

**MFM<sup>ac</sup>**

**MORTON  
FRASER  
MACROBERTS**

**LLP**

# **Five difficult employee scenarios and how to solve them**

MFMac Employment Team

Innes Clark, Alan Delaney and  
Caroline Maher

21 May 2026





## What we will cover

- Grievance raised against line manager and/or team members
- Multiple disability related absences
- Harassment allegations where the complainer doesn't want anything done
- Rejecting a flexible working request
- The badly behaved high performer

# Grievance raised against line manager and/or team members

Resolving the issues without  
breaking the team



# Grievances against colleagues or managers



Resolving issues without breaking the team

- Proactively seek to have an open culture that minimises the need for grievances
- Act promptly where issues might lead to grievances
- Where grievances are raised can they be addressed informally in a supportive and respectful way?
- Does your grievance procedure give enough focus on informal resolution options?
- Formal grievance processes often place further stress on a team and working relationships

# Practical guidance

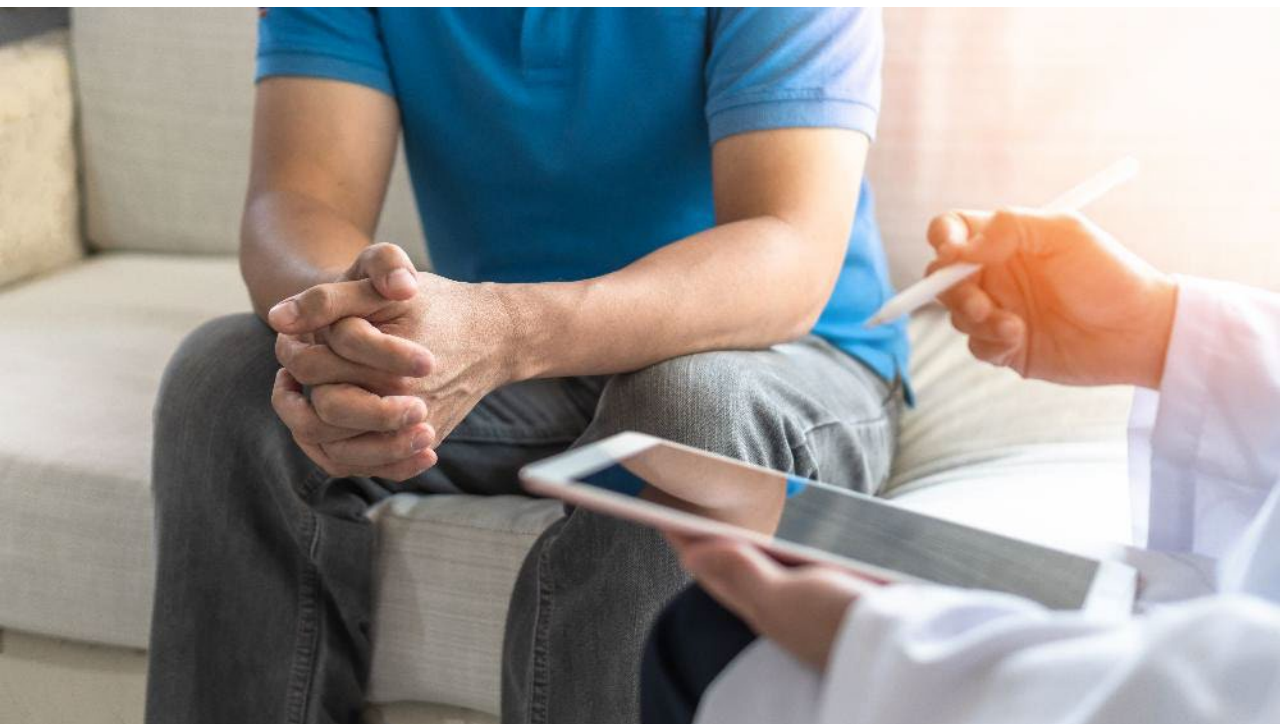


- Follow own grievance procedure and deal with promptly
- Ensure investigator is neutral (and preferably trained in carrying out investigations)
- Be clear on the specific allegations (what, where, when, who) and seek supporting evidence (for and against)
- Transparency with the colleague(s) complained about
- Do any adjustments to working arrangements require reasonably to be made?
- Support all parties throughout setting clear expectations including as to confidentiality and timescales

# Practical guidance



- Outcome should be clear and reasoned providing information where appropriate to others impacted
- Concluding a grievance will rarely repair a team
- Consider
  - Mediation for individuals or as a team
  - Leadership coaching
  - Ensure future expectations on behaviours are clear
- Implement recommendations and monitor the situation as relationships are rebuilt (consider also “lessons learnt”)
- Assess whether there is a wider cultural issue



## Multiple disability related absences

When adjustments might not  
be reasonable

# Multiple disability related absences

When adjustments might not be reasonable

- Duty applies where a PCP places disabled person at a substantial disadvantage compared to non-disabled colleagues
- Take such steps as is reasonable to take to avoid the disadvantage
- Applies where the employer knows or ought reasonably to know of the disability and the employee is likely to be placed at a disadvantage
- ECHR Code advises reasonable adjustments should be discussed and agreed with employee
- OH advice should be taken where appropriate

# Practical guidance



- ECHR Code advises reasonableness will depend on the circumstances and gives factors which might be relevant
  - The extent to which it is practical
  - Financial and other costs of making the adjustment and the extent of any disruption to the employer's activities
  - Financial and other resources available to the employer
  - Availability of external financial and other resources
  - Nature of employer's activities and size of the undertaking
- First factor most important: might the adjustment *be effective* in preventing the substantial disadvantage?
- Recent case law has indicated a “*real prospect*” is sufficient: *Hindmarch v North East Ambulance NHS Trust (EAT, 2025)*

# Practical guidance

- Assess sustainability
  - What is the burden on colleagues?
  - Is service impacted?
  - What are the cost implications?
  - Are these things sustainable in the long term?
- Document decision making including
  - Consultation discussions
  - Options considered
  - Reasons for decisions
- The stronger the consultation and documentation trail, the stronger defence to any claim

MMæ

# Practical guidance



- Multiple disability related absences may be evidence that reasonable adjustments in place are no longer effective
- Effectiveness of adjustments and their sustainability over time should be reviewed at regular intervals
- If a reasonable adjustment has been made on a temporary basis ensure this is clear and that review takes place
- Often difficult to “withdraw” a reasonable adjustment since duties or other contractual terms may have been varied

# Practical guidance

If concluding that an adjustment is not reasonable

- Be able to evidence
  - Why it is considered not reasonable to make
  - Medical evidence and OH input
  - Consultation with individual
- Review adjustments
  - What has been tried?
  - What has and has not worked?
  - Are there alternatives?

# Harassment allegations where the complainer doesn't want anything done

Complying with employer  
obligations and duties of care



**AMIA**

# Harassment allegations where complainer wants no action taken

MMa

- Employee wishes v duty of care
- Considerations
  - Severity of allegation
  - Ongoing risk to employee or others
  - Power imbalance
  - Is there a pattern of behaviour
  - Legal exposure if no action taken
- Employer may need to act even if complainer doesn't want them to

# Practical guidance

- Acknowledge employee concerns and offer support
- Explain limits on confidentiality of allegation
- Risk assess
- Consider proportionate action
  - Informal intervention
  - Monitoring
  - Training or coaching
  - Formal investigation
  - Wider cultural issue that needs addressed
- Keep employee informed about next steps, why those steps need to be taken and remind them about available support

# Rejecting a flexible working request

Justifying a refusal in a compliant way



**AMIA**

# Refusing a flexible working request

MM<sub>æ</sub>

## Common risks

- Inconsistent treatment – manager dependent?
- Damage to employee relations
- Loss of talent
- Legal claims
  - Claims relating to statutory requests
  - Discrimination
  - Constructive dismissal

## Statutory reasons for refusal

- Extra costs that will damage the business
- Work cannot be reorganised among other staff
- People cannot be recruited to do the work
- Flexible working will affect quality
- Flexible working will affect performance
- Business will not be able to meet customer demand
- Lack of work to do during the proposed working times
- Business is planning changes to the workforce

# Legitimate aims - examples



- Maintaining a high quality, personal service for customers
- Ensuring anti-social shifts are shared equally
- The need to balance workload amongst a team
- Ensuring a constant flow of information in relation to the work
- Ensuring collaboration and teamwork and knowledge sharing
- Protecting the health and safety of staff and patients

# Practical guidance

- Mindset - start from a positive perspective
- Don't rely on assumptions
- Consider potential discrimination issues
  - Is indirect sex discrimination justifiable?
  - Disability - reasonable adjustment?
- Demonstrate serious consideration of the request:-
  - Identify potential business issues AND ways to mitigate them
  - Speak to stakeholders (e.g. line manager)
  - Consider alternatives, not just the original request
  - Constructive dialogue with the employee
  - Consider trial period

# Practical guidance



- Ensure you have a clear business aim for refusal
- Explain the decision and the reasons for it fully and clearly
- If refusing a particular request, if at all possible, offer alternatives that works for your organisation
- Record and process requests in a manner that ensures consistency
- Role of HR/senior management to ensure that immediate line managers don't have negative default position
- Maintain records



## The badly behaved high performer

Balancing performance value with team dynamics and cultural value

# Badly behaved high performer

- The problem
  - Senior employee
  - Exceptional performer/revenue generator
  - Historically tolerated bad behaviour
- Risks of doing nothing
  - Team disengagement or departures
  - Reduced trust in leadership / in the organisation
  - Risk to (mental) health of others
  - Reputational damage
  - Risk of legal claims

MMæ

# Behaviour examples

- Fear based leadership
- Discrimination/harassment
- Bullying
- Aggressive behaviour – shouting/threats
- Micromanaging
- Burnout team culture
- Overly critical/demanding/undermining behaviour
- Relentlessly negative
- Regularly ignoring company requests/policies/procedures

# Badly behaved high performer

MMæ

*The culture of any organisation is shaped by the worst behaviour the leader is willing to tolerate.*

Gruenert and Whitaker

# Practical guidance

- Discuss specific incidents with high performer, the impact on others, expected standards and future expectations
- Are they open to change?
- Executive coaching
  - 1 to 1 coaching
  - Team dynamics coaching
- Use formal processes if necessary
  - Conduct
  - Performance management
- Follow up
- Protected conversation?

Questions

MMæ



**MFM<sup>ac</sup>**

**MORTON  
FRASER  
MACROBERTS**

**LLP**

# **Five difficult employee scenarios and how to solve them**

MFMac Employment Team

Innes Clark, Alan Delaney and  
Caroline Maher

21 May 2026

