

# How to have difficult conversation with Employees

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With Amanda Chadwick

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Run Time: Approx 50 Mins

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across **Employment Law, HR and Health & Safety**



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# Today We Will Cover

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- Introduction to difficult conversations.
- Preparing for difficult conversations.
- Acas framework for dealing with difficult conversations.

# Introducing difficult conversations



# What are difficult conversations?

- A conversation that needs to be approached sensitively, such as to:
- Address poor performance or conduct.
- Deal with personal problems.
- Investigate complaints/deal with grievances.
- Put an employee at risk and consult on redundancy.
- Terminate employment in a fair and reasonable manner, and in compliance with the law.
- Training on the skills needed are highly recommended for all managers, especially those new to people management.



# The risks of not training managers: Lindsay v HBOS

- Employee on mental health related sick leave
- Manager contacted them excessively during the leave, questioning their doctor's medical advice and employee's medication
- Manager took it upon themselves to remind the employee to be 'mindful' of the impact posting to social media images of cakes they had made would have on colleagues picking up their work



## Why do we need to have them?

- Ensure compliance with the law.
- Manage disruptive behaviour.
- Prevent or soothe employee relations issues.
- Acas recommend addressing issues head on, or risk their escalation.



# What if we don't have them?

- Gives the impression there is no issue and makes improvement unlikely.
- Denies employees the opportunity to put the issue right.
- Damages productivity and efficiency.
- Impacts employee relations and morale.
- Could exacerbate problems and lead to legal issues.



# Preparing for difficult conversations



# Preparation is key

- Are there applicable policies, and are they being followed?
- Does the issue need a formal or informal meeting?
- When and where is best to have the conversation?
- Who will hold the meeting—line manager? HR? Senior leadership?



# Making the approach

## Formal meetings

- Formal invite with particular requirements likely needed.
- Ensure the employee is given the right to be accompanied if needed.

## Informal meetings

- When acting informally, your opener and body language are important. You could try:
- Would this be a good time to talk?
- I have something I need to discuss, do you have a few minutes spare now?
- I have some feedback I'd like to share if that's ok?



# Know what to say

When initiating an informal discussion:

- Would this be a good time to talk?
- I have something I need to discuss, do you have a few minutes spare now?
- I have some feedback I'd like to share if that's ok?

During the meeting, plan for the main points you need to cover.

Follow up actions; don't overcommit but consider a plan for next steps.



# Acas framework for dealing with difficult conversations



# Respecting legal rights

- Shoab-Brown v IQVIA [2023]
- Chosen companion previously difficult to handle.
- Employer tried to prevent their attendance at a formal disciplinary, and a grievance, hearing.
- Successful claim for denial of right to be accompanied by a chosen companion.
- Anticipated conversation to be difficult, but this was not the right workaround.



# Four steps to challenging conversations

1. Setting the tone – introduction.
2. Identify the issues, with evidence.
3. Find out why.
4. Agree a way forward.



## Setting the tone

- Explain clearly what is to be discussed and that the employee will get a chance to speak.
- Agree standards of behaviour for discussion. Focus on remaining calm and professional.
- Focus on the issue, not the person. Use “I” rather than “you”.
- Cover the rights of the companion if one attends.



## Discussing the issue(s)

- What is the problem? Why?
- Refer to examples, dates, or specific interactions.
- Build on previous discussions.
- Stick to the plan.



# Don't make assumptions

Fitzgerald v Bouygues [2023]

- Employer introduced requirement to regularly test for covid, alongside ad hoc testing if team member tested positive.
- Employee had a negative attitude towards covid requirements, but absent when regular testing announced and not told of it.
- Refused to test when colleague positive and disciplined. When told (at disciplinary) of the regular testing requirement, was given 15 minutes to choose: dismissal or agree to testing. He was dismissed.
- Rather than having the difficult conversation, employer relied on attitude towards covid to assume he would refuse, resulting in little time for the employee to make a decision and a successful unfair dismissal claim.



# Why?

- Employee should be encouraged to tell their side.
- Explore the issues and question to find out more.
- Adjourn if necessary to consider new evidence.
- An opportunity to acknowledge their position and mitigating circumstances, and make the employee feel listened to.



## Moving on

- What does the employee think / want in resolution?
- Adjourn if necessary, communicate decision once made.
- Monitor and provide feedback on progress.
- Follow up on promises for support etc.



# Summary

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- Managing difficult conversations in a constructive way can make a huge difference to productivity and commitment to the business.
- As a key managerial skill, it is important that those who lead teams and / individuals work on their approach. Training would be beneficial for this.
- Being prepared, even for an informal chat, is highly recommended.
- Awareness of language (including body), tone and the need for patience are all essential to effective management of difficult subjects.
- Be wary of making assumptions and work to establish the facts.

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# Thank you!

Any questions

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