



Progressing Performance Management in Complex Employee Situations

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Agenda

- ▶ **Why this Matters**
- ▶ **Case: Chapman v Tesco Stores Limited**
- ▶ **What is Bullying**
- ▶ **Grievances and Bullying Allegations**
- ▶ **Disengagement with Performance Management**
- ▶ **Performance Management and Sickness Absence**
- ▶ **Practical Tips**

Bullying

How do you progress a performance management process when an employee perceives bullying and counters with multiple grievances, refuses to engage, or goes off sick partway through?

Why this matters?

Legal risks, employee wellbeing, organisational effectiveness

Grievances and sickness absence

Claims of constructive dismissal, disability discrimination, victimisation/harassment, whistleblowing, impact of Day 1 Unfair Dismissal

Operational disruption, poor precedents, undermining management authority

Chapman v Tesco Stores Ltd

- ▶ Long serving employee at supermarket promoted to night manager
- ▶ Failed to meet performance standards, led to formal performance management process
- ▶ Written warnings
- ▶ Raised grievance for bullying, not upheld
- ▶ Formal performance review hearing, argued performance targets now met
- ▶ Dismissed due to performance
- ▶ Appealed dismissal and grievance outcome – unsuccessful
- ▶ Claimed unfair dismissal - successful



Chapman v Tesco Stores Ltd (cont.)

It was held that the employee had been unfairly dismissed. While the reason for dismissal was found to be on grounds of capability, the dismissal was still unfair

- ▶ Failure to investigate employee's claims of improvement
- ▶ No consideration of recent progress
- ▶ Dismissal letter lacked clarity on reasons
- ▶ Ignored improvement made between meetings

Unresolved performance issues can affect morale, productivity, client service...



Bullying



ACAS definition:

unwanted behaviour that is either offensive, intimidating, malicious or insulting. Involves abuse/misuse of power that undermines, humiliates, or causes physical or emotional harm

- ▶ No legal definition
- ▶ Physical, verbal or psychological
- ▶ Regular/one-off, online/face-to-face
- ▶ Not always obvious to others

Managing Performance Amid Bullying Allegations

Common derailer: **the grievance**

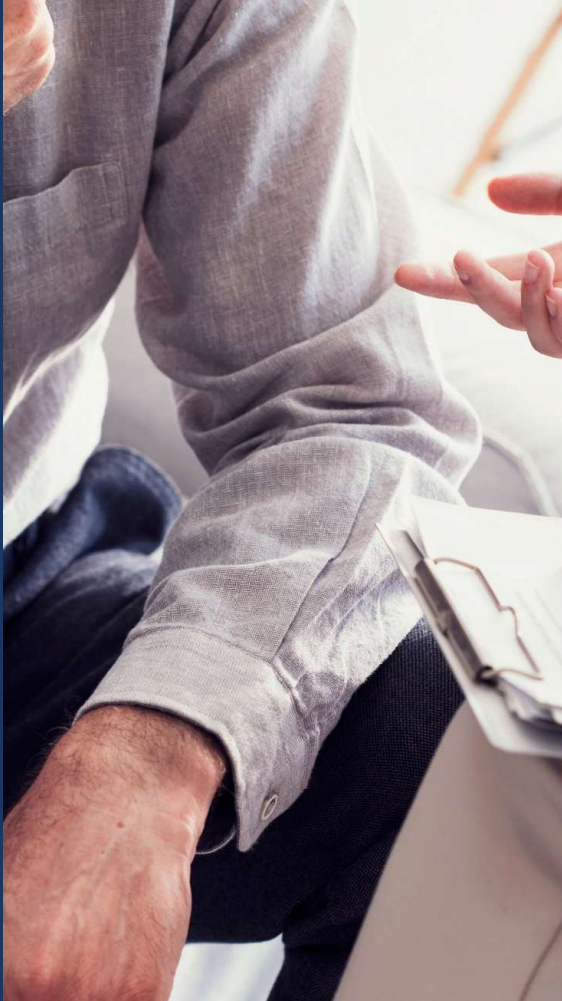
- ▶ Often raised once performance process begins
- ▶ Genuine concern or defensive tactic?

Assess the nature of the grievance

- ▶ When was the grievance raised?
- ▶ Is it about the manager or the process?
- ▶ Is it vague or specific?
- ▶ Is the employee long-serving or on probation?
- ▶ Have similar concerns been raised by others?

Review how performance concerns were handled

- ▶ Were they well documented?
- ▶ Does the tone of correspondence suggest underlying issues?
- ▶ May need to pause performance management to investigate grievance
- ▶ Document reasoning, communication
- ▶ Avoid delays



When an employee refuses to engage with performance management

Not attending meetings, ignoring emails or calls, claiming the process is unfair/invalid, until bullying grievance is addressed.

What you can do:

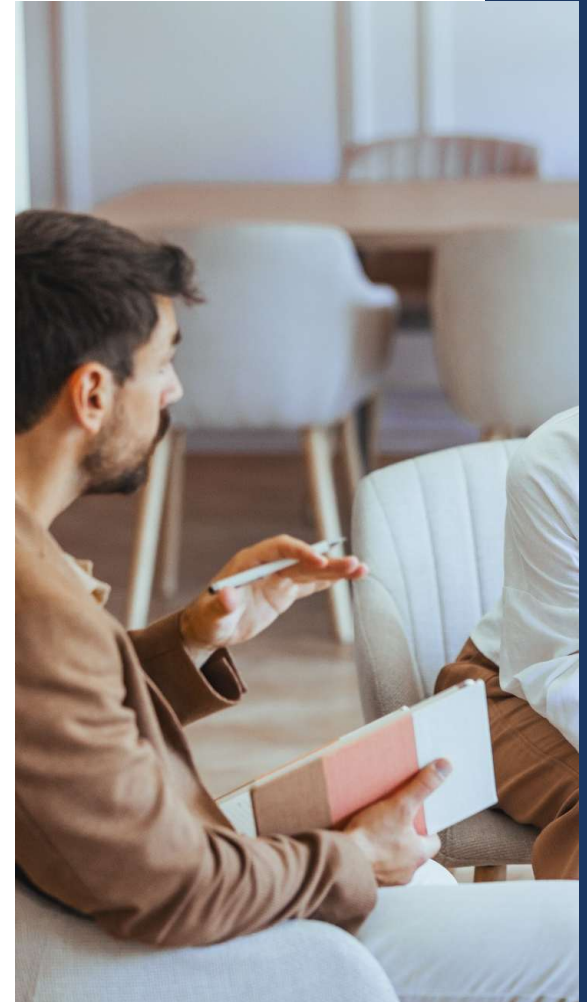
- ▶ Don't just park the issue – support, improvement as a goal, explore reasons for disengagement
- ▶ Sometimes dealing with the grievance will avoid subsequent delay.
- ▶ Involve a different manager in the performance process
- ▶ Proceed in the employee's absence (if fair) – keep informed, give chances to engage, consider barriers to participation
- ▶ Use written communication – put everything in writing
- ▶ Consider reasonable adjustments – potential health issues
- ▶ Procedural fairness is key – transparency, consistency, don't rush the process



Performance management countered with sickness absence

Legally and emotionally sensitive – balance performance management and duty of care

- Step 1:** understand the nature of the absence
- Step 2:** get Occupational Health input early
- Step 3:** consider adjustments (reasonable if disability)
- Step 4:** be mindful of discrimination risks
- Step 5:** review the process regularly





Some recent examples

- ▶ Probationary review meeting highlights some performance concerns and sets out clear areas for improvement
- ▶ employee counters with defensive responses to concerns.
- ▶ Employee goes off sick for seemingly unrelated condition.
- ▶ Fit note extended
- ▶ Steps taken

Some recent examples



- ▶ Employee returning to work from sick leave
- ▶ Work covered by colleagues when off highlight numerous serious mistakes
- ▶ Return to work meeting, employee highlights lack of support
- ▶ Previously disengaged with support offered
- ▶ Steps taken

Practical tips

- ▶ Review Performance Management Process to date
- ▶ Consider nature of bullying allegations
- ▶ If linked, pause PM and investigate grievance QUICKLY!
- ▶ Document decisions clearly with rationale
- ▶ Where possible, use an alternative manager
- ▶ Early intervention – OH referral
- ▶ Step back and review process for fairness



Questions?



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