Managing workplace discipline – who holds the key?
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With over 57,000 unfair dismissal claims made to employment tribunals in 2009/10 (Ministry of Justice, 2010), the management of workplace discipline is a crucial issue for employers, government, employees and trade unions. The role played by managers in handling disciplinary issues has come into stark focus in light of the Gibbons Review (2007), the abolition of statutory procedures under the Employment Act 2008 and the revised Acas Code of Practice on Discipline and Grievance. The implicit message of these reforms is that the rigid application of formal procedure can inhibit the early and informal resolution of disputes. Instead managers need to be allowed greater flexibility if they are to be able to nip disciplinary issues ‘in the bud’.

In practice, the impact of this change in policy emphasis is not simply dependent on the line and operational managers who implement procedure and make disciplinary decisions. In many organisations, managers work closely with HR professionals, who provide expert advice and guidance over disciplinary matters. This highlights an important, but under researched aspect of workplace discipline – namely the interaction between HR professionals and line managers. This article draws on recent research supported by Acas, to explore: the roles played by HR professionals and operational managers within workplace discipline; how their relationship impacts on disciplinary process; and the implications of this for policy.¹

HR professionals – applying procedure, protecting the business

In all the organisations that we looked at during our research, responsibility for investigations, disciplinary hearings and disciplinary decisions rested on line and operational management. HR professionals continued to play a key role in providing advice on the application of procedure and the legal and organisational implications of disciplinary decisions. Most operational managers also saw HR practitioners as providing a degree of objectivity and fair play. A private sector manager...
argued that the presence of HR within a disciplinary process:

‘serves that there’s an independent if you like who’s not as focused on the hard black and white issues of the operation.’

However, HR professionals themselves did not necessarily see their interests as aligned with the managers they were advising. There was a general view that if left to their own devices, line and operational managers would be prone to procedural irregularities and inconsistent decisions that would leave the organisation vulnerable to legal action. The job of HR professionals was to protect the interests of the ‘organisation’ and this could mean keeping operational managers in check. One of the HR managers that we interviewed explained that her job was to:

‘protect the business. That’s what I do. I protect the business but I also have to make sure the business protects itself as well from rogue managers.’

Line managers – flexibility, informality and inconsistency

Our research certainly suggested that operational and line managers had a preference for resolving issues through informal channels and found the rigid application of disciplinary procedure, cumbersome, inflexible and time consuming. HR professionals also suggested that many managers did not like dealing with disciplinary and performance issues – partly because of the time and inconvenience involved and also because of a fear of the potential legal ramifications. In these situations, HR professionals felt that they were often left to deal with the aftermath of issues, which had not been ‘nipped in the bud’ but left to escalate.

However, we also found that what was often perceived as a simple disregard for procedure, reflected the desire of operational and line managers for the flexibility needed to balance competing objectives and priorities. For example, managers were keen that their actions took into account the specific circumstances of the employee. One manager explained this as follows:

‘you’ve got to be flexible...If someone’s grandma has died and they’ve had a day off for the funeral, yes, that policy may state it’s an absence and that policy will state a disciplinary but hang on a minute, you’ve got to have compassion.’

Similarly, disciplinary decisions were also shaped by production imperatives. Consistency may dictate disciplinary action, but a manager may be reluctant to take a stance that might undermine the morale of their team or risk losing a productive worker. One operational manager explained his unhappiness at the way in which HR had insisted on applying severe sanctions to a group of staff involved in passing on inappropriate emails:

‘we were told heads will roll, people will be sacked and I couldn’t believe what I was hearing...I’d like to see all the senior managers step forward and say well I’ve never done that because I couldn’t step forward and say that and I just thought it was ridiculous.’

In the view of this manager, the ‘consistent’ application of a policy resulted in a group of key staff becoming de-motivated over what he perceived to be the exchange of ‘inoffensive’ material.

For HR professionals, however, such approaches opened up a ‘pandora’s box’ of nepotism and inequity with far reaching organisational and legal implications.

Managers and HR Professionals – struggling for control?

Therefore, there would appear to be a clear tension between the objectives of operational managers and HR professionals. Operational managers generally looked for the greater flexibility and contingency offered by informal processes, while HR professionals saw consistency and legal compliance as their main priorities. Importantly, however, it was the fear of potential litigation that provided HR professionals with the leverage to ensure that managers adhered to procedure. According to one manager:

‘people are wary of making a decision that gets overturned...you’ve got to be
really clear when you move to a dismissal, for example. That is the last option’.

Our research also suggests that the relationship between HR professionals and managers has a generational dimension. Experienced managers that we interviewed were comfortable with making their own decisions in light of HR advice. They were also more prepared to balance the risks of litigation with other considerations. However, those with less experience tended to defer to HR practitioners. This was in part due to a lack of procedural knowledge, but also reflected a concern that they might be held to account by senior management or an employment tribunal judge.

Similarly, HR professionals, with a deep understanding of their organisation and good relations with operational managers, saw their role as trying to develop the competencies of managers and gradually transferring power and control over the process. An HR manager explained that this involved: ‘giving them the power to do it and giving them the confidence that the next time it arises, they may be able to do it without any help.’

But less experienced HR practitioners were perceived to be ‘risk-averse’. One senior private sector manager commented that at times an inexperienced HR advisor can exacerbate the situation when they: ‘have come straight into the organisation and they know the process and procedure and know the law but don’t have the experience and knowledge to be able to work outside the box.’

Our research certainly suggested that a combination of inexperienced HR managers and a new generation of operational managers who lack the knowledge and confidence to deal with issues informally, was tending to strengthen the dominance of formal procedure. This was exacerbated where the HR function was remote (both physically and organisationally) from the workplace. Here, HR professionals had little knowledge of the work process and the workforce and had no emotional stake in the outcome of disciplinary decisions. In such cases, the key determinant inevitably became the rigid application of consistency.

**Drifting towards a formalised future?**

Overall, our research suggests that the way in which managers and HR professionals interact is critical in understanding disciplinary processes. Where they are experienced and enjoy good relationships, a delicate balance can be achieved between the need for flexibility, fairness and consistency. However, new generations of managers and HR professionals find themselves in a challenging environment in which the perceived threat of litigation has seen best practice become increasingly defined by legal compliance. Accordingly, despite the strategic shift of responsibility for disciplinary decision making to the line manager, HR professionals, in their role as procedural experts, have retained a substantial influence over the management of discipline.

Crucially, the nature of managerial relations, discussed in this article, may present a significant barrier to policy initiatives designed to develop a more informal and resolution-focused approach to individual employment disputes within UK workplaces. Not only are there question marks over the ability of managers to address disciplinary issues before they escalate into damaging disputes but there are also signs that the influence of HR practitioners is leading to an increased reliance on formal procedure.

Therefore, neither operational managers nor HR professionals alone hold the key to enhancing the management of workplace discipline. There is clearly a need for managers to develop the requisite skills to deal effectively with individual conflict. However, this in itself will have little impact unless HR practitioners, on whom they rely for guidance and advice, also adopt an approach that places dispute resolution before procedural observance.

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1 The research was based on case studies within eight organisations. All organisations had a dedicated HR function but varied in size from an electronics wholesaler and retailer employing around 400 staff to a manufacturer with well over 10,000 staff in the UK alone. Interviews were conducted in each organisation with HR professionals, operational managers and employee representatives or companions. Full report will be published next year.