Webinar: How to handle difficult conversations with employees

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Today’s presenters

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How to handle a difficult conversation

- **What** do we mean by a “difficult conversation”?  
- **Why** are they difficult?  
- **Why** is it important to have them?  
- **Who** should be having them?  
- Acas Guide “Challenging conversations and how to manage them”
Effective conversations

- HR should focus line managers on having effective conversations.

- An ‘effective’ conversation is one that brings positive value to the individual and benefits the organisation. (CIPD)

- ‘Effectiveness’ is in the eye of the individual or ‘receiver’.

- Effective conversations benefit the organisation or team – therefore be clear about what the benefit is.
Training Managers

- Raise awareness about the issues and concerns about difficult conversations
- Provide examples of what contributes to ineffective conversations
- Show them how to conduct effective conversations
- Provide checklists for preparation
- Provide templates for conducting the meetings
- Link it to management development
How to handle difficult conversations – A framework

• Prepare!
• Set the tone right/explain the purpose of the meeting
• State what the issues are and give evidence
• Explain the impact on the individual/team/business
• Listen to what they have to say
• Keep an open mind – don’t jump to conclusions
• Ask questions and explore issues
• Agree a way forward
• Keep records

(Taken from Acas Guide on “Challenging conversations and how to manage them”)
The employee who does not fit in

- Who are we talking about?
  - “Difficult” personality/incapable of working with colleagues/”difficult” management style

- How do we handle them?

- Conduct/capability/some other substantial reason?

- Two recent examples:
  - *Ezsias v North Glamorgan NHS Trust*
  - *Leach v OFCOM*

- Be careful about relying on “breakdown of trust and confidence” as reason for dismissal without careful consideration of true reasons and whether these are sufficient to justify dismissal
The employee who does not fit in

Practical steps:

• Deal with matters on an informal basis first
• Give employee an opportunity to address his behaviour
• Consider mediation
• Consider alternatives
• Dismissal
The employee who is underperforming

- Most common type of “difficult” conversation
- Challenge for HR – getting managers to have the conversation in the first place
- Keep records of all steps taken to manage performance
- Tricky issues:
  - What about the employee who raises a grievance?
  - What about the employee who goes off sick?
The employee who raises a grievance

- The employee who raises a grievance
  - If grievance constitutes defence to allegations, usually sensible to deal with matters at the same time
  - If grievance is totally unrelated to performance issues, normally safe to progress with performance procedure
  - If grievance seeks to impugn integrity of manager making the decision about performance, safest course of action is to adjourn performance management procedure until grievance is resolved
The employee who goes off sick

- The employee who goes off sick
  - Adjourn the process
  - Find out what is “officially” causing illness and whether there are any steps the business can take to address concerns
  - Consider obtaining medical evidence/discussing with Occupational Health
Older employees – can you still mention the “r” word?

Can you still have a conversation about retirement?

• Yes, but be careful!
• Do not make assumptions
• Avoid direct questions, such as “Are you planning to retire next year?”
• Have discussions with all employees
• Acas Guide “Working without the default retirement age”
• Consider building such discussions into appraisals
The employee who raises multiple grievances

- Do not refuse to deal with a grievance
- Ensure you comply with your procedures/processes
- Consider mediation
- Scope for disciplinary action?
  - Martin v Devonshires Solicitors
Changing terms and conditions

• Think about the business case for any change
• What type of change do you want to make?
• Have you got any flexibility with your existing terms?
• Are there any quick wins/incentives you could offer?
• Can you just impose the change?
• Dismissal/re-engagement
• Is the duty to consult collectively triggered?
• Can you use the current economic climate to your advantage?
Protected conversations

• So, what’s new?

• Employment Tribunals hearing claims of unfair dismissal will be prevented from taking into account any offer made, or discussions held, with a view to terminating the employee’s employment on agreed terms.

• Exceptions:
  ➢ Only apply to “ordinary” unfair dismissal claims
  ➢ Will not apply “in relation to anything said or done which in the Tribunal’s opinion was improper, or was connected with improper behaviour”
  ➢ Applications for costs

• Will they work?
“Without prejudice” conversations

• So, where does this leave WP conversations?
• Can sometimes be useful for employers
• Risks with this approach, if employer has not previously raised concerns about employee’s performance/behaviour/attitude
• Ideal platform for WP conversation is:
  ➢ employee raises it first; or
  ➢ formal process has reached the stage that even if the employee resigns, enough has been done to defeat a constructive dismissal claim
• As a general rule, not appropriate to have a WP discussion without the employee having first been made aware that there is an issue and preferably being taken some way down performance/disciplinary procedure
Questions and Answers

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