice. If you need advice about a particular legal issue, you should consult a member of the legal profession.*

The exercises in the Useful Guide can be done on your own paper, on the Useful Guide, if you have printed it, or in the MS Word toolkit on your computer. You can download the MS Word toolkit from [here](#). The toolkit also contains the template letters so that you can copy and paste them into your own letter format.

## Contents

	Page
<a href="#">Chapter 1</a> – What is conduct?	5
<a href="#">Chapter 2</a> – An overview of the conduct process	13
<a href="#">Chapter 3</a> – The formal procedure – the investigation	17
<a href="#">Chapter 4</a> – The formal procedure – the conduct meeting	23
<a href="#">Chapter 5</a> – The formal procedure – the right of appeal	35
<a href="#">Chapter 6</a> – Gross misconduct	40
<a href="#">Chapter 7</a> – The importance of keeping good records	42
<a href="#">Chapter 8</a> – Some useful management skills	45
<a href="#">Further Sources of Information</a>	51
<a href="#">Appendix A</a> – Identification of conduct and capability issues	52
<a href="#">Appendix B</a> – Some main benefits of managing conduct	53
<a href="#">Appendix C</a> – Types of misconduct	55
<a href="#">Appendix D</a> – Some examples of questions for informal conduct discussions	56
<a href="#">Appendix E</a> – The legal basics	57
<a href="#">Appendix F</a> – Sample template letters	58
<a href="#">Appendix G</a> – Investigation mini-scenarios	64
<a href="#">Appendix H</a> – Quiz 1 answers	65
<a href="#">Appendix I</a> – Ideas on how to deal with some difficult situations that may arise during a conduct meeting	66
<a href="#">Appendix J</a> – Quiz 2 answers	67
<a href="#">Appendix K</a> – Suitable conduct questions	68
<a href="#">Feedback</a>	70
<a href="#">Janice Lawrence</a>	70

## Chapter 1 – What is ‘conduct’?

You may have seen organisation policies headed with words such as ‘conduct’, ‘capability’ and ‘disciplinary’. All are concerned with employees not performing to the required standards at work. It is important, however, that we are clear about the differences between the meaning of these terms because it will affect the way we deal with an issue.

**‘Capability’** concerns individuals’ **ability** to perform their jobs. Employees may not be fully capable of carrying out their jobs because they lack the necessary knowledge or skills. For example, if new computer software is introduced, an employee may struggle to complete tasks using it unless appropriate training is provided.

**‘Conduct’** relates to individuals’ **attitude** towards performing their jobs. Misconduct occurs when an employee has the required knowledge and skills but does not display the required behaviour. For example, although an employee knows what the required organisation dress code is, he/she decides to ignore it.

**‘Disciplinary’** is the name sometimes used for a procedure to deal with capability and conduct issues because there can be a disciplinary outcome. This word tends to be used less now as a policy and procedure heading, as the outcome of the implementation of a procedure dealing with conduct/capability is not always a disciplinary penalty.

Your organisation is likely to take a different approach to, and may have separate procedures for dealing with, conduct and capability issues.

This Useful Guide looks at managing conduct issues.

### Looking at the following examples, which do you think are ‘conduct’ and which ‘capability’ issues?

1. Alex was observed smoking outside the front of the offices, which is a non-smoking area under the company’s policy.
2. Billy is having problems implementing the new purchasing rules and procedure.

3. Charlotte's three most recent performance reports have been produced late.
4. Di has been appointed into a management position recently and is having problems managing her team.
5. Eli has been late for work several times over the past two weeks.
6. Freda has criticised her work colleagues in front of external clients a number of times over the past month.

Now look at [Appendix A](#) to see the answers.

As already mentioned, the reason for an employee not performing his/her job to the required standard, i.e. conduct or capability, determines the procedure under which the matter should be dealt with. However, there may be cases where the apparent reason for the underperformance may be a result of a different hidden underlying cause. For example, in case 3 above, if there had been a change in the way the work is done and Charlotte had not been properly informed about it, then you could in fact be facing a capability and not a conduct issue.

So, although you may start to address an issue by the use of one procedure, say conduct, you may find that, as you have discussions with the employee, it becomes apparent that there is a different underlying cause, e.g. capability, and, therefore, you may need to deal with the issue in a different way than first thought.

*Tony is the manager of an accounts department of 10 staff. Una reports to him as an accounts supervisor. She has been with the organisation for 20 years and has worked her way up to her current role.*

*Recently the organisation has introduced a number of new work systems and processes to increase efficiency. One of these is a new accounts database. Everyone in Tony's department has received training on the use of the new software.*

*While Tony expected a slightly higher level of error reports while his team got used to the new system, the incidence has been higher than predicted. Particularly repeat mistakes by the more junior members of the team.*

*Tony has met with each of the junior staff members concerned. Most said that they were experiencing some problems but were reluctant to approach their supervisor, Una, for help. She often appeared annoyed at being interrupted and said that she was too busy to deal with their problems then and that they should try to sort it out themselves.*

*Tony realised he had a potential misconduct problem to deal with concerning Una's approach to these staff and failure to fully carry out her supervisory duties.*

*Tony had an informal conduct discussion with Una about the situation. At first she was defensive and blamed pressure of work. Tony dug deeper to try to find out if there was any underlying cause for Una's behaviour that she had not mentioned. After a while it came to light that she was also having problems with the operation of the new system. However, she had been reluctant to admit this. She was worried that, as someone with long experience and in a supervisory position, she would be expected to know the system well and, if she didn't, it would reflect badly on her.*

*Tony realised that what at first had appeared to be a conduct issue was in fact a capability matter. He was able to deal with it by arranging for some one-to-one training for Una.*

## Why should I bother to deal with conduct issues?

As managers, we can think of reasons why we can put off giving attention to managing the conduct of our employees. We are busy and have more important things to do. It could be an unpleasant experience and may damage our working relationship with the employee, so is better avoided. We may not have had to deal with conduct before and may feel lacking in the confidence to do so. Or, we may be worried about being accused of bullying.

This can lead us to make excuses about why not to take action ...

- Actually the problem is not as bad as I first thought.
- If I do something, it will make the situation worse.
- If I leave the situation alone it will resolve itself.

It takes our time and effort to deal with conduct, therefore, we need to understand why we should do so. Take a few minutes to think about why it is important to deal with conduct issues. You may find it easier to do this by considering separately the benefits for the organisation/manager and those for the employee. Then list them in the table below.

### Benefits for the organisation/manager ...

### Benefits for the employee ...

Some of the main benefits are listed in [Appendix B](#).

### What are the different types of misconduct?

Different organisations will have different definitions of different types of misconduct. There are, however, three commonly used categories ... 'minor', 'serious' and 'gross'.

The category that any particular case of misconduct falls into depends on the extent to which an organisation requirement is not being met and the magnitude of the adverse impacts. Some examples of behaviours that might come within the different levels are ...

#### Minor misconduct ...

- Failure to perform a minor job duty
- A few instances of slight late arrival at work where the employee's lateness does not have a significant negative impact on the organisation's operations
- A few occasions of taking slightly extended meal breaks
- Minor divergence from the organisation dress code.

### Serious misconduct ...

- Insubordination
- More frequent late arrival at work
- Misuse of the organisation's internet
- Repeated foul language
- Engaging in other paid employment without authorisation.

### Gross misconduct ...

Gross misconduct is conduct that is so serious that it damages the relationship between the employer and the employee to such an extent that trust and confidence is lost, which makes it extremely difficult to continue to work together.

The examples of what may constitute gross misconduct tend to be more similar across organisations ...

- Refusal to perform an important job duty
- Endangering the health and safety of others
- Fraud
- Theft
- Violence
- Serious damage to the reputation of the organisation
- Deliberate or serious damage of company property
- Serious breach of confidence
- Serious insubordination.

**Take a look at the following misconduct issues and decide whether you think they are likely to be minor, serious or gross misconduct ...**

1. Heidi has been 5 minutes late for work, three times in the past month.
2. Ivan was seen punching Josh on the shop floor.
3. Kevin peppers his conversations with swear words.
4. Lou has been late back from her lunch break on several occasions in the last month.

5. Matt has refused to carry out one of the less important parts of his job.
6. Neil has passed sensitive company information to a friend who works for a competitor.

Now look at the answers given in [Appendix C](#).

Check your organisation's conduct policy to see what types of behaviour are given as examples of the different levels of misconduct.

The level of alleged misconduct will impact on how it is dealt with and this is covered in the following chapters.

### **Some tips for dealing with conduct issues ...**

- If you have a conduct issue to manage, the aim should be to improve the conduct, wherever possible, not to impose a penalty.
- If you are concerned about the response you may get from your employee, remember, as a manager, you have a responsibility to manage how your staff perform their work. The important thing is to deal with the behaviour and not attack the person. For example, if you have an employee who becomes annoyed when dealing with customers' complaints, do not say "You are useless at dealing with customer complaints", which suggests they are hopeless as a person. Explain what it is about his/her behaviour that is not acceptable. For example, "When dealing with customers, you should not lose your temper and should remain polite".
- Ensure that your employees understand what is expected of them at work. Explain your organisation's employee rules of conduct, e.g. that they are required to turn up for work on time, that swearing is not permitted etc. Also, the performance standards they are required to meet in their jobs, e.g. to produce reports on time, deal with customer complaints politely etc.
- You should address conduct issues as soon as possible. It is best to deal with an issue early before it escalates and becomes a more difficult or serious matter. It is also unhelpful for these matters to drag on as they can damage working relationships and place unnecessary pressure on those involved.

- Deal with conduct matters objectively, fairly and consistently. Otherwise your employees may become demotivated. There is also a risk that an employee may bring a claim of unfair discrimination or dismissal to an employment tribunal. Preparing for and attending a tribunal will involve you in a lot of time, effort and cost.
- To help your employee understand why his/her behaviour is unacceptable, explain the consequences for him/herself and others if his/her conduct does not improve.
- To help the employee improve his/her conduct, arrive at some agreed actions with him/her, so that he/she is clear about what needs to be done. It is good if the employee suggests a solution, as he/she will more likely be committed to achieving this than some action that is imposed.

## Chapter 2 – An overview of the conduct process

Minor misconduct is often best dealt with informally by discussing the matter with your employee during your normal day-to-day/supervision conversations. If you deal with these issues at an early stage, they can often be resolved much more easily and be prevented from becoming more serious.

If the minor misconduct is not resolved by these informal discussions or there is an alleged case of serious or gross misconduct, then you may need to handle the matter by use of a formal conduct procedure.

### What does the 'informal' process involve?

Many misconduct issues can be dealt with by an informal chat explaining why the behaviour is unacceptable and what the employee needs to do to improve it. Sometimes an individual behaves inappropriately because he/she does not know what is required or that his/her conduct is not acceptable. The behaviour will often improve once this is explained.

You can carry out the informal conduct discussion during normal day-to-day conversations or a supervision meeting with the employee.

Some **tips** for carrying out an informal discussion are ...

- Remember you are trying to help the employee improve his/her conduct, not punish him/her. Use positive language and be supportive to encourage the employee to change his/her behaviour.
- The objective of the discussion is to ...
  - make the employee aware that his/her behaviour is not acceptable
  - make the employee aware of the standard they should be meeting
  - encourage him/her to come up with a solution for improving the unacceptable conduct, including targets, timescales and review dates.
- Think about how you will explain the unacceptable behaviour to the employee. Prepare specific examples of when this behaviour has occurred, including dates and times, and the consequences for the employee and others, e.g. the team, organisation, and customers.

- Check whether the employee understands the behaviour and standards required. Remember, his/her performance against these should be discussed regularly at work review meetings, which should help prevent unacceptable behaviour occurring in the first place.
- Think about what you want to ask the employee and decide on your lead-in questions. You want to know ...
  - his/her side of the situation
  - why he/she behaved in the way he/she did
  - does he/she understand why the behaviour is not acceptable?
  - are there any underlying causes?
- Give the employee a chance to respond and listen to what is said. You want to understand why the employee is behaving the way he/she is and whether there are any hidden underlying causes, e.g. personal problems. If the unacceptable behaviour is due to a temporary change in the employee's circumstances, e.g. a problem with childcare, it may be possible to adapt the work requirements in the short-term until a longer-term solution is found.
- Find somewhere you can talk to the employee in private and avoid interruptions.
- If, during the discussion, it becomes clear there is no problem, let the employee know this and that you will not be taking the matter any further.
- If it becomes clear that the conduct issue is more serious, you should stop the conversation and inform the employee that the matter will need to be dealt with under the formal procedure.

Even though the discussion is informal, it is good practice to keep notes of the key points discussed and what action was agreed. This will act as your record to monitor progress against and for future reference purposes. For example, you may need to explain what was done to manage the informal process if you have to go through the formal procedure or give evidence at an employment tribunal.

Give a copy of any agreed actions to the employee so that he/she is clear about what needs to be achieved. Remember, this is not a formal process, so it is not necessary to have a formal record of it, e.g. a letter.

It is important that you review progress against the action agreed, so review dates should be set. At the review meeting(s) start by discussing any improvement in conduct. This can help set a positive note for the conversation. Then, if the behaviour has not improved completely, discuss why and what still needs to be done and agree future actions.

**Imagine that you are going to have an informal conduct discussion with one of your team. He/she has been late providing his/her last 2 monthly activity reports. You need these reports for your monthly meetings with the department management team. Write down some of the questions you may wish to ask.**

Some examples of questions are given in [Appendix D](#).

### **What is the 'formal' procedure?**

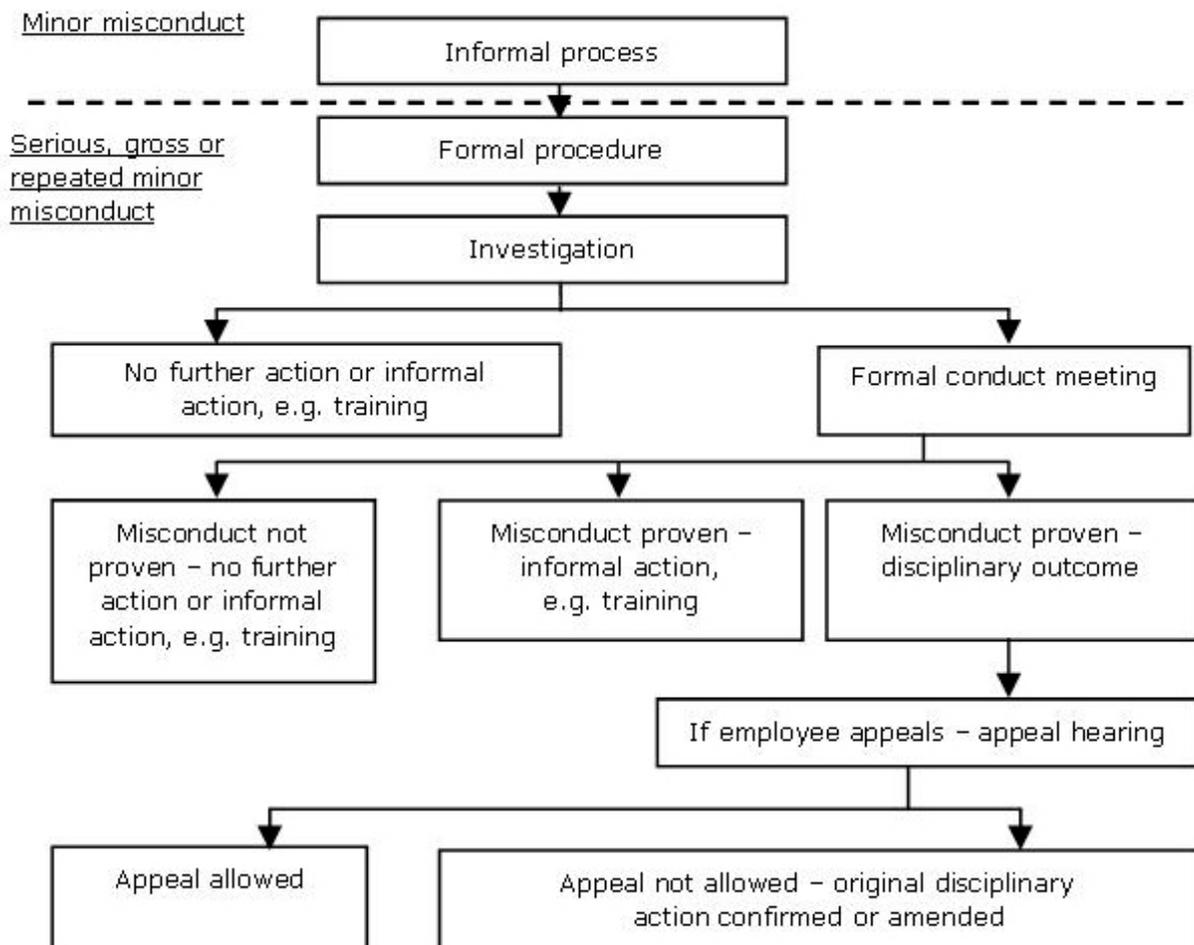
There may come a point where you have tried to deal with a conduct issue in an informal way but the lack of sufficient improvement and the impact on operational effectiveness means that the matter needs to be escalated and dealt with under your organisation's formal procedure. Or, if the alleged misconduct is more serious or gross misconduct, then you should use the formal procedure.

The structure of a formal procedure will differ from one organisation to another to meet the particular needs of each. It should, however, take into account requirements set by UK legislation – more information on this is given in [Appendix E](#).

As a minimum, the formal procedure should provide for an investigation, a formal meeting with the employee and an employee appeal. We will go through these stages in the next chapters.

### What are the stages I need to go through to manage conduct issues?

The conduct process can be illustrated diagrammatically as ...



## Chapter 3 – The formal procedure – the investigation

### Why do I need to conduct an investigation?

It is important that you ensure that an investigation is carried out in any case where you are considering holding a formal conduct meeting.

We need to remember that although there has been alleged misconduct, the employee is 'innocent until proven guilty'. Although we will have an amount of information that may suggest that the misconduct has taken place, it is unlikely that we will know the full story.

It would, therefore, not be fair to decide on whether there has been misconduct and what action to take until we have obtained as much information as possible. Even if we have witnessed unacceptable behaviour ourselves, we need to ascertain if there are any mitigating circumstances before we can decide fairly on any action.

For example, we may walk into a room and see an employee punch another. This is unacceptable behaviour but we may have missed seeing the other employee verbally abuse or punch the first employee before we entered the room, so there could be mitigating circumstances to take into account. Disciplinary action should never be taken until as many facts as possible are known.

### What are the objectives of an investigation?

The objectives of an investigation are to ...

- Obtain as much information about the alleged misconduct as possible and in a factual, non-judgmental way.
- Gather information that covers both the organisation and employee viewpoints.
- Decide whether there is sufficient evidence that misconduct might have occurred and, therefore that the formal conduct procedure should be implemented.

It is important to note that it is not the role of the investigator to decide whether any disciplinary penalty should be applied. This will be decided if there is a formal conduct meeting.

### **Who should carry out an investigation?**

It is important that whoever carries out the investigation, it should be done in an objective manner. So, the investigating manager is normally someone who has not been involved in the alleged misconduct situation. This could, therefore, be the line manager or another manager. Also, if there is an allegation of fraud or criminal activity, then a specialist function, such as internal audit, may need to lead the internal investigation.

### **How can I prepare for carrying out an investigation?**

If you have been asked to conduct an investigation, there are a number of things you can do to prepare ...

- Check what the allegation of misconduct is and who was allegedly involved, so that you can think about who you will need to meet with and what information you need to obtain from them.
- Plan how you will run the meetings and how you will explain the purpose and structure to those you will be meeting with.
- Think about your lead-in questions. You want to know the organisation's and the employee's side of the situation, who did what and why, what happened as a result and were there any mitigating circumstances.
- Check whether the employee and/or any of the witnesses need an interpreter or facilitator if they have language or understanding difficulties.
- Check whether the employee and/or any of the witnesses require any reasonable adjustments to be made so that they are able to attend and/or participate fully in the meetings.
- Do you want help with note-taking? If so, who would be a suitable person? It may be wise to have a member of the HR team or another manager present to carry out this role and who can act also as a witness to what occurs at the meeting.
- Think about timings and venue/s. You need somewhere private and where you will not be interrupted.

## How should an investigation be conducted?

The investigation should be carried out as soon as possible after the alleged misconduct has occurred. There should be a target timescale for completion of the investigation, which should be as short as possible.

In a case of alleged gross misconduct and if it is allowed for in the organisation's policy, an employee may be suspended to allow a proper investigation to be carried out. More information on suspension is given in [Chapter 6 on Gross Misconduct](#).

Normally, the employee who has been accused of misconduct should be informed that an investigation is to take place before the investigation is started. Exceptions may be where there is an accusation of fraudulent or criminal activity and there is a risk that the employee may tamper with the evidence. Check your organisation's policy for any exceptions.

The investigating manager will normally speak first with the person making the allegation to find out about the alleged misconduct. Then, normally, a meeting will be arranged with the employee to obtain his/her side of the story. Check your organisation's policy as to whether or not the employee may have a companion at the meeting. Then there would be meetings with any witnesses.

It may be that after some of these discussions, it will be necessary to go back to the employee or others to check new facts and information that have come to light.

The employee can be invited verbally to attend an investigation meeting but this should be followed up with a letter. This letter should ...

- Inform him/her of the alleged misconduct
- Tell him/her that the purpose of the meeting is to carry out an investigation and that it is not a disciplinary meeting
- Enclose any evidence about the allegation, so that the employee can consider it before the meeting
- Inform the employee that he/she may be accompanied, if the organisation procedure allows for this

- Refer the employee to the conduct procedure, so that he/she is aware of what will happen at the meeting and possible next steps. The procedure could be attached to the letter or reference made to where it can be found.

Your organisation will probably have a template letter that can be used for this purpose. If not, there is a sample template that you can adapt to your needs in [Appendix F](#) and the MS Word [downloadable toolkit](#).

If witnesses are to be asked for their statements, they should be informed about the purpose of the meeting, that their statements will be provided to the employee and they may be called to give evidence at any conduct meeting.

If a witness is reluctant to provide a statement, then you should explain why his/her statement is important and encourage him/her to provide one. If the witness still has concerns, then try to find out why. You may need to look into whether there are any reassurances that can be given. If you have an HR department, it is advisable to discuss this with them.

A witness may ask for his/her statement to be anonymous. In certain circumstances, e.g. where there is the possibility of intimidation of the witness, it may be appropriate to allow an anonymous statement to be provided. However, wherever possible you should try to substantiate any anonymous statement, e.g. check whether other witness statements corroborate what has been said. You will need to judge whether an anonymous statement should be given less weight when balancing the evidence to decide whether the matter should be dealt with under the formal conduct procedure. Again, if you have an HR department, it is advisable to consult them about this.

On completion of the meeting with the employee and each, if any, witness, the investigator should produce a statement of what the employee/witness has said and he/she should be asked to sign it to confirm it is a true record. These statements should be produced as soon as possible after the meeting.

### **What happens after the investigation discussions are completed?**

Based on the evidence gained from the investigation, the investigator will make a decision on whether there is sufficient evidence that misconduct may have occurred and, therefore, that the formal conduct procedure should be

implemented. If you have a HR team, you may find it useful to talk with them before coming to your decision, so that you can discuss your thoughts and the reasons for your decision.

The decision resulting from an investigation will be that ...

- There does not appear to be a case of misconduct to answer (in such a case, there may be a recommendation that some informal action is taken, e.g. training given); or
- There appears to be a case of misconduct to answer requiring the formal conduct procedure to be implemented.

Whatever the outcome, the employee should be informed in writing and a copy of the letter kept.

### **Investigation mini-scenarios**

**In each of the cases below, imagine that you have carried out the investigation. Based on the key findings, what decision do you think you might come to and why?**

#### **Case 1 key investigation findings**

- Pat has been found using the internet for personal reasons during work hours on three occasions recently by his line manager.
- The organisation's policy on the personal use of the internet is that this should be done during the lunch break only.
- Pat has signed a copy of the internet usage policy to say he has received a copy and read it.
- His line manager has held an informal conduct discussion with Pat on each occasion about his personal use of the internet.
- Pat states that he only used the internet for personal purposes for about 10 minutes on each occasion and this was because there was an urgent need. He made up the time at the end of the day.

### Case 2 key investigation findings

- Queenie has worked for the organisation for 2 months as a sales representative.
- On four occasions, she has failed to fill out a full record of the sales she has made during the week.
- In your discussion with Queenie it became apparent that she does not fully understand the sales record procedure as she has not undergone the full department induction/training programme and has only received guidance from her busy line manager.

Now read the answers in [Appendix G](#).

You can check your understanding of the material covered so far by completing this mini-quiz.

### Quiz 1

1. What is meant by 'conduct'?
2. When should you deal with a conduct issue?
3. List 3 examples of possible gross misconduct.
4. When would you normally use a formal conduct procedure?
5. If during an informal conduct discussion it becomes apparent that the misconduct is a serious matter, what should you do?
6. Why is it important to carry out an investigation when dealing formally with conduct issues?

The answers are given in [Appendix H](#).

## Chapter 4 - The formal procedure – the conduct meeting

### What happens when a formal conduct meeting is required?

If the decision of the investigation is to follow the formal conduct procedure, then the next step is for the employer to write to the employee inviting him/her to attend a conduct meeting. The letter is usually written by the person who will chair the meeting or a member of the HR team.

The letter should inform the employee of ...

- The reason for the meeting, i.e. to discuss the alleged misconduct. Reference should be made to any work/behaviour standards that have not been met. It is good practice to enclose any evidence supporting the allegation. This is so that the employee has a chance to consider the evidence and prepare for the meeting.
- The date, time and place of the meeting.
- His/her right to be accompanied (more about this below).
- The possible outcomes of the meeting.
- How he/she can access the conduct procedure, so that they know what is required. The procedure could be attached to the letter or reference made to where it can be found.

The letter should be sent out early enough to allow the employee to prepare adequately for the meeting.

Your organisation may have a template letter for this purpose. If not, there is a sample template in [Appendix F](#) and the MS Word [downloadable toolkit](#) which you can adapt.

### What is the right to be accompanied?

Under UK legislation, an employee attending any conduct meeting or appeal hearing where there may be a disciplinary outcome has the right to choose to be accompanied and to select his/her companion.

A companion can be a ...

- Work colleague;
- Trade union official; or
- Trade union representative who is certified to carry out the role.

The right does not extend to a companion being a family member or friend (unless he/she works for the organisation) or a lawyer, although some organisations may choose to allow one or other of these.

The person asked to be a companion does not have to agree to take on the role.

Companions should be allowed reasonable time off work to familiarise themselves with the case, confer with the employee and attend the meetings.

At the conduct meetings/hearings, companions are allowed to ...

- Put the employee's case, if the employee asks them to
- Respond to views expressed at the meeting
- Confer with the employee
- Ask questions
- Sum up the employee's case, if the employee asks them to.

Companions are not allowed to ...

- Answer questions addressed to the employee
- Address the hearing if the employee does not wish it
- Prevent the employer from explaining their case.

### **Who attends the meeting?**

The attendees of the meeting will be ...

- The chair – if possible this should not be the investigating manager. Depending on the organisation's policy, it may be the line manager or another manager of a similar organisation level who has not been involved in the conduct issue. If a possible outcome of the meeting is dismissal, then the chair must be a manager who has the authority to dismiss.
- The employee

- The investigating officer to present the evidence on why there is considered to be a case to answer
- A HR manager to provide technical advice, ask questions and maybe take notes. Or another manager, particularly if you do not have an HR department, to take notes and act as a witness to what happens at the meeting.

There may also be ...

- A companion, if the employee has chosen to be accompanied
- Witnesses
- A separate note taker, if the role is not taken by the HR representative/another manager.

### **What happens if the employee or companion is not able to attend a meeting?**

If the employee or companion is unable to attend the meeting, the employer will need to decide whether or not to reschedule the meeting. It is important that the decision taken can be shown to be reasonable in the circumstances.

So if you are faced with this situation you need to consider the reason for the absence.

If the employee fails to turn up on the day of the meeting without notice, it is good practice to rearrange the meeting to give them another chance to attend. This should be for a date as soon as possible after the cancelled meeting.

If the employee continues to fail to attend meetings but has acceptable reasons each time, then how many times you reconvene the meeting will depend on factors such as ...

- the seriousness of the alleged misconduct
- whether the employee has any current disciplinary warnings
- the employee's medical fitness to attend
- what action has been taken in similar cases in the past.

If there is a medical reason why the employee is unable to attend, it is important, if possible, to obtain a medical opinion on when the employee may be able to attend before you make any decision about what to do.

There will come a point when it is no longer operationally feasible for an employer to defer the meeting any longer. In this case, the employee will need to be informed that a decision will have to be made in his/her absence based on the available evidence. If you have a HR department, it is advisable to consult with them before coming to your decision.

If the employee does not have an acceptable reason for not attending a meeting, then it is good practice to rearrange the meeting but inform the employee that if it happens again, the meeting will go ahead and a decision will be made in his/her absence.

If the companion cannot attend, then rearrange the meeting, within five working days.

### **I am going to chair a conduct meeting, what do I need to think about ahead of time?**

If you are going to chair a conduct meeting, it is likely to go much more smoothly if you carry out good preparation. There are a number of practical actions you can take before the conduct meeting (there is an MS Word version of this checklist in the [downloadable toolkit](#)) ...

- Make sure you have all of the evidence and study it carefully so that you fully understand it.
- Think about who needs to be invited to the meeting.
- Check whether the employee (or any other attendee) will need an interpreter/facilitator if he/she has language/understanding difficulties.
- Check whether the employee (or any other attendee) requires any reasonable adjustments to be able to attend and/or participate fully in the meeting.
- Think about the timings and venue. You need somewhere private and where you will not be interrupted.
- Plan the structure of the meeting and how you will introduce it and explain the roles of those present.
- Think about how you will explain the unacceptable behaviour to the employee and why it is unacceptable, including the consequences of the behaviour for the employee, team, organisation and customers.
- Think about what you want to know from the employee and decide on

your lead-in questions. You want to hear, for example, ...

- Whether or not the employee accepts that his/her behaviour has been unacceptable.
- If he/she does, why they behaved in the way they did
- Does he/she understand why it is not acceptable behaviour?
- Were there any mitigating circumstances?
- How does he/she think he/she can improve his/her behaviour?
- If he/she does not agree that his/her behaviour is unacceptable, then why and what evidence does he/she have to support his/her view?
- Think about what you want to know from the investigating manager and any witnesses and prepare your lead-in questions.

Your approach during the meeting should be formal but polite. Never pre-judge the outcome and listen carefully to what is being said.

### **What happens at the meeting?**

If chairing a conduct meeting, you may find it helpful to have a structure to follow. Your organisation's conduct procedure may contain one. A common structure is ...

- The chair introduces ...
  - the purpose of the meeting
  - those present and their roles
  - the structure the meeting will follow - so that people know when they will be expected to speak and allowed to ask questions
  - an outline of the alleged misconduct by the employee.
- The investigating manager goes through the detailed evidence setting out the case to be considered. Questions about this evidence are then asked.
- Witnesses for the organisation are called. They stay only for that part of the meeting to which their evidence is relevant. They read their statements and then questions are asked.
- The employee then states his/her case. Questions are then asked.
- Witnesses for the employee are called. They stay only for that part of the meeting to which their evidence is relevant. They read their statements and then questions are asked.

- The investigating manager sums up the organisation's case. Then the employee sums up his/her case. The chair can choose to summarise the main points if they wish. It is good practice to ask the employee if they have anything further to say, this helps ensure that he/she has had a fair chance to put his/her case.
- The chair then sets out the next steps and adjourns the meeting to come to his/her decision.

In practice, the meeting is unlikely to follow the structure exactly, as the discussion and questioning is likely to mean that a number of people will be involved in the conversation at any one time.

**Imagine you are chairing a conduct meeting, what action do you think you might take in the following situations?**

1. The employee becomes emotional and starts to cry

2. The employee's temper becomes frayed and his/her voice raised

[Appendix I](#) gives some ideas about what action you could take.

## Can I use adjournments?

Adjournments are a valuable tool if you are chairing a conduct meeting because ...

- An adjournment will give you time to reflect on what you have heard and come to your decision on the outcome.
- It will give you the opportunity to discuss your thoughts and check points with the HR manager or other manager who attended before coming to your decision.
- If new evidence comes forward during the meeting, the meeting can be adjourned to allow investigation into the new information.
- If the employee becomes upset during the meeting, a short adjournment may be all that is needed to give them time to recover their poise and participate in the meeting again.

## What if the employee raises a grievance?

If an employee raises a grievance during a conduct meeting, e.g. he/she claims that his/her manager is biased against them or they are being unfairly discriminated against, then, as the chair, you can suspend the conduct procedure while the grievance is dealt with. The conduct procedure can then be resumed.

If the grievance relates directly to the conduct issue, e.g. a claim that some of the evidence is irrelevant, then both matters can be dealt with at the same time.

## How is the decision on the outcome of a conduct meeting reached?

Once the conduct meeting discussion is completed, the chair should adjourn the meeting so that he/she can come to a decision on what action is appropriate based on the evidence heard.

If you are the chair of a conduct meeting, it is good practice to discuss your thoughts with the HR manager or other manager present, so that you can check any information that you are not clear about and that you have not overlooked any key points. HR will also have information on what decisions have been taken in similar situations in the past, if there have been any.

If the case is straightforward, you can reconvene the meeting on the same day and inform the employee of the outcome.

If it needs more consideration, the meeting can be recalled on another day but this should be as soon as possible after the original date.

Whatever happens, the outcome should be confirmed in writing to the employee as soon as possible after the decision is made. This notification should inform the employee of ...

- The outcome of the meeting (see section below) and the reasons for the decision
- If the outcome is a disciplinary warning ...
  - the nature of the misconduct
  - the nature of the warning and how long it will remain 'live' on the employee's file
  - the improvement in conduct required, any support that will be given and the review periods
  - the consequences of failure by the employee to improve his/her conduct or any further instances of misconduct during the period that the warning is 'live'. (This is likely to be implementation of the formal conduct procedure. The possible outcomes for the employee should also be outlined. You should check your organisation's policy to see what would happen).
- If the outcome is dismissal the ...
  - reason for the decision
  - notice period to terminate the employee's employment
  - date the employee's employment will end
- The employee's right of appeal against the decision.

Your organisation will probably have a template letter that can be used for informing an employee of a disciplinary outcome. If not, there is a sample template letter in [Appendix F](#) and the MS Word [downloadable toolkit](#), which you can adapt.

## What might be the outcomes of a conduct meeting?

The outcomes from a conduct meeting might be ...

- That misconduct has not been proven and no further action is necessary. The employee should be informed of this in writing and a copy of the letter placed on their personal file.
- That misconduct has not been proven, however, the employee would benefit from some action taking place, e.g. training or more supervision.
- That misconduct has been proven but is not serious enough to warrant a disciplinary warning. Therefore, some other action, e.g. more supervision, is required.
- That misconduct has been proven and a formal disciplinary warning is given.
- That misconduct has been proven and is serious enough to warrant dismissal.

You will see that one possible outcome is a disciplinary warning. An organisation's conduct policy may provide for more than one level of disciplinary warning. As a minimum there is normally a first written warning and a final written warning.

A final written warning may be applied where there is a sufficiently serious case of misconduct but one which does not justify dismissal or the employee has already had a first written warning and further misconduct has occurred.

Often the more serious a warning, the longer it will remain 'live' on the employee's file. For example, the first written warning may be 'live' for 6 months and the final written warning for 12 months.

Dismissal may be applied in cases of gross misconduct or where a final written warning is 'live' and further misconduct has occurred. The decision to dismiss can be made only by someone who has that authority.

If misconduct has been 'proven', what factors do you think you should take into account in deciding on what penalty to give?

Now compare your thoughts with those on the next page.

Key factors that should be taken into account when deciding on what penalty to give are ...

- The gravity of the situation
- What, if anything, will help an improvement in the employee's behaviour (remember, the aim is to improve conduct wherever possible)
- The employee's disciplinary and general work record. If the employee has a long service without blemish, then the misconduct may have been an exceptional occurrence.
- The employee's awareness of the standards of conduct required. Have these been explained to the employee? Have the rules been applied consistently in the past? May the employee feel they have been singled out for unfair treatment?
- Do the organisation's rules indicate the likely penalty for this type of misconduct?
- What sanctions have been applied previously in similar situations. This does not mean that the same penalty always needs to be applied. The particular circumstances of each case must be considered.
- Are there any mitigating circumstances? For example, health problems, personal problems, provocation or a justifiable lack of understanding of the required standard.

*Viv was a sales assistant in a small convenience store. At the end of one day, there was a noticeable discrepancy between the till receipts and the cash in her till. Another sales assistant said she had seen Viv deliberately enter a wrong sales amount.*

*The shop manager, Will, invited Viv to attend a conduct meeting in two days' time. At the meeting, Viv explained that she had made a genuine mistake because it had been very busy in the shop at the time.*

*Will was under a lot of work pressure and his store had already lost an amount of money that month through loss of product from the shop. He decided to dismiss Viv.*

*Viv brought a claim of unfair dismissal to an employment tribunal. The tribunal found that she had been unfairly dismissed. This was because her employer had not followed a proper conduct procedure. Key failures had been that ...*

- there was an inadequate investigation*
- Viv had not been informed about her right to be accompanied*
- Viv had not been informed about her right of appeal.*

## Chapter 5 - The formal procedure – the right of appeal

### Can an employee appeal against the decision of a conduct meeting?

An employee has a right under UK law to appeal against any disciplinary outcome of a conduct meeting.

The grounds on which an employee might appeal include that ...

- The decision is considered perverse, i.e. should not have been made based on the facts of the case
- The type of sanction is considered inappropriate, e.g. it has failed to take into account mitigating circumstances
- The decision differs from that made in the past in similar circumstances
- The proper procedure was not followed
- The chair was biased
- New evidence has become available.

Unless the grounds of the appeal are obviously invalid or frivolous, it is good practice in the interests of fair treatment of the employee to allow the appeal to be heard. If it is decided that there is not a good reason to allow an appeal and it is refused, the employee should be advised of the reason/s.

Normally, an organisation's conduct procedure will require the appeal to be made within a set number of working days after the employee has received the letter informing them of the outcome of the conduct meeting.

### What happens if an employee appeals?

If an employee submits an appeal on valid grounds, then the employer needs to invite the employee to attend an appeal hearing.

The letter should explain ...

- The reason for the hearing, i.e. to hear the appeal
- The date, time and place of the hearing

- If the appeal is on the grounds of new evidence, when and how the employee must provide a copy of the new evidence and/or names of new witnesses
- The employee's right to be accompanied (see [Chapter 4](#)).
- The possible outcomes of the hearing
- How the employee can access the organisation's conduct procedure, so that they know what is required. This may be attached to the letter or a reference made to where it can be found.

The letter should be sent out early enough for the employee to be able to prepare adequately for the hearing.

Your organisation will probably have a template letter that can be used for inviting an employee to an appeal hearing. If not, there is a sample template letter in [Appendix F](#) and the MS Word [downloadable toolkit](#), which you can adapt.

### Who attends an appeal?

The attendees of the appeal hearing will be ...

- The chair - to help ensure objectivity, the chair will normally be a different and more senior manager than the one who chaired the conduct meeting, unless the organisation is very small and this is not possible. It should also, if possible, be someone who has not been involved previously in the issue. If the appeal is against dismissal, then the chair needs to have authority to confirm a dismissal if need be.
- The employee
- The chair from the previous meeting, who will explain what happened then.
- A HR manager to provide technical advice and maybe take notes. To help ensure objectivity, this will normally be a different HR manager to the one who attended the conduct meeting. Or another manager, particularly if you do not have an HR department, to take notes and act as a witness to what happens at the hearing.

There may also be ...

- A companion, if the employee wishes this (this may be the same

companion as before)

- Witnesses - there may be a smaller number than at the conduct meeting because only those whose evidence is relevant to the grounds of the appeal will be recalled.
- A note taker, if this role is not taken by the HR representative or another manager.

### **What happens at the appeal hearing?**

If you are to chair an appeal hearing, you may find it helpful to have a structure to follow. Your organisation's conduct procedure may contain one. The structure is normally similar to that of the conduct meeting, however, because the employee is making the appeal, often he/she will be the person who speaks first after the chair of the hearing and then the employer will respond.

A common structure is ...

- The chair of the hearing introduces ...
  - the purpose of the hearing
  - the people present and their roles
  - the structure of the hearing so that people know when they will be expected to speak and allowed to ask questions
  - then confirms the grounds of the appeal.
- The employee will explain the detail of the grounds of his/her appeal and go through his/her evidence to back it up. The employee is then questioned.
- Witnesses for the employee, if any, are called. They stay only for that part of the hearing to which their evidence is relevant. They may be asked questions.
- The chair of the previous conduct meeting explains what happened, then questions are asked.
- Witnesses for the organisation, if any, are called. They stay only for that part of the hearing to which their evidence is relevant. They may be asked questions.

- The employee sums up his/her case, followed by the chair of the previous conduct meeting. The chair of the hearing can choose to summarise the main points if he/she wishes. It is good practice to ask the employee if they have anything further to say, this helps ensure that he/she has had a fair chance to put his/her case.
- The chair of the hearing adjourns the hearing to come to his/her decision.

Similarly to conduct meetings, in practice, the hearing is unlikely to follow the structure exactly as the discussion and questioning is likely to mean that a number of people will be involved in the conversation at any one time.

### **What might be the outcome of an appeal hearing?**

If you are the chair of an appeal hearing, you will need to decide whether to ...

- Allow the appeal; or
- Confirm the original conduct meeting decision; or
- Impose a different penalty.

When making your decision, you may find it helpful to talk with the HR representative or other manager who attended the hearing about the issues involved, to help clarify your thinking and ensure that you do not overlook any important considerations.

If the situation is straightforward, the chair will normally recall the hearing to give his/her decision. If not, the parties should be informed as soon as possible after the hearing. Whatever happens, the decision should be confirmed in a letter to the employee.

The letter should include ...

- The outcome of the hearing and an outline of the reasons for the decision
- If the employee is given a different warning ...
  - the nature of the warning
  - how long it will apply
  - the improvement in conduct required
  - any support that will be given
  - the review periods

- the consequences of failure to improve his/her conduct or any further instances of misconduct
- Whether or not there is any further right of appeal.

Your organisation will probably have a template letter that can be used for this purpose. If not, there is a sample template in [Appendix F](#) and the MS Word [downloadable toolkit](#) which you can adapt.

## Chapter 6 - Gross misconduct

### Are there any differences in approach if there is alleged gross misconduct?

If there is a case of alleged gross misconduct, the adverse impacts for the individuals involved and the organisation are potentially much greater, therefore, it is important that the matter is dealt with as quickly as possible. At the same time, as with any other case of alleged misconduct, the matter must be dealt with fairly. It is still necessary to carry out a proper investigation and meet with the employee to discuss the alleged misconduct but the timescales should be as short as is fair to the employee. Gross misconduct needs to be proven just as any other alleged misconduct. Automatically dismissing before following a proper procedure is likely to be considered unfair under UK law.

Because of the seriousness of the accusations in alleged gross misconduct cases, some organisations have policies that allow for the employee to be suspended while the conduct procedure is followed. You should check what the position is in your own organisation.

Suspension is most likely to be considered if one of the following situations applies ...

- Evidence might be tampered with by the employee
- Witnesses might be intimidated by the employee
- Working relationships between the employee and others have broken down
- There are risks to the safety of other people
- There are risks of damage to company property

If you decide that an employee should be suspended, it is important to write to the employee to ...

- Explain the reason for the suspension
- State that the suspension is not a disciplinary action and there has been no prejudgment of the outcome of the conduct procedure. Rather that the action has been taken to permit a full and fair investigation to be conducted.
- Give an indication of the likely length of time of the suspension.

- Explain what conditions apply to the employee during the suspension. For example, whether the employee is allowed access to organisation sites; and/or to make any professional contact with other work colleagues and customers/clients.
- Explain that he/she will be required to attend meetings as required.
- Explain whether the employee will continue to receive his/her full pay. This will depend on what is contained in the employee's contract of employment and you should check what the position is in your own organisation.

If a conduct meeting held to consider a case of alleged gross misconduct finds that there has been gross misconduct, the likely outcome is either dismissal or a final written warning.

If the decision is to dismiss, the employee can be dismissed without any period of notice. This is known as 'summary' dismissal.

Remember, employees found to have committed gross misconduct still have a right of appeal against that decision.

## Chapter 7 - The importance of keeping good records

### Why do I need to keep records?

It is important that you should keep adequate records of any conduct matters you deal with.

This is because ...

- You can capture a record of what happened
- You can check on the employee's progress in improving his/her conduct
- They provide a record for other managers who may have to manage the employee in the future
- If the employee submits a claim of unfair dismissal or discrimination to an employment tribunal, then good records will provide the evidence that a proper and fair procedure was followed.

*Xavier was in the process of dealing informally with a conduct issue concerning one of his staff, Yvonne. She has returned late from lunch on three occasions in the past month. Each time, he had met with her informally to discuss her conduct and the reasons for it. He had pointed out that her conduct was unacceptable and, if it happened again, it would be considered a more serious matter and might have to be dealt with under the organisation's formal conduct procedure.*

*Soon after the last discussion, Xavier left the organisation. Zoe was appointed in his place.*

*Not long after, Yvonne was again late back from lunch. In his brief handover, Xavier had mentioned the issue of Yvonne's timekeeping to Zoe, so she was aware of it. However, when Zoe checked what she could do under the conduct policy, she realised that as there was no written record of Yvonne's lateness and the informal discussions, there*

*was no evidence of what had been discussed and agreed. Zoe was, therefore, not in a strong position to deal with the matter under the formal procedure. Instead, she would have to start the whole conduct process again, beginning with informal discussions.*

*The lack of a good record of the informal discussions meant that the organisation was constrained in the action it could reasonably take to deal with the lost work time. Also, the rest of Zoe's team saw that Yvonne was able to get away with unacceptable behaviour and this had an adverse impact on their motivation.*

The records kept should cover all relevant documents, including ...

- Letters
- Notes of investigations and other meetings
- Employee and witness statements
- Any warnings given
- Notes of any appeal hearings
- Reviews of progress against agreed actions
- E-mails
- Notes of telephone conversations.

It is important that your records are accurate and objective. They should be written as soon as possible after the event they relate to, while the issues are fresh in your mind. Records should also be kept in line with the requirements of the [Data Protection Act 1998](#), which includes their being ...

- used only for the purpose for which they were made
- adequate
- relevant
- accurate
- kept secure
- kept no longer than necessary.

This Act also gives employees a right to access records about them, including conduct records.

You should look at your organisation's data usage policy for information on the requirements you need to follow and advice can be obtained from your HR team, where you have one.

Now you can check your understanding of the formal conduct procedure and records by completing this mini-quiz.

## Quiz 2

1. Is it correct that an employee's companion can be a member of his/her family?
2. Should companions be allowed to answer questions directed to the employee?
3. List 2 reasons why adjournments are useful.
4. When might a final written warning normally be given?
5. Who can decide that an employee's contract of employment can be terminated?
6. Does an employee have a statutory right of appeal against a disciplinary penalty?
7. List 2 reasons why it is important to keep good records of the management of conduct issues.

The answers are given in [Appendix J](#).

## Chapter 8 – Some useful management skills

### What skills can I call on to more effectively manage conduct issues?

There are three skills areas in particular which you may find helpful for dealing with conduct issues. These are ...

- giving constructive feedback
- active listening
- questioning.

#### Constructive feedback

**What do you think makes feedback constructive rather than negative? Write your answer below and then check on the next page.**

Feedback is constructive when ...

- It indicates to the recipient that something can be done to improve his/her performance/behaviour. For example, feedback that “you have ignored the organisation’s dress code” is not very helpful in indicating what the employee could do to change his/her behaviour. A statement such as “the organisation’s dress code requires you to wear a suit when attending external meetings” is more helpful because it states the action that could be taken.
- It is specific and not general. For example, a statement that “you are very abrupt when dealing with other members of the team” is so general that the recipient may not accept it because he/she does not always behave in that way. To help the employee understand when he/she has been abrupt, it is better to give specific examples, e.g. “At the team meeting this morning when Roy was explaining his new product idea, you interrupted several times in a dismissive way saying ...”.
- It is relevant to the individual and situation.
- It is given soon after the event. Giving feedback too long after the actual event can mean that memories have faded and the individual cannot remember behaving in the way mentioned and, therefore, may not accept the feedback.
- It is given at an appropriate time. For example, neither when you are under pressure and cannot give it proper attention nor when the individual is under pressure and cannot fully take in what is being said.
- It is clear. Therefore, use straightforward language.
- Not too many issues are covered at one time. Otherwise this could confuse the employee and be too much to deal with.
- It is about the behaviour of the person, not about the person. For example, “The fact that you continue to submit your reports late means that ...” and not “You are useless at getting your reports in on time”.
- You take ownership of what you are saying. Use the “I” word, e.g. “I want ...”. If you say that someone else has asked you to give the feedback, then it can suggest that you do not agree with it. For example, “The director has asked me to tell you that you need to ...”.  
If you do not agree with the feedback, why should the employee?

Remember also that if you need to give feedback, try not to do this in an aggressive way or the recipient may become defensive and non-receptive. At the same time say it with conviction or the individual may think the message is not important.

### **Active listening**

**What do you think 'active listening' means? Write down your ideas and then check on the next page.**

When listening actively, we ...

- Give full attention to the person speaking. This means concentrating on what is being said, not interrupting or finishing the other person's sentences.
- Demonstrate our interest in what has been said. For example, by physical signals such as nodding, smiling etc or verbally by saying such things as "That's interesting".
- Gain as much information as possible. We can do this by asking for more information, e.g. "What happened then?" and encouraging the person to speak, e.g. "That's interesting, tell me more".
- Check our understanding of what is being said. This can be done by asking questions, e.g. "If I have understood correctly, what you said was ...?"; summarising what we think has been said; or paraphrasing using different words to those used by the speaker.

### Questioning skills

There is a skill to asking the right types of question to gain the information required in different situations.

When dealing with conduct issues, you will find the following types of questions are particularly helpful ...

- Open questions - When having an informal discussion or carrying out an investigation, conduct meeting or appeal hearing, you want to gain as much information as possible. It is helpful, therefore, to ask questions that will provide a full explanation. These are known as 'open' questions. They often start with words such as "What", "Why" or "How". Most of the questions you use in conduct conversations should be open. For example "What happened?", "Why did you behave the way you did?" and "How did he react to that?".
- Closed questions – These questions elicit short answers, such as "yes" and "no". They are useful for establishing and checking facts. For example, "Is it correct that two other people were present at the time?"
- Probing questions - Once you have asked your initial questions, you can then dig deeper by asking 'probing' questions to elicit further information. For example, "What happened next?", "Why do you think that was the case?" These questions are particularly useful when trying to determine if there are any hidden underlying causes for the employee's conduct.

- Reflective questions - You can also use questions to show your understanding. This can be done by the use of 'reflective' questions, such as "So, you are saying that ...?"

Types of question that are not so useful when dealing with conduct issues are ...

- Leading questions - Because you want the employee's side of the story, you should try not to put words into his/her mouth. You should, therefore, avoid the use of leading questions. For example, "Did what he said upset you?". This would focus the individual's thoughts on whether or not they felt upset, rather than make him/her think of his/her reaction at the time. It would be better if you asked a question such as "How did you feel when he spoke to you like that?"
- Multiple questions - These are where a number of questions are strung together. This may confuse the employee and he/she may provide only part of the answer. For example, "Who was there, what did they do and what happened next?". Break the sentence down into separate questions and give the employee time to answer each. In this way you will get more detailed and accurate information. For example, "Who was there?" – allow the employee to answer; then ask "What did they do" – allow the employee to answer; and then ask "What happened next?" – allow the employee to answer.

**Take a look at the questions below and decide which you think might be suitable questions; which might not; and why?**

1. "Did this happen at 10am?"
2. "Were you annoyed by what Sam said to you?"
3. "If I have understood correctly, what you have told me is ...?"
4. "Why did you behave in the way you did?"
5. "What happened? When? And who was there?"
6. "What happened next?"

The answers are in [Appendix K](#).

## Further sources of information

ACAS (Advisory, Conciliation & Arbitration Service) website: [www.acas.org.uk](http://www.acas.org.uk)

ACAS (2009) Code of Practice: *Disciplinary and grievance procedures*. London. Acas

ACAS (2009) *Discipline and grievances at work: the Acas guide*. London. Acas

Department for Business, Innovation & Skills website: [www.bis.gov.uk](http://www.bis.gov.uk)

Trade Unions Congress website: [www.tuc.org.uk](http://www.tuc.org.uk)

## Appendix A - Identification of conduct and capability issues

The answers are ...

1. Conduct - Alex has broken a company policy.
2. Capability - Billy has a lack of knowledge about the new purchasing rules and procedure and may need some more training or supervision.
3. Conduct - Charlotte has produced reports on time before but is now failing to do so.
4. Capability – Di has recently been promoted but she does not appear to have the necessary skills for the role. This could be because she has not received the necessary training.
5. Conduct – Eli has been able to get to work on time in the past but is now failing to do so.
6. Conduct – Freda’s attitude towards her work colleagues is not acceptable.

## Appendix B – Some main benefits of managing conduct

### *For the organisation/manager ...*

- Improves the performance of the individual and the organisation
- Improves work relationships
- Employees are likely to be more motivated if they know what is required of them and that they are doing it successfully
- Prevents other employees from becoming demotivated as a result of seeing another employee being allowed to underperform
- Prevents poor service and customer dissatisfaction
- Prevents poor behaviour becoming acceptable
- Enhances the manager's reputation as someone who is effective at managing staff
- The manager can gain respect from the employee and others for dealing with the issue rather than ignoring it
- Helps ensure fair, consistent and honest treatment of employees
- May prevent a claim of unfair treatment being brought by the employee against the organisation at an employment tribunal. This will save the organisation unnecessary costs - legal, time, effort - and protects its reputation
- Prevents the escalation of problems, which then become more difficult to deal with and have greater adverse impacts
- Helps establish the desired organisation culture

***For the employee ...***

- Helps the employee understand what job performance is required, what they are doing incorrectly and how they can improve
- The employee can obtain support, e.g. training, to help them improve
- Can stop the employee's underperformance, which might otherwise continue and lead eventually to his/her dismissal
- Can make the employee aware of the possible consequences of his/her unacceptable behaviour and give him/her the choice to do something to change it
- The employee can get greater job satisfaction from knowing that he/she is doing a job well
- The employee will receive positive feedback on job performance and experience a greater sense of recognition for a job well done

## Appendix C - Types of misconduct

Although there are not set definitions of the different levels of misconduct, likely answers to the questions are ...

1. This is likely to be considered minor misconduct at this stage. However, if the lateness continues or the time of arrival becomes later and later, then the matter may become a more serious case of misconduct.
2. This is most likely to be considered gross misconduct.
3. This is unacceptable behaviour and may be offensive to other people and as such is likely to be considered serious misconduct.
4. Because this is a frequent occurrence, it is likely to be considered as serious misconduct.
5. This is likely to be considered minor misconduct. If, however, it continued to happen or had been a more important part of the job, then the matter would probably be seen as serious misconduct.
6. This is most likely to be considered gross misconduct.
7. This is breach of company policy and, therefore, may be considered as serious misconduct.

Remember, it is important that you look at your organisation's policy to see how it would classify different cases of misconduct.

## Appendix D - Some examples of questions for informal conduct discussions

Examples of questions you may wish to ask in this situation are ...

- You have provided your section activity report late for the last two months, why is this?
- Why has this started happening now?
- Do you understand what the impacts of providing your reports late are?
- What impact do you think your late reports have on your team?
- What impact do you think your late reports have on our department's reputation?
- What can you do to ensure that your reports are submitted on time?
- What support do you need from me or the rest of the team?
- Will your next report be on time?
- Do you understand why it is important that your next report is in on time?
- What will you do if it looks like you will not be able to complete the report on time?

## Appendix E - The legal basics

The main current legislation covering conduct is the Employment Act 2008.

The ACAS (Arbitration, Conciliation & Arbitration Service) Code of Practice on Disciplinary and Grievance Procedures provides information on how the legislation should be implemented.

Basically, to be able to demonstrate a fair procedure was followed, the obligations on employers are to ...

- Establish the facts of the case
- If it is decided that there may be a case of misconduct to answer, inform the employee in writing
- Hold a meeting with the employee to discuss the issue
- Inform the employee in writing of the outcome of the meeting and of their right to appeal.

It is also important to treat employees fairly and consistently and deal with conduct matters promptly.

If an employee brings a claim that he/she has been unfairly treated by his/her employer to an employment tribunal, the tribunal will give consideration to whether or not the employer followed the ACAS Code of Practice. If the employer has not followed the Code, then any reward made against it may be increased by up to 25%.

ACAS has also produced non-statutory guidance – Discipline and grievances at work: The ACAS guide - that is separate from the Code. Employment tribunals are not required to take this guidance into account, its purpose is to help employers implement the Code of Practice.

The Employment Rights Act 1999 gives the employee the right to be accompanied by a companion at any meeting that may result in some form of disciplinary action. The companion may be a fellow worker; trade union representative certified to act in this capacity; or a trade union official.

## Appendix F - Sample template letters

The following letters are samples that you can adapt to meet your needs. They give the basic content of a letter.

Sections that need completing are enclosed in arrowheads.

Optional sections are enclosed in square brackets.

The letters will need 'topping' and 'tailing' to match your own organisation's format.

There may be more information that you wish to include and the style may need to be changed to match that of your own organisation.

All these letters are available in your MS Word [downloadable toolkit](#) so that you can copy and paste them into your own letter format.

## ***F.1 Invite to an investigation meeting***

Dear <Name> ,

This letter is to invite you to attend an investigation meeting in line with the <Conduct> Policy. The reason for the meeting is to investigate <outline alleged misconduct>.

The purpose of this meeting is to gather evidence from you to help determine whether or not there may be a case of misconduct to answer. It is not a disciplinary meeting.

The meeting has been scheduled to take place at <time> on <date> in <room and venue>. Please confirm that you will be able to attend by <date>.

The information concerning the alleged act of misconduct is attached: <list documents>.

If you have any documents that you consider relevant to this matter, please bring them with you to the meeting.

The possible outcomes of this investigation are:  
<possible outcomes>.

[You may choose to be accompanied at the meeting by a fellow employee or a trade union representative. It is your responsibility to invite them to attend. If you are to be accompanied, please let me know the name of your companion by <date>.]

[<Name> will also be present to take notes.]

A copy of the <Conduct> Policy [is attached][can be found at <location>].

If you have any queries about this investigation, please contact me.

Yours sincerely

## ***F.2 Invite to a conduct meeting***

Dear <Name> ,

Following the investigation into <outline alleged misconduct> , this letter is to invite you to attend a formal conduct meeting, in line with the <Conduct> Policy, to discuss the alleged misconduct.

The meeting has been scheduled to take place at <time> on <date> in <room and venue> . Please confirm that you will be able to attend by <date> .

Evidence of the alleged misconduct gathered by the investigation into this matter is attached:

<list documents> .

The possible outcomes of this meeting are:

<possible outcomes> .

You have a right to be accompanied at the meeting by a fellow employee or a trade union representative. It is your responsibility to invite them to attend. If you are to be accompanied, please let me know the name of the companion by <date> .

The other attendees will be:

- Chair – <name>
- Investigating manager, to present the evidence – <name>
- HR representative, to provide technical knowledge [and take notes] – <name>
- Witnesses, who will attend only that part of the meeting relevant to their evidence – <list names>
- [Notetaker – <name>].

If you have any evidence that you believe is relevant but is not included in that attached, then you should send a copy to me by <date> , so that it can be properly considered. If this means that any additional witnesses may need to be called, you should provide me with their names by <date> so that they can be invited to attend the meeting.

A copy of the <Conduct> Policy [is attached][can be found at <location>].

If you have any queries, please contact me.

Yours sincerely

### **F.3 Outcome of a conduct meeting**

Dear <name> ,

This letter is to inform you of the outcome of the conduct meeting you attended on <date> .

All of the evidence at the meeting has been considered and it has been decided that:

<Decision and brief reason for it. If misconduct has been found, outline the nature of it and improvement required. If the decision is dismissal, include the period of notice and date employment will end.>

[This warning will remain 'live' on your file for <period> . If the required improvement in your conduct is not achieved or a further incidence of alleged misconduct occurs during the period of the warning, then the <conduct> procedure may be implemented again, which might result in <possible outcomes> .]

You have a right to appeal against this decision. If you wish to do so you should write to me by <date> setting out your reasons. [The decision of any appeal hearing will be final and there is no further right of appeal.]

A copy of the <Conduct> Policy [is attached/can be found at <location>].

Please sign and date the copy of this letter and return it to me to acknowledge receipt.

If you have any queries, please contact me.

Yours sincerely

I acknowledge receipt of this letter

Employee's signature ..... Date .....

#### ***F.4 Invite to an appeal hearing***

Dear <Name> ,

This letter is to invite you to attend an appeal hearing in line with the <Conduct> Policy. The reason for the meeting is to hear the appeal you have submitted against the decision of the conduct meeting held on <date>.

The grounds of your appeal are <brief outline of grounds of appeal>.

The hearing has been scheduled to take place at <time> on <date> in <room and venue>. Please confirm that you will be able to attend by <date>.

The information concerning the appeal is attached:  
<list documents>.

[If you have any new evidence that you believe is relevant but was not available at the time of the previous conduct meeting, then you should send a copy to me by <date>, so that it can be properly considered. If this means that any additional witnesses may need to be called, you should provide me with their names by <date> so that they can be invited to attend the hearing.]

The possible outcomes of this hearing are:  
<possible outcomes>.

You may choose to be accompanied at the hearing by a fellow employee or a trade union representative. It is your responsibility to invite them to attend. If you are to be accompanied, please let me know the name of the companion by <date>.

The other attendees will be:

- Chair – <name>
- Chair of previous conduct meeting, to explain why the original decision was taken – <name>
- HR representative, to provide technical knowledge [and take notes] – <name>
- Witnesses, who will attend only that part of the hearing relevant to their evidence – <list names>
- [Notetaker – <name>].

[The decision of this appeal hearing will be final and there is no right to any further appeal.]

A copy of the <Conduct> Policy [is attached/can be found at <location>].

If you have any queries, please contact me.

Yours sincerely

### ***F.5 Outcome of an appeal hearing***

Dear <name> ,

This letter is to inform you of the outcome of the appeal hearing you attended on <date> .

All of the evidence at the hearing has been considered and it has been decided that:

<Decision and brief reason for it> .

[If a different disciplinary warning is given, then provide information on:

- the nature of the warning and how long it will remain 'live' on the employee's file
- the improvement in conduct required, any support that will be given and the review periods
- the consequences of failure to improve conduct or any further instances of misconduct during the period that the warning is 'live'.]

[This decision is final and there is no right of further appeal.]

Please sign and date the copy of this letter and return it to me to acknowledge receipt.

Yours sincerely

I acknowledge receipt of this letter

Employee's signature ..... Date .....

## Appendix G - Investigation mini-scenarios

### Case 1

Evidence that there may be a case of misconduct to answer is ...

- Pat has been observed misusing the organisation's internet.
- Pat has not denied this.
- The line manager has had informal discussions with Pat but his behaviour has not changed.

Evidence that there may not be a case of misconduct to answer is ...

- Pat has said that he only used the internet for personal reasons because he had an urgent need.

On balance, the evidence would seem to point to there being a case to answer requiring the formal conduct procedure to be implemented.

### Case 2

Evidence that there may be a case of misconduct to answer is ...

- Queenie has failed to follow the organisation procedure on four occasions.

Evidence that there may not be a case of misconduct to answer is ...

- Your discussion with Queenie has identified that the omissions were not deliberate but because she lacks knowledge about the procedural requirements.
- It appears to be a capability matter as she has not received sufficient training or guidance.

On balance, the evidence does not seem to point to there being a case of misconduct to answer requiring use of the formal conduct procedure. There is evidence that Queenie has not been given the support required to help her fully understand the sales record procedure requirements. Given this, you may recommend that the issue should be dealt with informally and that more training is provided.

## Appendix H – Quiz 1 answers

1. 'Conduct' relates to individuals' attitudes towards performing their jobs.
2. As early as possible.
3. You might have listed three of the following ...
  - Refusal to perform an important job duty
  - Endangering the health and safety of others
  - Fraud
  - Theft
  - Violence
  - Serious damage to the reputation of the organisation
  - Deliberate or serious damage of company property
  - Serious breach of confidence
  - Serious insubordination.
4. When minor misconduct is not improved by the use of the informal process or the alleged misconduct is more serious or gross misconduct.
5. Stop the discussion and tell the employee that the matter might need to be dealt with under the formal conduct procedure.
6. In the interests of fairness, otherwise a decision may be taken based on incomplete evidence.

## **Appendix I - Ideas on how to deal with some difficult situations that may arise during a conduct meeting**

1. The employee becomes emotional and starts to cry  
If the employee becomes distressed during the meeting, allow them a few minutes to recover, then continue. It is important not to delay hearing the matter if at all possible, as deferring dealing with the issue prolongs the situation and adds pressure for all involved. If the employee is excessively distressed and unable to continue to participate in the meeting, then adjourn and reconvene the meeting as soon as possible.
  
2. The employee's temper becomes frayed and his/her voice raised  
Some individuals may 'let off steam' during a meeting. This may be all right as long as it does not turn to anger and/or abuse. If the employee is losing his/her temper, the conversation should be stopped and the employee warned that such behaviour is unacceptable and if it continues the meeting will be adjourned and the behaviour may itself become the subject of a conduct hearing.

## Appendix J - Quiz 2 answers

1. There is no right under UK legislation that a companion may be a member of the employee's family (unless he/she is a fellow worker), however, an organisation can choose to allow this within its conduct policy.
2. No, only the employee can do that (unless he/she has a special need for assistance).
3. You may have listed two of the following reasons why adjournments are useful ...
  - giving you time to reflect on your decision
  - to discuss and check points with HR or the other manager present at the meeting
  - for investigation into any new evidence that comes to light during a meeting
  - to allow an employee who gets upset some time to recover
4. When the proven misconduct is serious or there is further misconduct and the employee has a written warning already.
5. A director/manager with the required authority.
6. Yes.
7. You may have listed two of the following reasons why it is important to keep good conduct records ...
  - you can capture a record of what happened
  - you can check on the employee's progress in improving their conduct
  - they provide a record for other managers who may have to manage the employee in the future
  - if the employee submits a claim of unfair dismissal or discrimination to an employment tribunal, they provide the evidence that a proper and fair procedure was followed.

## Appendix K - Suitable conduct questions

1. This is a good closed question for establishing that you have correct factual information, in this case the time an event occurred.
2. This is a leading question. It suggests to the employee what his/her reaction might have been, ie, being annoyed. The employee may confirm this or otherwise but without telling you what they really felt about the situation. It would be better to ask a non-leading question, such as "What did you feel when Sam said that?"
3. This is a good question because you can use it to check and show that you have understood what has been said.
4. This is a good open question which is likely to elicit an explanation of why the employee behaved in the way he/she did.
5. This is a multiple question. Each of these questions could be useful if asked separately but because they are strung together, the employee is likely to become confused and give only a partial answer.
6. This is a good probing question. An employee may volunteer so much information but you will need sometimes to ask further questions to find out exactly what happened.

## Feedback

As we are always trying to improve our Useful Guides we would appreciate any feedback you can give us on **A Useful Guide to Managing Conduct**. Please click on the link below to access our online feedback form ...

[www.pansophix.com/useful-guide-feedback.html](http://www.pansophix.com/useful-guide-feedback.html)

If we use your feedback to improve **A Useful Guide to Managing Conduct** we will email you a copy of the updated version.

You can access lots of free tips and tools at [247freetips.com](http://247freetips.com).

## Janice Lawrence



Janice Lawrence has been working as a freelance HR Consultant for 8 years. She delivers practical solutions which meet the client's specific needs and support the organisation's strategy and culture.

Her areas of specialism include ...

- Training on HR subjects and management skills
- HR policy and procedure development
- Employee communication and consultation.

Before becoming a HR Consultant, Janice was Group Employee Relations Manager for the InterContinental Hotels Group. In this role, she was involved in the development of employee relations strategy, policy and practice. Janice has worked in other large and SME organisations within a number of sectors, including retail, fmcg and finance and in the public and voluntary sectors.

Janice works also as an associate trainer.

Janice has a MSC in Administrative Sciences (majoring in Personnel Management), is a Chartered Fellow of the Chartered Institute of Personnel Management and a Member of the Chartered Management Institute.