

# **East Cumbria Family Support Association**

## **DISCIPLINARY POLICY AND PROCEDURE**

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## **Introduction**

East Cumbria Family Support Association (ECFSA) is committed to the highest standards of performance by its staff.

Generally, our staff members work to the high standards we require. However, there will be occasions when it is necessary to take action as a result of poor performance, or breaches of discipline.

This policy and procedure provides details on how ECFSA deals with poor performance and disciplinary offences.

These policies and procedures should be read alongside the Acas Code of Practice on Disciplinary and Grievance Procedures, which is attached.

### **1. Poor Performance: Informal Action**

- 1.1 Cases of unsatisfactory performance or minor disciplinary offences will normally be dealt with through a poor performance interview.
- 1.2 This will be carried out on an informal basis, and the employee concerned need not be accompanied by a union representative or colleague.
- 1.3 The purpose of the interview will be to agree on the action required to bring about an improvement in performance.
- 1.4 It will be made clear to the employee that if there is no improvement in performance, or a repetition of misconduct, formal disciplinary action will be taken.

### **2. Disciplinary Offences: Formal Action**

At all stages of the disciplinary process the employee will be given the chance to state his or her case, accompanied, if requested, by a trade union representative or a friend or colleague.

The various stages of the procedure are set out below.

**It should be noted that ECFSA reserves the right to vary these arrangements, dependent on the circumstances of the particular case.**

ECFSA will at all times aim to deal fairly with its employees.

#### **2.1 Stage 1: Inform the Employee of the problem**

- i) The first step in the formal process is to inform the employee in writing what it is they are alleged to have done wrong.
- ii) The letter should contain enough information for the employee to understand what it is they may have done wrong and the reasons why it is not acceptable.

- iii) The letter should invite the employee to a meeting at which the problem can be discussed.

## **2.2 Stage 2: Investigatory Meeting**

### **2.2.1 Purpose of the Investigation**

- i) All potential disciplinary matters must be thoroughly investigated.
- ii) For minor breaches of discipline, the manager will simply meet with the employee to establish the facts.
- iii) For more complex matters, a formal Investigatory Meeting will take place, led by the staff member's Line Manager. The purpose of the investigation is to:
  - Enquire into the circumstances surrounding the alleged misconduct
  - Take a balanced view of the information that emerges
  - Give the employee the opportunity to offer an explanation
- iv) In conducting an investigation the role of the Line Manager is to:
  - Ascertain the facts ;
  - Assemble the evidence;
  - Decide whether there is a case to answer.
- v) It is the Line Manager's responsibility to present the case at any disciplinary hearing which may follow.
- vi) The investigation should involve as few people as necessary in gathering sufficient evidence to make a decision on the correct course of action.
- vii) The investigation should be carried out in accordance with ECFSA's Policy and Procedures for Information Sharing and Confidentiality, and it should be made clear to those interviewed that breach of those procedures could be a disciplinary offence.
- viii) Following the meeting the Line Manager will recommend whether or not disciplinary action is justified.

### **2.2.2 Guidance on conducting an investigation;**

- i) When allegations are made that a disciplinary offence has been committed, a discussion should take place between the manager and the employee, so that the employee has the opportunity to offer an explanation.
- ii) This discussion will establish whether a formal investigation would be appropriate.
- iii) It should be made clear that the Investigatory Meeting is part of the investigation and not a formal Disciplinary Hearing.
- iv) A third person should take notes and verify the details of the meeting.

- v) Other persons believed to have information about the alleged misconduct should be interviewed and written statements obtained if possible.
- vi) Copies of notes should be sent to all parties giving the opportunity to challenge any items of record.
- vii) If, during the investigation, other matters of concern come to light, these should be notified to the employee and incorporated into the investigation.
- viii) At the conclusion of the investigatory meeting the Line Manager should write to the employee concerned and advise him/her of the decision as to whether or not it is felt that there is a case to be answered and what would happen next. The letter should include:
  - The reasons for the decision
  - Date, time and place of any disciplinary hearing (where appropriate)
  - A copy of the Disciplinary Procedure
  - A copy of the notes of the Investigatory Meeting
  - Any witness statements
  - A statement of the right to be represented by a Trade Union or friend or colleague

### **2.2.3 Stage 3: Disciplinary Hearing**

- i) Employees should be notified in writing at least 5 working days in advance of the hearing.
- ii) Employees and their representatives should make every effort to accommodate the dates set for the hearing to avoid protracting the process but reasonable requests for an alternative date will be considered.
- iii) In order to allow time for exchange of evidence prior to the hearing, the manager should submit the papers to the panel at least 2 working days before the hearing. Where possible the employee should submit any papers he/she wishes to submit at least 2 working days prior to the hearing.

## **3. Disciplinary Panel**

The Disciplinary Panel will consist of a minimum of two and maximum of three people and will not include anyone involved in the investigatory stage.

### **3.1 Conduct of the Hearing**

- 3.1.1 One member of the panel will take the chair. The chair will invite all parties into the room where the Hearing will be conducted. He/she will then introduce the panel and invite everyone else to introduce themselves. There will be a note taker present.
- 3.1.2 The Chair will establish whether or not everyone has received copies of all relevant papers.
- 3.1.3 The Chair will invite the manager who conducted the investigation to make the case for disciplinary action.

- 3.1.4 The employee or his/her representative will be invited to ask questions of the manager making the case.
- 3.1.5 The panel may ask questions.
- 3.1.6 The manager presenting the case will be given the opportunity to sum up.
- 3.1.7 The Chair will then invite the employee or his/her representative to make their statement of case.
- 3.1.8 The manager will be invited to ask questions followed by questions by the panel.
- 3.1.9 The employee or his representative will sum up their case.
- 3.1.10 The Chair will advise the employee of the decision of the panel in writing within 5 working days.

#### **4. Possible Outcomes of a Disciplinary Hearing**

##### **4.1 No Action**

Should the panel consider that there is insufficient evidence to take action or that new evidence has emerged to disprove the allegations, no action will be taken.

##### **4.2 Verbal Warning**

4.2.1 Where the Panel considers that the offence merits such action, and that it will address the misconduct or poor performance concerned, the employee will be given a Verbal Warning.

4.2.2 This will be confirmed in writing.

4.2.3 Papers relating to the offence will be held on file for 12 months and removed thereafter if there has been no further recurrence of the misconduct or poor performance.

##### **4.3 Written Warning**

4.3.1 Where the Panel considers it appropriate, or where a verbal warning has not led to an improvement in conduct, or performance, the employee will be given a Written Warning.

4.3.2 This will be removed from the employee's file after 12 months if there is has been no further recurrence of misconduct or performance has improved.

##### **4.4 Final Written Warning**

4.4.1 Where the panel :

-Considers the misconduct to be so serious that a written warning is deemed to be insufficient, but not so serious as to justify dismissal

**OR**

- If previous misconduct continues, or performance has failed to improve following a written warning, a Final Written Warning will be given.

4.4.2 This will be held on file for 12 months and removed thereafter if there has been no recurrence of the misconduct or poor performance.

#### **4.5 Dismissal**

4.5.1 Dismissal will not be considered for a first offence except where gross misconduct is involved.

4.5.2 Dismissal may result from repeated misconduct, where previous warnings have already been issued, but conduct or performance has not improved.

#### **4.6 Gross Misconduct**

4.6.1 "Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee thus justifying summary dismissal. Acts which constitute gross misconduct must be very serious and are best determined by organisations in the light of their own particular circumstances"

("Discipline and Grievances At Work-The ACAS Guide P32.)

4.6.2 For ECFSA examples of gross misconduct would be :

- Abuse of children or vulnerable adults
- Inappropriate relationships with service users
- A serious breach of confidence
- Theft or fraud
- Deliberate and serious damage to property
- Serious misuse of ECFSA's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing ECFSA into serious disrepute
- Serious incapability at work caused by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules.

**This list is not exhaustive, and other offences could be regarded as acts of gross misconduct**

4.6.3 If the Disciplinary Panel is satisfied that gross misconduct has occurred: given due regard for any mitigating circumstances, the result will be summary dismissal without notice and without payment in lieu of notice.

#### **5. Conclusion of the Hearing**

5.1 The Chair of the Panel will advise the employee of the decision of the panel in writing within 5 working days, and should include the reasons for the decision and should advise the employees of his right to appeal.

5.2 Any appeal to be made by the employee should be made within 15 working days of receipt of the confirmation letter.

## 6. Suspension

- 6.1 In the event of serious misconduct an employee may be suspended on full basic pay while an investigation is carried out.
- 6.2 The Line Manager should decide whether or not suspension is appropriate.
- 6.3 Employees may also be suspended from work on full pay during an investigation if it is considered that their continued presence at the workplace may be to the detriment of any party, including themselves, or hinder the investigation.
- 6.4 Notification of a decision to suspend must be made in writing and the letter should include:
  - The reasons for the suspension
  - Details of any Investigatory Meeting
  - The right to be represented by a Trade Union or friend or colleague.
- 6.5 Suspension will be for as short a period as possible.

**It is important to note that suspension is a *neutral* act, and *does not* imply guilt or blame.**

## 7. Timescales

- 7.1 Under normal circumstances, and wherever possible, the time between the Investigatory Meeting and the Disciplinary Hearing should not exceed 10 working days.
- 7.2 On occasion timescales may need to be extended due, for example, to annual leave, sickness or the need for a more detailed investigation, particularly in cases of gross misconduct.
- 7.3 The outcome of an investigatory meeting or a disciplinary hearing should be confirmed in writing to the employee within 5 working days.
- 7.4 An appeal against the decision of a disciplinary hearing should be made within 15 days of receipt of the letter giving the decision of the Disciplinary Panel. (See Section 9 below for details of the Appeals Procedure).

## 8. Appeals Procedure

- 8.1 An employee has the right of appeal against disciplinary action agreed at a disciplinary hearing.
- 8.2 Any appeal should be made, in writing, to the Chair of **ECFSA** within 15 working days of receipt of receipt of the decision of the Disciplinary Panel.
- 8.3 Wherever possible, appeals should be heard within 15 days of receipt of the appeal.

## **9. The Appeal Hearing**

- 9.1 A Panel of Trustees, chaired wherever possible by the Chair of ECFSA, and excluding any Trustee who participated in the Disciplinary Panel, will hear the Appeal.
- 9.2 There will be a note taker present.
- 9.3 The Appellant will have the right to be accompanied by a Trade Union representative or friend or colleague.

## **10. Appeals Panel Procedure**

- 10.1 The Chair of the Appeal Panel will introduce the Panel. He/she will then invite all other persons present to introduce themselves.
- 10.2 The Appellant or his/her representative will be invited to present the case for appeal.
- 10.3 The Chair of the Disciplinary Panel will be invited to ask questions of the employee or his/her representative followed by questions from the Appeals Panel.
- 10.4 The employee or his/her representative will be asked to sum up.
- 10.5 The Chair of the Disciplinary Panel will then be invited to put the case for disciplinary action, followed by questions from the employee, and then members of the Appeals Panel.
- 10.6 The Chair of the Disciplinary Panel will be invited to sum up.
- 10.7 The Appeal Panel will adjourn to consider its decision.
- 10.8 After reconvening, the Chair of the Appeals Panel will advise the employee of its decision and the reasons for reaching its decision.
- 10.9 The decision of the Appeals Panel will be final and will be notified formally to the employee in writing within 5 working days.

## **11. Overlapping Grievance and Disciplinary Cases**

- 11.1 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended, in order to deal with the grievance.
- 11.2 Where the grievance and disciplinary cases are related, it may be appropriate to deal with both matters concurrently.

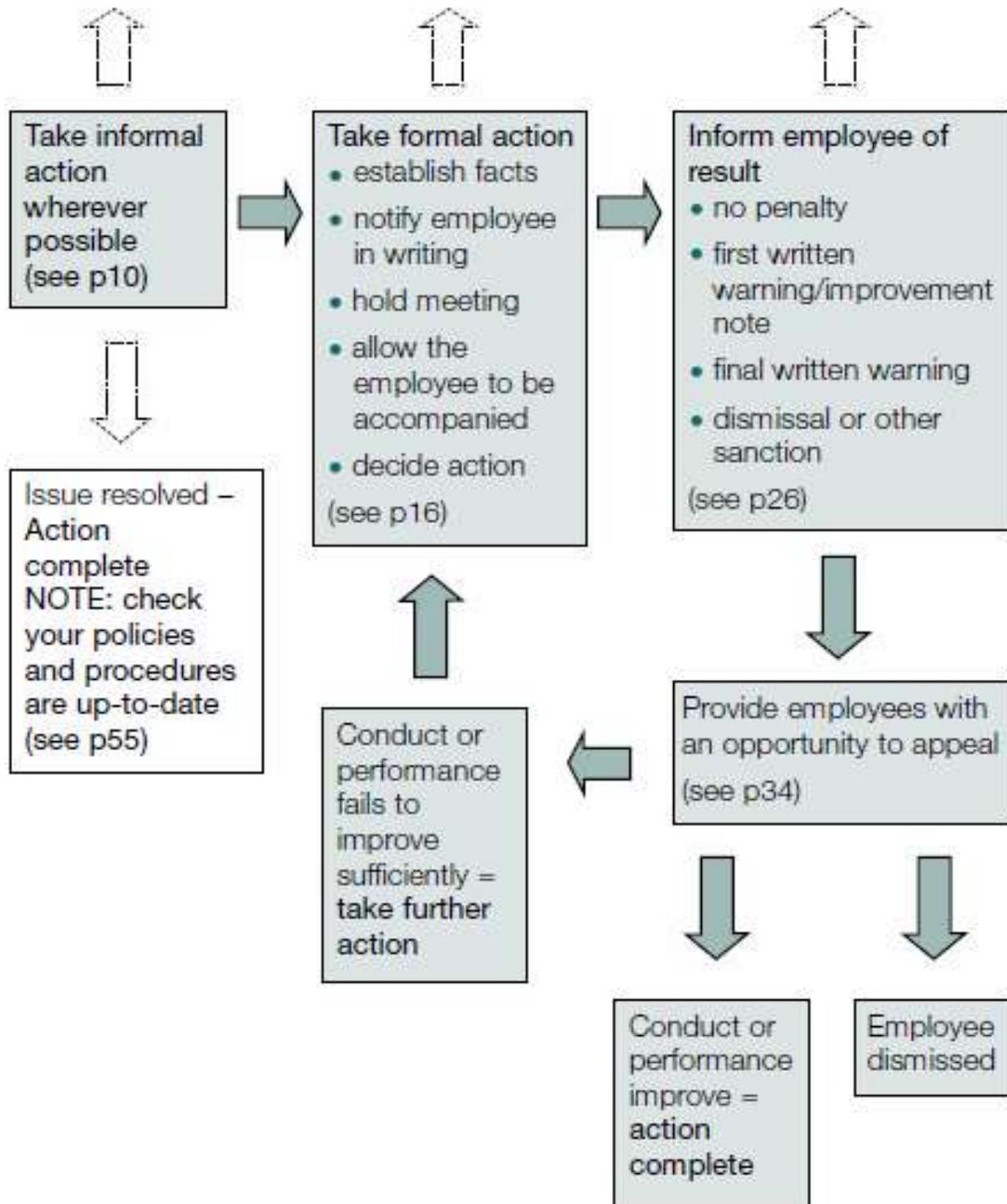
### **Attached :**

**“Discipline and Grievances at work The Acas guide”**

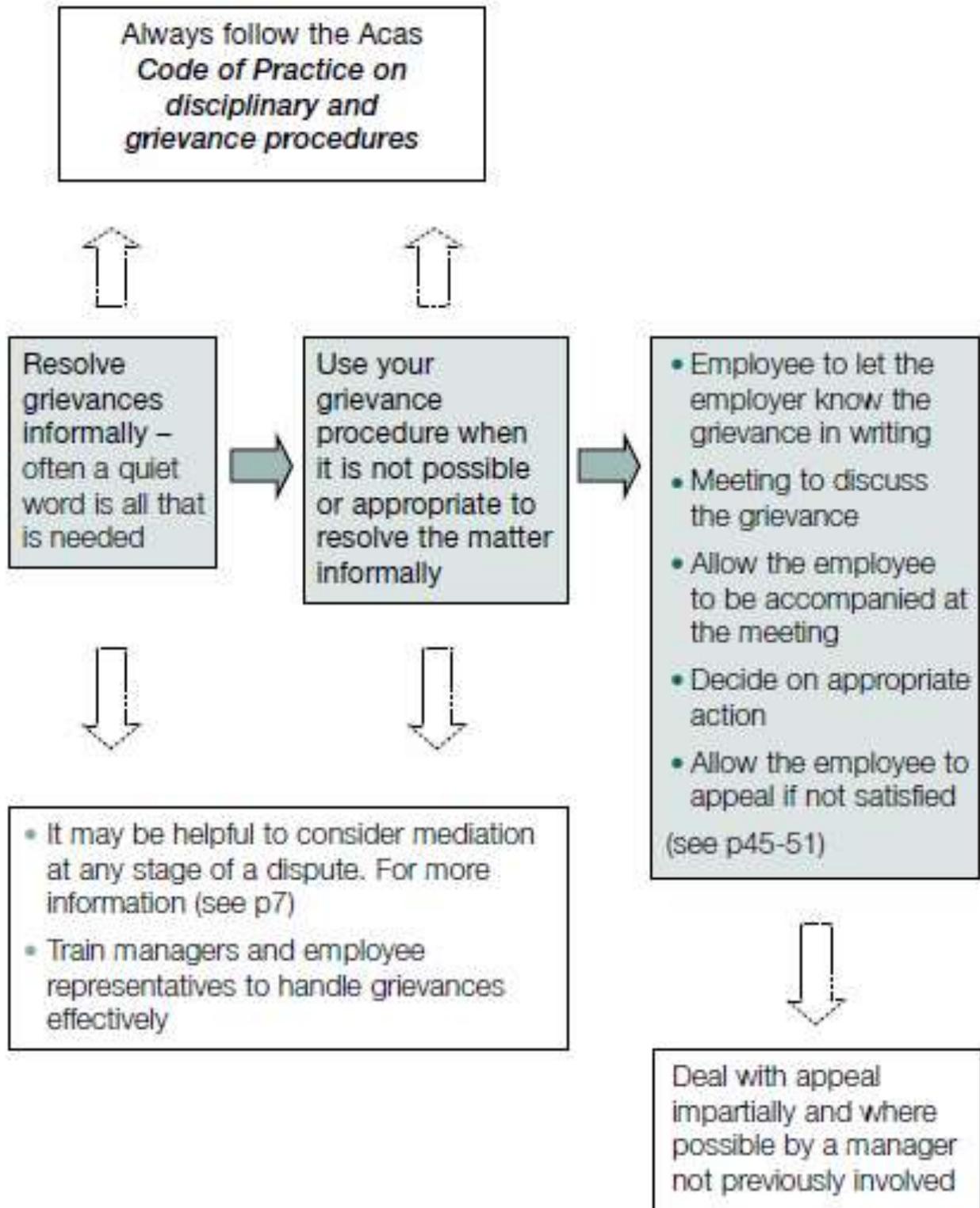
**“Code of Practice on Disciplinary and Grievance Procedures” (Acas March 2015)**

## Handling discipline – an overview

- Always follow the Acas *Code of Practice on disciplinary and grievance procedures*
- It may be helpful to consider mediation at any stage – see p7



## Handling grievances – an overview



## Using mediation

An independent third party or mediator can sometimes help resolve disciplinary or grievance issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediators may be employees trained and accredited by an external mediation service who act as internal mediators in addition to their day jobs. Or they may be from an external mediation provider. They can work individually or in pairs as co-mediators.

There are no hard-and-fast rules for when mediation is appropriate but it can be used:

- for conflict involving colleagues of a similar job or grade, or between a line manager and their staff
- at any stage in the conflict as long as any ongoing formal procedures are put in abeyance, or where mediation is included as a stage in the procedures themselves
- to rebuild relationships after a formal dispute has been resolved
- to address a range of issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment.

In some organisations mediation is written into formal discipline and grievance procedures as an optional stage. Where this is not the case, it is useful to be clear about whether the discipline and grievance procedure can be suspended if mediation is deemed to be an appropriate method of resolving the dispute.

Grievances most obviously lend themselves to the possibility of mediation. Managers may not always see it as appropriate to surrender their discretion in relation to disciplinary issues where they believe a point of principle is at stake, such as misconduct or poor performance. However, disciplinary and grievance issues can become blurred, and the employer may prefer to tackle the underlying relationship issues by means of mediation.

### **Cases unsuitable for mediation**

Mediation may not be suitable if:

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation
- it is used by a manager to avoid their managerial responsibilities
- a decision about right or wrong is needed, for example where there is possible criminal activity
- the individual bringing a discrimination or harassment case wants it investigated
- the parties do not have the power to settle the issue
- one side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.

For more information about mediation see the Acas website at [www.acas.org.uk](http://www.acas.org.uk) and the Acas/CIPD guide *Mediation: An employer's guide* which can be downloaded from the website.