

21st April 2008

Our Ref:
Your Ref:

Mr G Millar
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Edward Shephard
Secretary

Dear Graham,

REVIEW OF DISCIPLINE AND GRIEVANCE PROCESSES

1. Thank you for your email of 31st March seeking the unions' response to your suggested changes to the FC's discipline and grievance processes. You will be aware that the current procedure was formally negotiated and agreed with ourselves and I hope that we can reach an agreement on a revised procedure in the coming weeks.
2. When we spoke on the 31st March I indicated that I might need some time to consider the detail of all of the drafts which you sent me, but that I would try and offer our views on the major changes by the 18th of this month—my apologies for the slight delay. Consequently whilst I have some overall comments about the style and content of the various drafts (which I shall come back to), this initial response predominantly relates to your tabular document on the 'proposed changes to the current system'. Can I therefore be clear that my expectation is that we shall require further discussion in order to agree a mutually agreeable package of changes and set of supporting documentation.

Nipping in the bud

3. Overall our respondents were pleased with the renewed emphasis on trying to resolve appropriate issues early and informally before they have time to 'develop'. I think the assertion from one of the documents that some managers are currently unclear on the scope for informal resolution is probably correct, and clarification on this aspect will therefore be welcome.
4. I welcome your commitment to providing training for trade union reps (and others) on managing difficult situations. It is possible that this will be covered by one of the MDP1 modules, but if not then perhaps we can discuss the scope of the training nearer the time.

Streamlining the process

5. Your paper suggests three significant changes to the first set of stages within the discipline process: the delegation of additional responsibilities to unit managers, greater flexibility in the conduct of investigations and the removal of the additional disciplinary hearing stage. Whilst each of these changes has some merit, I am very concerned that

if they were all to be applied as suggested, the overall process would lose nearly all of its systemic checks and balances and be almost wholly reliant on the competence an individual manager and remote support from HR. Feedback from my colleagues raised a number of pertinent points, for example:

- a. The pool of managers with delegated responsibility to adjudicate on cases of suspected serious misconduct will increase from approximately 12 to between 120 and 150 (and possibly more). Even with appropriate training and HR support maintaining consistency of application amongst this pool will be difficult.
 - b. Given the increase in the size of the pool and the relatively low number of instances of suspected misconduct, it is probable that many managers will only deal with a significant disciplinary case once or twice in their careers. It has to be questioned therefore whether or not it will be cost effective to provide training for all of these managers, particularly given that it may then be many years before they are required to put the theory into practice. An appropriate balance between competency and cost may be better found by widening the pool to around 30 to 40 managers with an aptitude and interest in this area.
 - c. In many instances where issues may have been simmering for some time, or where they may previously have been dealt with by line managers, it is likely that unit managers will already have a perception both of circumstances and individuals and will therefore find it difficult to reach an impartial decision based solely on the facts of the case. This is of particular concern if we were also to allow managers the option of holding an informal or internal investigation.
6. All three of the changes you suggest; delegation of responsibility, removal of the additional hearing stage and the option for an informal investigation, all go some way to removing the requirement for independent external 'assessment' of a particular case; to the point where it is possible that an individual manager could identify, investigate and adjudicate on a case right up to and including the dismissal of an individual, without any 'external' involvement beyond the support of a remote HR Case Manager. I am sorry to say that we believe that this combination goes too far in removing the appropriate checks and balances within the system and opens up both the organisation and individuals to an unacceptable level of risk.
7. We are however mindful of your wish to simplify and speed up the administration of the process and would therefore suggest the following. We should be willing to agree to the removal of the additional hearing stage and the further delegation of responsibility for hearing cases of suspected serious misconduct beyond the SSG provided that:
- a. The pool is only broadened to include around 30-40 managers spread around the Commission, who have agreed to take on this responsibility and who have actually been trained in this area.
 - b. Where the case is one of suspected repeated serious misconduct for which one possible penalty may be dismissal (with notice), the case will be decided by two managers working together.
 - c. All cases of potential serious and gross misconduct are independently investigated by a minimum of two external (to the unit) and trained investigators who produce an evidence based report, that is subject to full disclosure.

- d. That the role of HR Case Managers is strengthened to allow them to properly intervene where there is concern about the conduct of a case.
8. I hope you will agree that this represents a sensible balance between efficiency of the process and consistency and quality of decision making.

Disclosure

9. Your suggestion of the full disclosure of all statements and reports is something that you and I have discussed on many occasions, and to which I am content to agree. Some guidance for individuals on producing an unsupported statement might be helpful.

Appeals

10. You will be aware from our earlier discussions that the removal of the role of the DG to hear all appeals against dismissal is another area that causes us some concern; and this has been borne out by the comments from my respondents. However having talked this through with senior colleagues we should be agreeable to the appeal routes outlined in your paper provided:
 - a. That you are agreeable to the points in paragraphs 7a-d above.
 - b. That unit managers can hear appeals for cases of minor misconduct, only provided that they have genuinely had no involvement (including informal discussions) on the case to that point.
 - c. That senior managers hearing an appeal against dismissal are accompanied and supported in person by a senior HR Case Manager as well as a minute taker.
11. I also agree with the need to clarify the role of the appeals authority and the grounds on which an individual can appeal and am happy to support your suggestions on this point.

Other Points

12. Mapping the procedures and 'parity of punishment': Your suggestions on these are sensible and I'm happy to agree to them. Several respondents indicated that they found the flowchart helpful.
13. Links between disciplinary and Grievance: Although your desire to have the option to run these processes concurrently seems sensible, several people commented that they believe that this might be difficult to achieve in practice. In particular there is a belief that although it may be possible and sensible to have one investigation covering both aspects, it is important that each case is still managed and adjudicated separately. Data protection rules may also require a joint investigation to actually produce two exclusive reports. I should welcome your further thoughts on how this might work.
14. Documentation: Although I have not had time to consider the detailed wording of all of the procedure and guidance documents, I do have a number of ad-hoc comments which I hope are helpful:
 - a. The splitting up of the current PM4 into three separate documents was well received, though if we are to retain a section on discipline and grievance in the Staff Handbook

(as I think we must) I wonder if there is really a need for a separate policy document as well? As indicated above the flowchart was well received.

- b. It is a personal observation but I am sorry to say that I find the new 'house style' of HR documents to be un-appealing and difficult to read, seemingly having abandoned most good principles of page layout and typography. The wide variation in text size, accompanied by variable spacing, margins and colours, disrupts the flow of the document and confuses the hierarchy of headings. The loss of paragraph numbers and the use of long unordered lists also makes it more difficult to navigate the documents and to externally reference specific sections and points. I appreciate that the documents are trying to emulate the OGB booklets, but can I respectfully suggest that this is done in a substantive rather than decorative way.
 - c. Can I please emphasise that with all previous draft HR documents we have discussed and agreed the actual draft text, so if the intent is to give these drafts to a third party for 'translation/adaption', please can you complete this step before sending me the revised drafts for further discussion and agreement.
15. Mediation: The greater use of trained mediators in appropriate circumstances is strongly supported, though it is important that we do not inadvertently send a message that we are watering-down our commitment to deal firmly with any proven cases of harassment and bullying.
16. I hope that these initial points are helpful in moving us toward an agreement on revising these procedures. Although the current procedures are quite detailed, they have proved to be broadly effective over a number of years and it is important that we move carefully with any changes to ensure that the pace of change is sensible, that the role-out is properly managed and that any new procedures take proper account of organisational fit as well as statutory requirements.
17. Finally can I please highlight that I shall be out of the office for much of May, so once you have had an opportunity to consider the points in this letter, may I suggest that we agree a timetable for moving forward as soon as possible.

Yours sincerely



Edward Shephard