NHS Employers

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Leadership in HR

Balancing People and Process

Interviews with HR leaders on the application of disciplinary policy and process

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- The essential role of HR leadership
- Putting people at the centre
- Support for everyone involved
- Addressing inequality
- Choosing the correct process
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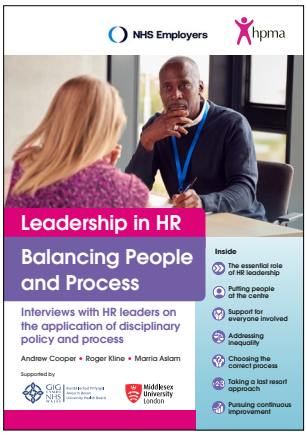
- Pursuing continuous improvement

Background

This paper is based on interviews with Chief People Officers (and their equivalent role) from NHS organisations in England, Northern Ireland and Wales.



Individuals were invited to take part based on the authors' knowledge of their organisations' work to review and improve disciplinary processes. Some were at the start of a journey to address issues and concerns. Others were further forward.

Of the 19 organisations approached, 16 responded. They represented acute trusts (7), ambulance services (1), community trusts (2), mental health trusts (4) and specialist trusts (2).

Apart from a few deputies, the interviewees all held responsibility for People/HR in their organisations and were members of their executive teams.

The authors conducted 90 minute interviews with participants between October 2024 and April 2025. Each related to the application of disciplinary policy and processes in the interviewee's organisation.

After transcription and undertaking a thematic analysis, seven themes were agreed from the interviews.

Organisations have been anonymised to protect confidentiality and to enable as open and honest a conversation as possible.

We have used the term Chief People Officers generically to include HR Directors, Directors of Workforce and other such Board roles.

AVOIDING HARM

This discussion paper forms part of the HPMA's Avoiding Harm programme. For further details, visit www.hpma.org.uk/avoiding-harm

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Welcome

The HPMA's Avoiding Harm programme and its focus on improving employee investigations has struck a chord.

When it launched in 2024, more than 800 colleagues across the UK joined our online sessions. And those sessions have been shaping conversations and informing actions across organisations ever since.

For many, the issues have resonated not only professionally, but personally too.

NHS Employers is pleased to support HPMA with the next phase of this work and the opportunity it offers to us all to review, question and continually improve our practice.

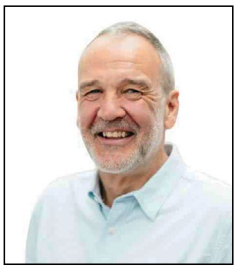
This new discussion paper is a response to the requests the HPMA has received to provide further support. The Chief People Officers and HR leaders who were interviewed shared their personal insights and experiences, and set out how they were looking to make improvements in this area of HR practice.

Seven themes emerge. It's not surprising that leadership comes out top as the issue needing to be the priority for making meaningful change.

Whilst the authors of this paper are not suggesting that this is the definitive list of themes, it's a good place to start. Please discuss them with your teams, your board colleagues and your counterparts in neighbouring organisations. Which of the themes resonate? What are the issues that have not been covered?

We know there isn't only one way to address the harm caused in complex HR processes. But this paper provides a top-level checklist for us to work through to ensure our policies and processes work better for everyone involved: our employees, our HR teams, our organisations and the patients and communities we serve.

Julie Rogers
Chief Executive, HPMA



Dean Royles
Interim Chief Executive, NHS Employers

How you can use this paper

1. **Discuss with senior HR leaders in your community:** What are the points that resonate with you? What do you challenge or disagree with? How can the paper and its themes support change?
2. **Discuss with your HR team:** How does your current practice align or differ from the themes raised? What themes do you wish to develop? What themes need further consideration and discussion? Can you use this paper to guide your approach to disciplinary processes in your organisation?
3. **Discuss with your executive team and board:** Introduce the seven themes to colleagues for awareness and reflection. How do they wish to proceed – in-line with the seven themes or by challenging them and taking another approach? What data do they need to assess performance and outcomes?

Introduction

There has been a growing understanding that disciplinary policy and practice can cause significant harm – to the people who are subject to it, to the people managing the process and to the organisations they work for.

There is also evidence that employees from ethnic minority backgrounds, disabled and lower paid employees are more likely to be harmed than their White or higher paid colleagues.

This paper explores these issues through the responses of Chief People Officers across the NHS.

Harm

Evidence shows that the overuse and misuse of disciplinary policies can harm people under investigation. Heightened anxiety, distress, confusion and isolation as well as trauma and depression have been reported.

Evidence also shows that disciplinary processes and related sanctions are disproportionately applied to some people, notably on the basis of their protected characteristics, especially disability or ethnicity, but also lower paid staff.

More recently, there has been an understanding of the impact poorly applied disciplinary policy has on those involved in the delivery of these processes - managers, witnesses, decision-makers and investigators.

Organisations also feel the impact. Culture can be harmed if people perceive unfairness and mistrust, or see colleagues who have been damaged. Recruitment and retention can be affected. And the cost of disciplinary proceedings can mount up in terms of sickness leave, bank staff and legal costs. There are opportunity costs too when people are affected by, or focused on, disciplinary issues rather than patient services.

Together, these impacts can seriously affect the delivery and safety of the care NHS organisations exist to provide.

Responding to the concerns

The NHS has responded to the growing understanding of the harm disciplinary practice can cause.

The publication of *Maintaining High Professional Standards* in NHS England (2005) and *Upholding Professional Standards* in NHS Wales (2015) provided a more structured approach to the application of processes for the medical profession. The introduction of a *Just and Learning Culture* to NHS England (2016) sought to move healthcare employers away from blame to focus on the consequences for both staff and patient care and safety.

NHS England's response to the suicide of nurse Amin Abdullah, following a flawed and biased disciplinary process, prompted guidance on a range of standards and safeguards (NHS Improvement, 2019). Drawing on lessons from the patient safety movement, NHS Wales introduced the concept of *avoidable employee harm* in 2023 to inform its disciplinary policy-making and processes.

The launch of the Workforce Race Equality Standard (WRES) in 2015, prompted work to reduce the disproportionate disciplinary action experienced by BME staff, most notably through a triage system at the point of incident (2019).

The role of HR

HR is responsible for the design and implementation of disciplinary policy in the NHS. In addition to its direct responsibility for employees, it also works with regulatory bodies for professions that have their own fitness-to-practise processes.

Disciplinary policy, whether developed on an all-country basis or by individual organisations,is shaped by Acas guidelines and is therefore broadly similar. In most NHS organisations, the administration of disciplinary policy is devolved to its leaders and managers.

Over recent years, there has been an increased focus on the health and wellbeing of those being investigated in addition to ensuring procedural compliance. However, more work is needed to achieve a balance between the two. In 2024/25, more than half the attendees who completed an online survey at HPMA's 'Improving employee investigations' seminars said their organisations still focused only on the process.

HR leadership: balancing people and process

Chief People Officers (CPOs) in the NHS have responsibility for achieving the balance between process and wellbeing so that disciplinary policies are applied justly, fairly and with compassion.

This paper hears directly from CPOs who, on a daily basis, are juggling the challenges, complexities and the individual lives of employees who find themselves in these processes.

From their reflections and experiences, seven key themes have been identified. The themes have been designed to stimulate discussion and debate across NHS organisations to enable a more aligned approach.

Seven themes and key take-aways

The essential role of HR leadership

Strengthen Board leadership so CPOs lead, own and report on disciplinary policy in line with organisational culture and values.

Putting people at the centre

Design policies that are accessible, humane and rooted in trust, written in clear language and focused on the people affected.

Support for everyone involved

Ensure consistent, structured support for staff under investigation, as well as for managers, investigators and HR teams.

Addressing inequality

Improve fairness, transparency and consistency in how disciplinary processes are applied across the workforce.

Choosing the correct process

Support managers to distinguish between conduct and capability issues and to intervene in all HR issues earlier and appropriately.

Taking a last resort approach

Prioritise informal resolution wherever appropriate to reduce harm and improve outcomes for individuals and teams.

Pursue continuous improvement

Embed ongoing learning in organisations, reviewing processes regularly and using data to drive improvement and consistency.

1. The essential role of HR leadership

Key take-away: Strengthen Board leadership so CPOs lead, own and report on disciplinary policy in line with organisational culture and values.

Participants articulated the essential role of the Chief People Officer (and their equivalents) in the development, application and reporting of disciplinary cases and practice. There was a general view that it should be owned and overseen by them: "I've got to be front and centre of it … because this matters too much … and I have to own it." (Int.6)

Two participants described their role as "being the conscience of the organisation" [Int.11,12] seeing it as their responsibility "to stand up for what is right" [Int.12] with the application of the process, and another seeing themselves as the "guardian" [Int.1] of it.

The CPO's responsibility to balance the effective implementation of policy, as well as a providing duty of care to employees, was also highlighted: "What is the right process? What is the safest process? What is the fairest process and how do we know that's being applied fairly? How do we take assurance that it's being done in the right way? How do we support and coach managers across the organisation?" [Int.2]

The accessibility of the CPO was seen as central to this: "I have to be accessible, because … whilst most people come to work to do a good job, there is racism, discrimination and bias in the workplace. So, for me, there's something about being accessible." [Int.4]

Leading change

Participants acknowledged that change was needed in this area of HR practice and highlighted areas they had been taking forward in their organisations. These included:

Reporting: One interviewee explained: "When I came in as Chief People Officer, there was no reporting against employment tribunal cases … And we'd spent millions in defending those cases" [Int.7], highlighting the importance of understanding the scale of any potential issues in order to develop approaches to remedy them.

Changing mindset: A number of participants highlighted the need to change the mindset of colleagues within their teams and organisations, because as one person put it: "Right now, we have thousands of HR professionals who think the [measure of] success is successfully defending the organisation every time … [which] means you always think of people as the enemy." [Int.7]

Supporting colleagues to 'work in the grey': While all agreed on the importance of policy, some pointed out that it is not always possible to address every issue through it and therefore saw their role "… to empower the team [for the] situations [when] the policy doesn't quite fit ... to do the right thing." [Int.4]

Relationships and partnership: One participant emphasised the need for good relationships and partnership was central to getting this area of practice right: "Across the organisation, relationships between frontline managers and their teams [and] partnership with our trade union colleagues … are fundamental to getting all of this right." [Int.16] Another expressed that: "Trust is absolutely fundamental in building relationships with staff-side." [Int.8]

Board accountability

The accountability of the CPO to the board for disciplinary policy and process in their organisation was a key consideration of participants.

The reporting of employee relation cases to the board was the area most discussed and highlighted a number of approaches. Two participants had recently introduced regular reporting on the process for the first time in their organisations. [Int, 7,15]

The frequency and nature of what was reported varied, but there were common areas which included the number of disciplinaries, their length and organisational impact. "The board … get a quarterly employee relation report [with] types of cases broken down by various characteristics." [Int.10] One mentioned taking a report of ER cases to a confidential trust board meeting, which included: "the length of time they're taking and reporting on protected characteristics." [Int.14]

Another highlighted the importance of not only actively monitoring cases at board level but scrutinising the data through thematic reviews. Others were taking a high-level view, asking how the application of the process fitted with their values and impacted their wider culture. [Int.9]

As part of the accountability, several participants highlighted their responsibility for identifying risk arising from investigations, in order to "keep the organisation safe." [Int.11] This also included the impact of the process on "people's experience, their health and wellbeing", as well as "their lives and safety of our patients." [Int.2]

Questions to consider:

- Does the Chief People Officer in your organisation lead on the development, application and reporting of disciplinary policy?
- What disciplinary performance data is reported to your Board? Do you report on impact to wellbeing, culture and finance?
- What do you agree or disagree with here and what might you add?
- Is there anything in your own practice that you might change, focus more on, or do differently after reading this?
- Do you collaborate with neighbouring organisations to learn from their approaches?

2. Putting people at the centre

Key take-away: Design policies that are accessible, humane and rooted in trust, written in clear language and focused on the people affected.

There was widespread acknowledgement that disciplinary policies and processes need to be much more people-centric, considering the needs of individuals being taken through them: "We are trying to make them more people-centred, on the basis that most people come to work to do a good job. The policy should reflect that basic trust and humanity. The policy sets the standard and tone for how you deal with things. It sets the terms of the relationship." (Int.1)

Participants recognised that the potential harm of disciplinary processes could be prevented by considering procedures up-stream. The people who will implement, and be affected by, procedures need to develop and agree them.

Policy problems

Participants said that policy itself is **not written to be people-centred**. "The first step … is a complete overhaul of the policy in a way that truly reflects being people-centred" [Int.1] As one interviewee put it: "Let's talk about the problem we're trying to solve, rather than the policy we're trying to apply." [Int.4]

Participants also raised **complexity and inaccessibility** as a significant issue. "I think people are frightened of the policy. They're too long and wordy. They're inaccessible and sometimes written in very legalistic language." [Int.1] "They're written for degree-qualified academics, or they're in HR-speak. I just think policy should be written in plain English." [Int.3]

A further complication cited was that policies tend to be **designed - and therefore applied - for the worst-case scenario**. They bake in a power imbalance between the organisation and employee, making it challenging to remain

people-centred during an investigation. They observed that if the starting point is to handle the case as a 'worst-case scenario' then that defines the approach that will be taken and will often bias the support provided to the investigated. [1]

There was clear consensus from participants that existing disciplinary policies are not fit-for-purpose. They identified clear, major areas for change, with people needing to be at the heart of policy design and development.

Making policy more accessible

"We've got to make them accessible. We've got to make them shorter, with supporting flowcharts or communications plans. And we've got to be very clear that this is there to help them. It's not there to catch them out." [Int.2]

"Every policy: no more than five pages including the cover sheet. If you can't get the policy into a workflow, it's not going to happen … assume that managers and staff will only read the workflow." [Int.2]

Three participants specifically mentioned the importance of monitoring disciplinaries against their EDI strategy [Int.1,13,14] and their "various characteristics." [Int 10] For example, one highlighted neurodiversity [Int.5] as being an important area for consideration.

Wider engagement

In relation to policy development, participants highlighted the importance of ensuring wider engagement to gain the broadest perspective on relevant issues: "We take these policies through our different diversity networks, so we can work through with their lens." [Int.1] "Every time we … collect feedback from a whole range of people – we then change the parts of it that we can. We collected feedback from divisional nursing leads, Obst leads … leading to multiple iterations." [Int.2]

There was also a focus on reflecting the desired culture and values of the organisation: "We formally updated … our disciplinary and grievance processes to be reflective of the culture that we're striving for and introduced a screening tool." [Int.3] "We have definitely tried to place our values absolutely central to the process." [Int.12]

Keep iterating

Many participants regularly reviewed their policy to reflect the organisation's learning from cases (see Theme 7), its intention to reduce the harm caused by investigations, legislation and emerging issues: "We are not very static with that policy ... If there's a line we don't like, or if we see it causes confusion or harm, we change it. We've probably changed it six or seven times." [Int.1] "Learning would come through the review of cases, gaps in knowledge, or if there's a legal [change] or national guidance." [Int.3]

This was highlighted in relation to parallel policies: "We've reviewed our policy in relation to sexual misconduct. We've made amendments to that and the dignity at work policy because of sexual misconduct." [Int.14]

Questions to consider:

- Does your organisation's policy and procedures reflect its values?
- How could you engage your wider organisation in the design, development and monitoring of your disciplinary policy?
- Is your policy informed by the learning from disciplinary cases?
- What do you think are the key elements to ensure that a disciplinary policy is person-centric?
- Are your policies easy to understand for all your staff including those whose first language is not English?

3. Support for everyone involved

Key take-away: Ensure consistent, structured support for staff under investigation, as well as for managers, investigators and HR teams.

There is growing awareness of the significant and detrimental impact of the disciplinary process, not only on the person being investigated, but on all those involved, and on the quality of the investigation.

Participants demonstrated keen awareness of the harms caused, the need to understand them better and the importance of developing measures to mitigate them.

Supporting the investigated

The interviews revealed that there is no consensus for, or standard approach to, supporting the investigated person. Each participant talked about individual, varied strands of positive support, but no-one had an agreed, joined-up plan for providing the best duty of care.

The most common support involved signposting to an employee assistance programme [Int. 1,2,7,14]: "… we try to make that available to everybody that's going through a formal process" [Int.1]; using existing internal services for counselling [Int.5,15], wellbeing [Int.1,2,5,14], occupational health [Int.2,5,13,15,16] and access to organisational psychologists. [Int.2,5,10,13,14,16]

A number [Int.7,10,11] highlighted support from a named member of the HR team: "framed as somebody who will ensure they understand the process [and] signpost them to any help or support." [Int.10] Some provided support through a welfare officer, or identified "buddy". [Int.1,9,12,14] Others referred to the importance of connecting employees with their trade union representatives. [Int.5,16]

All felt that support for the person being investigated fell short: "Not much. Just being very honest. The support in place is an email that points them to the employee assistance

programme – it's a line that every HR person uses. Just points them to the link to call the employee employment advice helpline and the HR advisor is there to support the manager. I've checked with at least 20 CPO colleagues. That's how it operates." [Int.7]

They also highlighted inconsistent support: "There is the fortnightly check-in. That's a part of the policy that we need to improve on, because it's not routinely adhered to" [Int.3] and a lack of integrated support: "I think we've got some basic things in place. But I think we need to do more in terms of integrating that into the processes, so that we've got assurance that people are getting wellbeing support as they go through a process." [Int.2]

Restoration

Restoration after a disciplinary process was the least considered aspect among participants, with the least structured approach.

A few recognised its importance: "We're very conscious of restoration. We don't have a defined process, but I definitely know it takes place." [Int.3] Others said they had given it little consideration: "There's not that massive focus around restoration and what it means for either the team, or the person, or the manager actually. You're making me really think that I need to be more mindful, actually and proactive around that – because I've left it too much to chance." [Int.16]

One participant acknowledged that: "Staff often come back incredibly bitter, damaged and potentially resentful. We've done a lot of work on the ground, after cases to try and manage those relationships. But, probably not done as much as we could." [Int.1]

Only one participant was able to articulate what they did for the employee and team post-investigation: "We don't just plonk the individual back into work. We put an OD intervention in around the team before they return." [Int 13]

Supporting the investigators

There was awareness of the impact of investigations beyond the person being investigated – HR staff and investigators (managers or specialists): "We've also been looking at the support for those who lead investigations, because I think one of the things that is missed is that investigations impact everyone involved." [Int.2]

Participants recognised the need for both support and respite for investigators. One spoke about their head of investigations receiving "support from psychological medicine" [Int.14], while another described how they provide "a bit of respite [to enable] people to heal [because] it's onerous [and] drags everybody down." [Int.15]

One participant highlighted their practice of rotating investigators to underpin the integrity of investigations, as well as provide respite, because "… they can become immune to certain stuff as well." [Int.14]

Questions to consider:

- How do you measure and report on the impact of disciplinary investigations on those under investigation, the investigators and HR staff?
- What support do you provide for people under investigation and for those leading investigations?
- How would you develop a support plan for an employee, from the start of an investigation, through to their restoration or dismissal?
- How would you support those leading investigations to mitigate the impact of the process on both the investigators and future investigations?

4. Addressing inequality

Key take-away: Improve fairness, transparency and consistency in how disciplinary processes are applied across the workforce.

All participants recognised that employee investigations are disproportionately applied to groups with protected characteristics: "I don't think we've addressed it in a systemic way. Is that an issue? Yeah." (Int.2)

Discrimination

By far the most discussed characteristic was race, with nine participants [Int.1,2,3,4,5,6,13,14,15] agreeing that: "like most NHS organisations, people from Black and global majority communities are over-represented in those processes" [Int.4]. Several knew this from their own Workforce Race Equality Standards (WRES) as well as NHS data: "We know statistically from the NHS data and working with [external support], people from Black ethnic minority backgrounds would be five times more likely to be in a process than a White counterpart." [Int.5]

Several participants felt that racial disproportionality reflects "institutionally racist" organisations. [Int.13]

Whilst some found trade unions helpful on this issue, others questioned the support: "A trade union may come out and really fight for, you know, a White colleague, when the allegation is considerably more serious, and the evidence is strongly there. When a lesser allegation comes against a BAME member of staff, there's no support at all. And they're almost not in the room." [Int.14]

Many acknowledged that gender and role could be factors: "BAME and male colleagues are much more likely to enter a disciplinary process than any other protected characteristic" [Int.3]; "I do a lot of work with HCS [healthcare support workers] because they're the most junior. They're typically Black, typically female, typically [with] childcare responsibilities." [Int.12]

One participant raised discrimination against bank staff who, they felt, can be considered "as less than human." [Int.7]

Participants also highlighted the impact on investigation outcomes: "I've seen … somebody who is LGBT, or BAME, or disabled will get a harsher sanction." [Int.14]

Neurodiversity was considered not yet fully understood or recognised as a potentially hidden characteristic: "It's a personal choice, whether or not, somebody wants to share that with us or not." [Int.5] "Neurodiversity is probably the most difficult for managers." [Int.10] "There was no recognition that something might be a disability. [There's a] big education and learning piece there for people services." [Int.15]

Tackling bias

All agreed that specific focus is required and that there is much to do: "We [have] still got some massive challenges around inclusion within the NHS." [Int.8]

Purposefully exploring data and issues in more depth was raised by most participants, with several saying they "track and monitor [investigations] from a protected characteristic perspective" [Int.9]. One mentioned introducing "thematic reporting" [Int.12] and another "about unpacking the categories that are within Black, Asian, and minority ethnic staff groups" [Int.1], while others intended to do more: "some deep dives to understand what we're going to do." [Int.9]

Several participants highlighted training as an issue, particularly for the role of the investigator, "particularly around discrimination and race. Finding an investigator who's really equipped is almost impossible" [Int.2]; "I want specialist, trained, advance skilled investigators for race, sexual harassment, disability, bullying." [Int.6]

To help address institutional racism, most participants felt instances should be called out as they happen: "Some of the worst experiences … where people have been responsible for causing harm and managers have just said, 'Well, that was just banter'" [Int.2]; "Actually calling it out and naming it within an organisation is a critical foundation step" [Int.3]; "I think it's about being brave … to challenge … your other peers, your execs, your other senior leaders." [Int.8] One participant said they had stood up among leaders and said, "We're institutionally racist. And we need to change." [Int.13]

Surfacing the issue was seen by some as a foundation for supporting managers who fail to deal with issues because they fear "being accused of being racist" [Int. 8], with this failure then potentially leading ultimately to formal investigations.

"Nobody's having that brave, courageous discussion with the global majority member of staff who you know has a different lens. [Instead, we try] to deal with this through formal processes, all that does is reaffirm the discrimination and the ongoing culture pieces that we get."

Questions to consider:

- Do you collect data that identifies the proportionality of your employee investigations?
- Does your data cover the banding of staff as well as protected characteristics?
- How does your data compare with other information you hold such as WRES indicators?
- What do you do to achieve equity within the disciplinary process?
- What can you do to identify and address the root causes of any disproportionality in the application of your process?
- Have you involved your EDI team in addressing disciplinary inequalities?

5. Choosing the correct process

Key take-away: Support managers to distinguish between conduct and capability issues and to intervene in all HR issues earlier and appropriately.

The main experience of participants was that the disciplinary process has become customarily used in place of more appropriate policies, particularly capability (Int.2,4,11). "Conduct versus capabilities is a constant challenge" (Int.9) and "People don't really use capability and then it falls apart with no case to answer, because it was never a disciplinary issue in the first place." (Int.4)

Use of process over people management

Managers' anxiety over difficult conversations and appearing "hard" [Int.13] means "they're scared of doing the performance [conversation], so they lean on the disciplinary route." [Int.1] As conversations are avoided when issues first arise, they become more difficult to broach. They grow and can lead directly to the disciplinary process being inappropriately invoked: "Either they didn't want to have the difficult conversations, or they left the difficult conversations too late. They're now treating it as a disciplinary, because their relationship has broken down, because they haven't helped a person to perform or know their expectation." [Int.1]

Disciplinary process can feel like an easier option

When it becomes clear that a formal process is required, half of participants [Int.1,2,4,5,6,10,11,13] said the capability process is seen as harder to follow than the disciplinary process: "There's a perception it takes longer. It's harder." [Int.4]

Two participants felt that one of the root causes is the lack of adherence to a performance framework in the first place: "The NHS does not do performance management well" [Int.12]; "For us to hold people to account, we need to know they've got the right knowledge and tools and that tends to be the missing piece." [Int.13]

Understanding what lies behind the issue

One of our participants highlighted management style: "… managers think that there should be some sort of terrible consequences for individuals and it's all a bit too soft to have a people-centred approach." [Int.1] While another was clear that "even though we're not going down these punitive formal sessions, we can maintain performance and accountability." [Int.16]

Poor day-to-day people management was seen as a key reason that issues arise and escalate: "Managers [are] not effectively supporting and developing their team"; they are "hiding behind the policy" [Int.5], so people are "getting dealt with down a behavioural route, but they didn't get the support they needed to do the job." [Int.8]

As a result, one participant said, managers can feel more comfortable handing an issue over to their HR colleagues: "'That's a bit tricky to deal with, but I don't want to be unpopular...' so they make it a formal HR issue." [Int.6]

HR teams can also be too quick, to turn to the disciplinary policy as requested by a manager, instead of looking deeper: "When actually they need to get underneath what the problem is for a manager and coach managers through that." [Int.5]

Creating an effective response

One participant shared how they were making sure colleagues are clear on what's expected of them: "Clarity to what standards we are setting and our code of conduct [has] got tighter definitely around some of our clinical standards around sleep practices … which has been a very common one with our temporary workforce." [Int.3]

Several participants said they empower their teams to both challenge managers' decision-making and support them to uncover the core issues and revisit whether they relate to performance or conduct: "Sometimes managers will say, 'I want to go down a conduct route' and the real issue isn't conduct. My team should be saying to those people, actually this isn't conduct." [Int.14]

One participant said early collaboration between managers and the HR team would help, as "managers will contact HR at the time something has already gone wrong, rather than on a proactive basis." [Int.12] Another referred to: "Keeping that open lens. [We] had a number of cases that have switched over from conduct to performance, some from performance to conduct." [Int.9]

Participants were clear that addressing the inappropriate use of disciplinary process could bring significant positives, including a focus on improvement: "What can we do better …? And what's the learning that we need to take forward from this?" [Int.9] (see Theme 7).

Questions to consider:

- How can your team support managers to tackle issues earlier – including disciplinary and capability?
- Do your managers have the training, support, time and confidence to manage disciplinary cases well?
- How can you empower your team to assess if it is a conduct or capability issue before triggering the disciplinary process?
- Is your work on disciplinary process linked up with the work needed in respond to other reviews covering behaviour and performance?

6. Taking a last resort approach

Key take-away: Prioritise informal resolution wherever appropriate to reduce harm and improve outcomes for individuals and teams.

Whilst disciplinary policy and processes have an important role, most participants supported a last resort approach to their use: "Don't do them" (Int.6); "As much as possible, get rid of them." (Int.14)

Interviewees focused on pursuing informal approaches wherever possible: "The whole ethos is to seek to resolve first and only move to formal where absolutely necessary." [Int.1]

Reasons for change

Participants provided several reasons for seeking less formal means of resolution, most citing the detrimental impact on people: "We don't want people going through formal processes unnecessarily. We are trying to reduce investigation times. The longer it goes on, the worse [it is for] their wellbeing." [Int.3]

One participant acknowledged the wider impact: "Don't ever forget if you dismiss somebody: you're withdrawing, potentially their opportunity to pay the bills and look after the kids. We've got to do it right and it's got to be the last resort." [Int.9]

Interviewees also raised concerns about the correct/appropriate use of disciplinary policy, particularly given the number of investigations that lead to no sanction: "There was a lot of investigations, but not much action, so there was lots of 'no case to answer'. We were putting people through unnecessary investigations" [Int.8]; "It shouldn't have been a disciplinary process in the first place [which] was a big driver for me." [Int.1]

Another highlighted the NHS's preoccupation with process: "The NHS is like 'follow the process, follow the process, follow the process.' It's the environment in which they've grown up." [Int.5]

Challenging internal systems to move away from the default position of embarking on a disciplinary process represents a major cultural change. Participants shared how they were trying to gain support for a 'last resort' approach at the point of deciding if an investigation should be launched.

Encouraging managers to question the need for investigation

One participant talked about their guiding principles: "Is there an alternative to a formal HR process?" [Int.1] Another added to their deciding questions: "Should this lead to a disciplinary? Is this something that can be dealt with informally?" [Int.7]

Senior approval

A number of participants said they made themselves the gatekeeper for final sign-off: "We're [HR] closed for business, unless the alleged misconduct meets the very high threshold for potential gross misconduct. If it didn't meet these two criteria, we weren't even going to be looking at it" [Int.6].

Another participant shared the questions they ask: "First thing I look at: Is the issue about conduct? Is it about capability? Is it a worthwhile investment of people's time, or can we get the outcome earlier? [If it was about purely capability issues] I would say what/why are you bringing it to me …?" [Int.12]

Another highlighted escalating the final decision to an executive level: "We say, you're going to need to write to either the chief nurse, or you're going to need to write to the relevant executive to get permission to go down a formal route" [Int.14].

Case conferences for shared decision-making

A number of participants spoke about their move to case conferences: "We've shifted the disciplinary process accountability back to the case conferences and away from just the temporary staffing team. That's resulted in fewer investigations being taken forward" [Int.3]. One participant spoke of anonymising the case-related data so that panel members can undertake an unbiased assessment before deciding [Int 15].

The key role of managers

Participants highlighted the importance of managers raising issues with employees earlier: "I think managers hide behind processes. I think that's the biggest issue." [Int.4]

Another participant spoke about how they had "trained their workforce team to coach, rather than just following a process. They spend much more time now coaching managers, working alongside managers to find the best way forward." [Int.11] They also talked about educating staff on the reason for this approach, as some managers had felt it would fail to hold employees to account.

Frameworks to support decision-making

Participants raised the usefulness of external frameworks to support processes. "Before we proceed into a formal investigation, we have to go through our restorative guidance" [Int.8] and "We've embedded the minimising employee harm work [asking] is this appropriate at all?" [Int.11]

Questions to consider:

- How do you encourage a 'last resort' approach to the use of the disciplinary policy and process in your organisation?
- What are the arguments against a 'last resort' approach, who makes them and how can they be countered?
- What support and training would line managers and your teams need to implement a 'last resort' approach?
- Do you collect data on informal resolution and how do you assess whether a 'last resort' approach is working?

7. Pursuing continuous improvement

Key take-away: Embed ongoing learning in organisations, reviewing processes regularly and using data to drive improvement and consistency.

All participants acknowledged the considerable challenges and complexity of applying disciplinary policy and their related processes. It was for this reason that many had taken a continuous improvement approach to their use. They recognised that ongoing learning needs to shape the design and application of disciplinary policy and process on an on-going basis.

Some participants referenced existing, or aspired to apply, quality improvement methodology to inform and improve the processes: "Everything we want to improve becomes an improvement project. We've got dashboards, we've got data, we've got milestones, and it's tracked right up to board level." [Int.1]; "We're looking to stabilise our quality improvement approach. At the moment, it's more of a toolkit. But we want to embed a more standardised process." [Int.3]

While approaches varied widely, most participants highlighted the need for continuous improvement versus a one-off, project approach: "My QI training taught me this phrase: 'permission to fail. If we get it wrong, we'll fix it and try differently.'" [Int.12]

Carrying learning forward

Some participants either had some processes in place or intended to identify learning from previous disciplinaries for future policy application and training. Participants who practised post-process reflection used varied methodologies, including case reviews – sometimes by an external agency, thematic reviews and feedback sessions, which then informed or even shaped policy reviews.

Some of the issues that came to light were not just significant but "pivotal". [Int.3] They led to major changes to both policy and process and, in one case, to overturning the outcome: "We do case reviews. That was quite a sea change for us. We

had a case where someone was dismissed and then reinstated because the investigation didn't ask why they did something, it just assumed guilt. That changed everything for us." [Int.3]

As well as feeding into policy reviews, participants said they used the data or learning they collated to share in different ways with their wider organisation, often depending on existing internal learning culture and practices. Examples included feeding back to the organisation's senior leadership teams [Int.11,12], sharing learning with their improvement committee and in a newsletter [Int.16], or rebriefing teams once policy changes had been made as "part of our continuous learning culture" [Int.3]. "We do a lot of shared learning and reflection, and we make stories around our colleagues very visible in our [internal] communication." [Int.15]

Feedback sessions

While all participants looked to capture learning from disciplinaries, several alluded to a lack of formal process; "It's a bit hit and miss, if I'm honest" [Int.16]; "There might have been some analysis of themes, but I'd say it's not mature, not developed. It's something we need to work on" [Int.2]; "We do feedback sessions. If, for example, there's a difficult, complex case, we will kind of do a bit of a wash-up session after that's ended and talk with colleagues involved." [Int.5]

One participant took the opportunity to communicate the need for change after their organisation lost an employment tribunal (ET): "The big piece of learning that we introduced was after the ET was lost, I did a presentation to the full senior leadership team [on the] need to change." [Int.13]

The amount and nature of training that follows on from captured learnings also varies in format and intensity: "We've had numerous webinars and sessions [and] repeat that iteratively all the time" [Int.12]; "We put all of our employee relations teams and business partners through intensive training. We had workshops, new systems, checks and balances" [Int.14]. One participant also mentioned the introduction of "a lead investigator who supports all of the other investigators and rotates them and looks after their wellbeing as well." [Int.14]

Several other examples of how improvements are being made were described by participants, from resolution coaches "to coach them through how they resolve that for themselves. We're not even close to getting this right by a long shot" [Int.6]; restorative practice: "Going back to behaviours and civility and respect" [Int.8] and the appointment of bank investigators: "We've … recruited three or four people to be on a bank [and do] investigations on a kind of call-off basis." [Int.10]

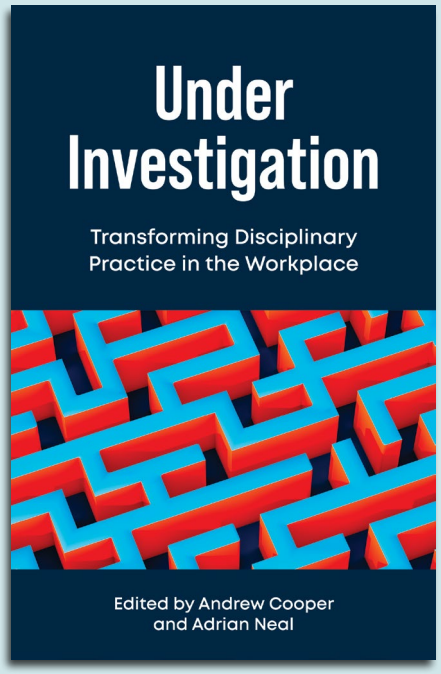
Questions to consider:

- Do you have the skills and systems in place for data collection, analysis and continual learning?
- Do you learn from everyone involved in a disciplinary process – the investigated, the investigator, line managers, witnesses, trade unions representatives etc?
- How are you capturing, or could you capture, learning and significant issues from past disciplinaries to inform a policy review?
- Does there need to be a standardised way of capturing learning and disseminating it in your organisation? What models and practices could support this?
- How do you make improvement a **continuous** process?

Looking for more help and support to improve your disciplinary processes?

The ***'When we do harm'*** discussion paper is packed with ideas, resources and talking points to start a conversation in your organisation about how to improve your disciplinary processes.

www.hpma.org.uk/avoiding-harm



'Under Investigation' proposes a shift in mindset that prioritises employee wellbeing alongside the application of the process, reducing potential harm and creating healthier work environments.
(Bristol University Press)

www.under-investigation.com

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The Healthcare People Management Association (HPMA) is the professional voice of people professonals in health and care across the UK.

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