

Resolving workplace disputes in SMEs qualitative research with employers

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Disclaimer

This report contains the views of the authors and does not represent the views of the Acas Council. Any errors or inaccuracies are the responsibility of the authors alone.

Glossary

Advisory, Conciliation and Arbitration Service

Acas is an independent, non-departmental public body that provides free and impartial advice to employers, employees, and their representatives on employment rights, best practice and policies, and resolving workplace conflict.

Capability

A capability issue is when there is an issue with an employee's ability to do their job for example due to an illness. Adjustments or support may be able to help resolve it.

Code of Practice on disciplinary and grievance procedures

Basic practical guidance to employers, employees and their representatives which sets out principles for handling disciplinary and grievance situations in the workplace. The guidance in the Code is taken into account in relevant employment tribunal cases. The Foreword to the Code and accompanying [Acas guide to discipline and grievances at work](#) both contain recommendations on disciplinary and grievance procedures but do not form part of the Code and are not statutory. Therefore, tribunals are not required to take into account the recommendations in the Foreword and the non-statutory guidance.

Disciplinary

Situations where there is a concern that an employee is performing poorly or has acted in a way that is improper or unacceptable. Disciplinary action is formal action against an employee. For example, issuing a first written warning for misconduct or dismissing someone for gross misconduct.

Disciplinary and grievance policies and procedures

Policies and procedures for organisations to follow to deal with disciplinary cases or to consider employees' grievances. Policies and procedures help employers deal with disciplinary or grievance matters fairly and consistently.

Employment tribunal

An independent judicial body established to resolve disputes between employers and employees over employment rights. The tribunal will hear claims about employment matters such as unfair dismissal, discrimination, wages and redundancy payments.

Grievance

Situations where an employee has a problem or concern that they want to raise with, and be resolved by, management.

Gross misconduct

When an employee has done something inappropriate that's very serious or has very serious effects.

Human resources (HR)

The department in an organisation responsible for all employee-related operations including disciplinaries and grievances. When there is no department or member of staff whose main responsibilities include HR, the company may engage an external HR consultant or service, who manage HR on the company's behalf.

Indemnified advice

When an organisation has received insurance and advice from an HR provider and the insurance is conditional on following that advice.

Investigation

The process involving information gathering about the circumstances around a disciplinary or grievance.

Workplace mediation

A way to explore mending relationships when there is a disagreement at work and to agree on how to work together in the future. Mediation is held by a neutral person (a 'mediator') who impartially helps everyone involved find an agreed solution.

Judicial mediation

A preliminary step offered in some tribunal and court proceedings, where the parties meet with the judge to explore the possibility of settling a legal claim without the need for an adjudicatory hearing.

Poor performance

When an employee fails to meet the performance standards expected by the employer, which are written or implied in their terms of employment.

Suspension

Requiring that an employee temporarily stops work or sending an employee home from work, during an investigation or a disciplinary or grievance procedure.

Executive summary

This report presents findings from qualitative research with employers in micro, small and medium-sized enterprises (SMEs), exploring contemporary experiences of dispute resolution procedures inside the workplace. This research was carried out by NatCen Social Research on behalf of Acas using 40 in-depth interviews with senior staff responsible for disciplinary and grievance matters.

Throughout this report, 'case' is used to describe the process in which an employer addresses an employee's disciplinary or grievance issue. 'Issue' is used to describe the problem which has led to the initiation of that process.

Dispute causes

- SMEs of different sizes and sectors described a wide range of issues leading to disciplinaries and grievances. They included gross and general misconduct, bullying and harassment, negligence, unfair treatment, discrimination, poor performance, poor timekeeping, health and safety issues and disputes related to pay, terms and conditions.
- While some cases involved either a disciplinary or grievance, others encompassed both. Disciplinaries had led to grievances as a result of employees feeling the disciplinary process was handled poorly, though SMEs sometimes appeared to conflate the term 'grievance' with appeal processes. Where grievances led to disciplinaries, staff members who were the subject of the grievance had disciplinary action taken against them as an outcome of the grievance.
- The main factors underpinning how frequently disciplinary and grievance issues arose were organisation size and the nature and severity of the issues. The frequency of issues was broadly proportional to employer size and less serious issues (for example performance issues) tended to occur more often than more serious issues (for example gross misconduct).
- SMEs believed company culture and recruitment methods affected the frequency of issues they experienced. High levels of interaction between managers and staff were thought to allow more issues to surface, and some SMEs used this as a deliberate strategy to identify and address issues early on. SMEs with a low frequency of issues pointed to thorough recruitment practices, aimed at getting the right 'fit' for the company culture, as contributing to this.

- SMEs' feelings about the rate of disciplinary and grievance issues their organisation experienced was influenced by whether they were perceived to be commonplace for their sector. When issues arose, SMEs reported either feeling motivated to resolve the issue for the sake of preserving staff relations; disappointed because staff were generally cordial and performed well; or concerned because of the time and cost implications handling issues would have for their organisation.
- The impacts of the coronavirus (COVID-19) pandemic on the cause of issues were divided, with some SMEs not observing any changes. Where the pandemic did have impacts, these were linked to the effects of home-working; reticence to return to work after being furloughed; mental health issues stemming from the stressful circumstances of the pandemic; and employees' safety concerns when returning to the workplace. For organisations with a higher frequency of issues, the pandemic was felt to increase the rate, particularly regarding performance issues.

Policies and procedures

- There were 4 distinct approaches taken by SMEs to delivering their HR function. Those SMEs whose owner or manager delivered the HR function tended to be micro or small businesses. Other SMEs had dedicated internal HR staff, and these tended to be small or medium businesses. Both of these groups made use of a range of formal and informal support. Another group of SMEs, of all sizes, had no dedicated HR staff, and made use of external HR consultants. Lastly, there were SMEs that took a hybrid approach, with both internal HR staff and external consultants. These tended to be medium-sized businesses.
- In general, SMEs' policies and procedures comprehensively covered the principles set out in the Acas Code of Practice ('the Code') for disciplinary and grievance procedures. However, there was some variation, and some relatively consistent gaps and mismatches, both in terms of alignment with the Code, and in terms of how well policies and procedures equipped SMEs to deal with the kinds of issues they experienced.
- Not all policies and procedures gave examples of what was considered gross misconduct, despite the Code requiring this. There was also variation in the extent to which policies and procedures explained the right to accompaniment. Finally, it was rare for policies and procedures to explain what would happen in the case of overlapping or linked disciplinary and grievance issues; this is mentioned only briefly in the Code, but it was a scenario experienced by a wide range of SMEs.
- The SMEs that wrote their own policies and procedures tended to base them on examples or guidance from Acas, the CIPD and others. SMEs whose policies and procedures were written by external HR consultants tended to go through a collaborative process of editing and refining, to ensure that they fit the specific needs of the business. Staff were not, in general, involved in the development of policies and procedures and efforts to educate staff and ensure that they fully understand the policies and procedures were minimal, despite the Code requiring this.
- The absence, or lack, of confidence in an organisational policy could compromise confidence in the fairness of the resolution process. Employers could feel vulnerable to issues escalating into legal claims, therefore opting to make costly financial settlements rather than attempting to address the problem through their disciplinary or grievance procedures.

Approaches to disciplinaries and grievances

- SMEs had adopted a wide range of approaches to resolving disciplinary and grievance issues, from very informal to very formal. The choice of approach was determined by several interlinked factors: business need, concern for employee welfare, perceived severity of the issue and the existence of a disciplinary or grievance policy or procedure.
- There was a consensus that taking an informal approach, at least at an early stage, could lead to a better resolution process. This was considered especially important in SMEs due to the close working environment and relationships. However, the research found that informal approaches were sometimes used inappropriately (when a formal approach may have been more appropriate or when issues were not taken seriously), or ineffectively (where they were rushed or used superficially).
- In more exceptional cases, SMEs with workers on zero-hours contracts were able to circumvent formal processes altogether, simply by ceasing to offer work. This points to a need for further consideration of what employers' obligations towards such workers in potential disciplinary or grievance situations are or should be.
- Approaches to both investigations and suspensions varied, with some being more formal in nature while others were less so. Investigations were widely viewed as good practice because they facilitated a fair judgement. On the other hand, employers

generally agreed that suspensions should only be used in very serious situations. Examples included where workplace attendance posed a risk of damage to the business, to others or to the investigation process, or due to concern that the employee may not carry out their work responsibly, for example due to drug or alcohol use. Outside of these situations, it was felt that avoiding inappropriate suspensions was in the interests of employers and employees.

- There were limited experiences of mediation among participating SMEs. Where mediation was used as a means of dispute resolution in the workplace, it was in cases where communication and relations between parties had broken down. Some SMEs were advised to use mediation by external HR consultants while others had experience of using judicial mediation as a preliminary step used to explore settling a legal claim before going to a court or tribunal hearing.
- The effectiveness of the resolution process was influenced by a range of factors. Close relationships between management and staff could make employers and employees averse to raising issues, due to a fear of conflict or finding it awkward. This allowed problems to exacerbate unchecked, meaning that employees were confused when the issue was finally raised formally.
- Conversely, close relationships could also support the resolution process. Managers could more easily spot issues, respond empathetically and speak openly because they knew employees well. Line managers failing to escalate issues to senior managers when appropriate, could also be problematic. Staff time and monetary constraints posed challenges but were also reported to support a more streamlined process, involving fewer people and less bureaucracy.
- Confidence in dealing with disciplinary and grievance issues varied widely. Employers were more confident if they had prior experience of handling disciplinary and grievance cases, access to reliable forms of expert advice or support, trust in and positive relationships with employees, and if the issue at hand was relatively clear-cut. On the other hand, confidence was undermined by more complex issues, a fear of legal action, aversion to confrontation, and a concern for employee welfare.

Outcomes and impacts

- SMEs experienced a range of outcomes in relation to both disciplinary and grievance issues. In some instances, processes culminated in employees losing their jobs – either as an outcome of a disciplinary process, or where employees resigned before a disciplinary process had concluded. Outcomes where employees remained in employment included implementing performance management plans, written warnings, further training or a combination of all of these measures.
- Outcomes were determined by several interlinked factors: the severity of the issue, the formality of the approach taken, the extent to which the employer and employee felt that continuing in employment was appropriate or desirable for either party, and the employer's anticipation of a legal claim.
- Employers' feelings towards the outcomes of issues were shaped by their views of how well they had handled the process, and linked to this, how fair the outcome was perceived to be. The impact on the organisation was also important; dismissal, resignation or a financial settlement (which averted having to go to a tribunal) were viewed positively if morale was restored or financial losses were minimised. Employers also valued outcomes that led to improvements in employee relations and performance, such as training for staff.
- While the resolution process had led to some positive outcomes, SMEs reported a range of negative impacts on employees, managers, and the organisation as a whole. For employees they included negative career implications and mental health impacts. For managers they involved workload pressures and stress. At the organisational level, disciplinary and grievance issues had financial impacts for employers due to the time and cost of resolving disputes and the costs of financial settlements.
- Lessons learnt by employers prompted a range of changes to their overall approach. This included strengthening their training offer; improving internal communication; intervening in issues sooner; seeking more advice and support, and keeping records of issues for future reference in case of a claim to an employment tribunal.

Information, support and training needs

- SMEs had used a range of sources of information or support on handling disciplinary and grievance issues, often in combination. They were: external HR services; Acas; trade bodies and associations; online resources (websites, articles and video tutorials); solicitors and HR literature.

- Professional HR services were well-regarded for their personalised, responsive and clear advice. They were perceived as good value for money due to the peace of mind they offered, including packages with insurance cover for disputes resulting in an employment tribunal claim. A recurring view among those who paid for external HR services was that their needs surrounding disciplinarys and grievances were fulfilled by this source alone.
- Acas's services were widely used and cherished. The Acas website played an important role for SMEs as a free, high quality and comprehensive resource and those who had attended Acas training and seminars on disciplinarys and grievances found them useful. Some participants believed Acas should do more to raise SMEs' awareness of available training and information sessions.
- Areas in which additional help was wanted were: training on disciplinary and grievance issues and how to handle them both informally and formally; advice and guidance on informal resolution and unexpected situations; sector-specific support and financial help for SMEs.
- The main barrier to accessing support was cost. Staff availability posed an additional barrier to accessing training for smaller firms who could not easily release staff to attend courses. Though not widespread across the sample, there was a misconception among some employers that Acas sided with employees and this stopped some SMEs from accessing Acas advice.
- Awareness and use of the Code depended on whether participants were in HR-focused roles. Those who were aware of and used the Code did so for detail or clarification. Their confidence was boosted by the knowledge that they were following good practice. There was a view among some non-HR specialists that the principles-based nature of the Code was too open to interpretation for their level of skills or knowledge.

Conclusions

- Issues underpinning disciplinary and grievance cases experienced by participating SMEs were diverse in terms of how severe, persistent, complex and intractable they were, and this led to the use of a variety of resolution approaches and outcomes.
- Because the frequency of disciplinary and grievance issues was closely linked to employer size, employers tended to have less experience of, and confidence in, handling disciplinarys and grievances in smaller organisations, or with issues which occurred more rarely in their sectors. These employers, particularly those lacking access to internal or external HR expertise, could be usefully targeted as in need of greater support.
- SMEs of all kinds may also benefit from additional guidance on good employment relations practices in general, given some employers' recognition of the role that a positive company culture could play in contributing to a low rate of disciplinary and grievance issues.
- The nature of policies and procedures at SMEs was linked to the way their HR functions were configured. Those with external or in-house HR support tended to have policies tailored to their organisations. Amongst those who did not, there were examples of policies not existing at all or not being fully fit for purpose. The absence or lack of confidence in an organisational policy could leave employers feeling vulnerable to issues escalating into legal claims or financial settlements, suggesting that investing in organisational policies and procedures and in keeping them up to date could potentially save employers money long-term.
- SMEs may benefit from an elaboration of the Code in the section about linked disciplinary and grievances cases, and from increased awareness of the requirement laid out in the Code which advises employers to involve and educate staff in organisational policies and procedures. The latter could help SMEs strengthen the quality and buy-in of organisational policies within workplaces and to support employees' understanding of their rights and responsibilities at work.
- For some SMEs, the pandemic affected both the volume and nature of issues experienced, and SMEs ability to address these issues. In some instances, preventative measures were put on hold. It is important that as SMEs transition out of the pandemic, good practice measures are reinstated and adapt appropriately to new working arrangements such as long-term remote working.
- Effective techniques for early and informal resolution are a promising area for further advice and training, given that informal approaches are widely considered fruitful but not consistently or effectively applied. Organisations who have concerns over staff retention (in specialised industries or rural areas), or very small organisations with close personal relationships, may particularly benefit from such advice and training. Training and support on the role that wider good management and

communications practices can play as 'preventative' measures could potentially also help SMEs to identify and address problems at earlier stages.

- The limited experiences and understanding of mediation among SMEs who participated in this research suggest that raising awareness of mediation and how it could help may increase uptake of this option.
- SMEs lacked confidence when dealing with less straightforward cases and if they believed the legal system was weighted towards employees. Confidence was improved through access to in-house or external HR specialists, meaning that micro organisations and those where the owner or manager dealt with HR were particularly in need of support. Nonetheless, some SMEs indicated that seeking advice from external HR practitioners could formalise issues too quickly. These findings highlight a key tension between employers' preference for closely following defined steps laid out in a procedure to safeguard themselves from legal consequences versus the desire to resolve issues informally.
- Contraventions of the Code included issuing written warnings as a result of informal conversations and carrying out investigations to support a pre-determined outcome. This suggests a need for raising awareness of the Code, which is likely to have a more positive impact when this is matched with an offer of one-to-one support, where specialist HR support is lacking, in order to help navigate more complex situations in view of the principles-based nature of the Code.
- Cost was a key barrier to accessing support, underlining the importance of provision of and signposting to free information. However, lack of awareness of this available support suggests that SMEs could benefit from targeted promotion about Acas and its services.

1. Introduction

This report presents findings from qualitative research with micro, small and medium-sized enterprises (SMEs), exploring contemporary experiences of dispute resolution procedures inside the workplace. This research was carried out by NatCen Social Research on behalf of Acas, using 40 in-depth interviews with SMEs.

1.1. Context for the research

Disciplinary, grievances, investigations and suspensions are key elements of dispute resolution.

Disciplinary issues are defined as situations in which an employer is concerned that an employee is performing poorly or has acted in a way that is improper or unacceptable. Where appropriate, this might involve a suspension, usually with pay, where an employee is required temporarily to stop work, for example if their continuing at work may compromise the disciplinary or grievance procedure in some way.

Grievance issues are situations where an employee has a problem or concern that they want to raise with, and be resolved by, management. Both disciplinary and grievance issues may involve a process of gathering information on the situation, known as an investigation (Acas, 2015).

The Code sets out the minimum disciplinary and grievance procedures that employers should follow for handling such issues in the workplace (Acas, 2015). It provides practical guidance to employers, employees and their representatives, including the basic requirements of fairness that will be applicable in most instances of formal dispute resolution. The Foreword to the Code also refers to a specific Acas guide on disciplinary and grievances, which includes examples of procedures that could be implemented by organisations.

Recent decades have seen a rise in written procedures for handling disciplinary issues and grievances in UK workplaces (WERS, 2011). Previous data indicates that organisational size is positively associated with: the presence of procedures; adherence to the key principles of the Code; and the use of mediation, which offers an alternative to legal redress for workplace disputes (Wood, 2014).

At the same time, workplace size is also an important predictor of the incidence of disputes (ibid; Knight and Latreille, 2008), indicating that SMEs are less experienced and potentially less equipped in handling them.

The Workplace Employment Relations Survey 2011 found that increased and targeted promotion of the Code may encourage earlier, less formal resolution alongside fair practice (NatCen, 2011). A subsequent Acas research paper found that while SME owners often lacked knowledge and understanding of the Code, where they were familiar with it, it tended to have more relevance for them than for larger organisations, who were more likely to exceed the minimum requirements set out in the Code (Saundry et al, 2016).

The existing evidence points to a number of challenges experienced by SMEs in resolving workplace disputes. While SMEs may wish to handle disputes informally at an early stage where possible, the use of formal procedures can provide a defence against potential legal action. In addition, insurance cover which offers legal support in the event of a dispute resulting in an employment tribunal claim requires full observance of the advice provided and can therefore pose a barrier to less formal resolution (Harris et al, 2008).

Compounding these challenges, smaller SMEs can lack access to internal HR expertise and are therefore in need of external advice and support to resolve workplace conflict. However, advice that is perceived as sufficiently customised to their organisation, sector and small business context (Harris et al, 2008) can come at a cost, while evidence suggests the need for more services that are free of charge and for better visibility of existing resources (Hann, 2012).

While the existing evidence base goes some way to illuminate the experiences of resolving disputes in SMEs, much of it is several years old and some predates revisions to the Code made in 2009. Accordingly, fresh evidence is needed to shed light on contemporary experiences of SMEs and any additional support they require. This report seeks to address this evidence gap through in-depth qualitative research with SME employers, in order to answer key questions outlined below.

1.2. Aims and methods

The research aimed to answer the following questions:

- What sorts of issues lead to disciplinary and grievance matters within SMEs?
- What policies and procedures do SMEs have in place?
- How do SMEs deal with the issues that arise?
- How do disciplinary and grievance matters affect SMEs?
- What are SMEs' understanding, experiences and views of using the Code?
- What additional support is required?

The research used a qualitative approach to answer these questions. It consisted of 40 in-depth interviews with employers who had experienced disciplinary or grievance issues in the last 3 years. The sampling approach was purposive, achieving its diversity through the screening of key characteristics, such as organisation size, sector and HR function. Interviews lasted approximately 60 minutes and took place by telephone or video-call. Interviews took place between December 2021 and February 2022.

NatCen's Framework approach was used for data management of interview transcripts, and case-and-theme-based analysis was undertaken of the managed data. This analysis included reviewing disciplinary and grievance policies and procedures, which were shared with the research team by 15 of the participating SMEs. Full details of the achieved sample and research design can be found in Appendix A.

1.3. Interpreting the findings

The report avoids giving numerical findings, since qualitative research cannot support statistical analysis. This is because purposive sampling seeks to achieve range and diversity among sample members rather than to build a statistically representative sample.

The questioning methods used are designed to explore issues in depth within individual contexts rather than to generate data that can be analysed statistically. What qualitative research does do is provide in-depth insight and explanation into the range of experiences,

behaviours, views and suggestions. Wider inference can be drawn on these bases rather than on prevalence.

Verbatim quotations and case illustrations are used to illuminate the findings. They are labelled to indicate employer size and sector. Further information is not given in order to protect the anonymity of research participants. Quotes and case illustrations are drawn from across the sample.

2. Causes of disciplinaries and grievances

This chapter introduces the types and causes of issues participating micro, small and medium sized enterprises (SMEs) experienced that resulted in disciplinary and grievance cases. It then discusses SMEs' views about the frequency of issues experienced and their feelings when issues arise.

Key findings

- SMEs of different sizes and sectors described a wide range of issues leading to disciplinary and grievance cases. They included gross and general misconduct, bullying and harassment, negligence, unfair treatment, discrimination, poor performance, poor timekeeping, health and safety issues and issues relating to pay, terms and conditions.
- While some cases involved either a disciplinary or grievance, others encompassed both. Disciplinaries had led to grievances as a result of employees feeling that the disciplinary process was handled poorly, though SMEs sometimes appeared to conflate the term 'grievance' with appeal processes. Where grievances led to disciplinaries, staff members who were the subject of the grievance had disciplinary action taken against them as an outcome of the grievance.
- The frequency of issues was broadly proportional to employer size. Less serious issues (for example poor performance) tended to occur more often than more serious issues (for example gross misconduct). SMEs also believed company culture and recruitment methods affected the frequency of issues they experienced. High levels of interaction between managers and staff were thought to allow more issues to surface, and some SMEs used this as a deliberate strategy to identify and address issues early on. SMEs with a low frequency of issues pointed to thorough recruitment practices, aimed at getting the right 'fit' for the company culture, as contributing to this.
- SMEs' feelings about the rate of disciplinary and grievance issues their organisation experienced was influenced by whether they were perceived to be commonplace for their sector. When issues arose, SMEs reported either feeling motivated to resolve them for the sake of preserving staff relations; disappointed because staff were generally cordial and performed well; or concerned because of the time and cost implications for their organisation.
- The impacts of the pandemic on the cause of issues were divided, with some not observing any changes. Where the pandemic did have impacts, these were linked to the effects of home-working; reticence to return to work after being furloughed; mental health issues stemming from the stressful circumstances of the pandemic; and employees' safety concerns when returning to the workplace. For organisations with a higher frequency of issues, the pandemic was felt to increase the rate, particularly regarding performance issues.

2.1. Issues underpinning disciplinaries and grievances

The research explored disciplinary and grievance issues experienced by SMEs in the last 3 years. While some cases were exclusively disciplinary or grievance matters, there were also instances in which issues had led to both.

The issues ranged in severity and included gross misconduct, general misconduct, bullying and harassment, negligence, unfair treatment, discrimination, poor performance, poor timekeeping, health and safety issues and issues relating to pay, and terms and conditions. Appendix C lists the types of issues underpinning both disciplinaries and grievances experienced by the SMEs.

While the types of issues participating SMEs experienced generally cut across all sectors, some were more specific to the type of work carried out in particular sectors.

- For SMEs in the manufacturing, utilities, construction and transport sectors, there were commonalities regarding the physically demanding and hazardous nature of the work. For example, SMEs described disciplinary action being triggered by employees neglecting to follow safety procedures on scaffolding or incorrectly operating heavy machinery. These industries also encountered disciplinary matters on driver-related issues, such as car accidents or points on drivers' licenses.
- SMEs in the retail, food, accommodation, arts and entertainment sectors shared issues linked with the ways in which work was organised into shifts. For example, disciplinary issues would arise when staff failed to show up for their shifts, and grievances were raised over shift hours and availability. Also, as customer-facing sectors, issues such as employees being rude or not looking after customers properly would trigger disciplinary action.

In cases involving both a disciplinary and a grievance, disciplinaries could lead to grievances for a range of reasons. In some instances (primarily performance-related disciplinaries), employers described employees raising grievances about a separate issue but suspecting this to be motivated by a wish to prolong or retaliate to the disciplinary.

In others, employees were reported to have raised grievances about how the disciplinary process had been handled. In these cases, grievances were either raised because the employee believed that the formal approach taken was unjustified, that they had been treated unfairly during the disciplinary process, or that false accusations had been made during the disciplinary.

As the Code sets out, the proper process for questioning the outcome of a disciplinary case would be an appeal. However, SMEs sometimes appeared to conflate the term 'grievance' with appeal processes. In one example, an employer described a grievance being raised disputing the fairness of a disciplinary outcome which required the employee to financially reimburse the company for damages caused by employee negligence.

In some cases, employers questioned the motives behind employee grievances, believing that they were intended to slow down a disciplinary process or influence the outcome in the employee's favour. This applied to some cases where disciplinary action was taken due to repeated poor performance and employees raised grievances about disciplinary processes being mishandled.

Where grievances led to disciplinaries, staff members accused of causing the grievance had disciplinary action taken against them as an outcome of the grievance. For example, the outcome of a sexual harassment claim was to discipline the accused employee.

There were also instances in which investigations into grievance issues revealed additional problems in need of disciplinary action. In such situations, employers felt justified in their decision to formalise their approach to the matter. In one example, through investigating a grievance about inappropriate behaviour, other performance-related issues were uncovered which consequently resulted in formal disciplinary action being taken.

2.2. Frequency of issues

SMEs were asked how frequently they experienced disciplinary and grievance issues and how this compared to pre-pandemic levels. SMEs tended to distinguish between major and minor issues when reporting on frequency. They did not always define these categories in the same way, but there were 2 key aspects linked to viewing an issue as 'major': nature and persistence. For example, a one-off case of sexual harassment could be seen as major, as could a repeated failure to adhere to safety procedures.

The frequency of major issues fell into 3 main categories: relatively infrequent (0 to 2 times a year), moderately frequent (3 to 5 times a year), or frequent (6 or more times a year). The frequency of minor issues was more difficult to gauge: whilst some SMEs reported that they always had a minor issue ongoing, others did not report any, though this was likely due to their perception of what qualified as a disciplinary or grievance issue and their levels of awareness of minor issues.

Overall, minor issues such as those caused by general misconduct, timekeeping and poor performance were reported to happen frequently, but were handled informally in order to understand the reasons behind the issue and give employees the opportunity to adjust their behaviour.

More severe issues such as sexual harassment or bullying that triggered immediate formal action were reported to occur infrequently. However, the relationship between severity, approach, and frequency depended on whether informal resolution approaches successfully prevented minor issues from persisting. Where minor issues that were initially approached informally remained unresolved, what was originally considered minor had to escalate in severity. Consequently, SMEs had to formalise their approach in order to overcome the issue.

The frequency of major issues experienced was broadly proportional to the size of the company. For example, the frequency of such issues in micro-sized firms ranged from 0 to 2 issues a year and this was attributed to smaller workforce sizes. In a similar way, small-sized firms experienced a frequency of 0 to 5 such issues a year, and occasionally 6 or more. For the small-sized firms, experiencing 6 or more issues a year appeared to stem from multiple problems with the same employees – rather than one-off incidents among different employees. Medium-sized firms experienced the greatest frequency of major issues: either moderately frequent (3 to 5 times a year) or frequent (6 or more times a year).

Employers gave further reasons for the frequency of issues at their organisation:

- **Company culture:** the ways in which staff interacted and operated at work was seen to contribute to whether the frequency of disciplinary and grievance issues was high or low. For organisations with a low frequency of issues, participants claimed that company procedures ensured staff knew what was expected of them which consequently prevented issues from happening. For example, by having a performance reporting process, if an issue relating to poor performance arose, the employee would receive additional training and support before any disciplinary action was taken. For some organisations with a higher frequency of issues, it was felt that, due to being in a small organisation, managers and staff were in constant dialogue, leading to more issues being brought to the managers' attention. Other organisations deliberately sought regular communication, viewing it as a way of ultimately reducing the likelihood of issues becoming formal: managers would be expected to identify issues in weekly conversations so they could be addressed early on.
- **Recruitment:** for organisations with a low frequency of issues, participants believed that the time they devoted to recruiting staff they believed would fit in with the company culture contributed to issues rarely occurring. On the other hand, for some organisations with a higher frequency of issues, one reason given was a misunderstanding of the requirements of the role. For example, an SME in the retail sector claimed that employees who were newer to the organisation or earlier in their careers ran into more issues because they did not understand what was expected from them despite clear job descriptions and training.
- **Wider circumstances:** circumstances relating to the working environment post-Brexit (including complications resulting from new trade regulations) and during the pandemic were reported to have influenced the frequency of issues experienced. For organisations with a low frequency, while Brexit had caused disruptions to the working atmosphere, this did not translate into disciplinary and grievance cases. Rather, it elicited efforts to stabilise the working atmosphere which resulted in a low frequency of disciplinary and grievance cases following this period of disruption. For organisations with a higher frequency of issues, the pandemic was thought to increase the rate, particularly regarding performance issues. Working from home was thought to have negatively affected employees' motivation and attitude towards work compared to pre-pandemic standards. The ways in which the pandemic impacted the cause of issues for organisations is discussed in Section 2.3.

Participants' feelings about the frequency of incidents they experienced depended largely on how commonplace disciplinary or grievance issues were perceived to be for their sector. Where organisations experienced a high rate of issues, but were not concerned about this, the types of issues that frequently arose were regarded as common for the sector. For example, grievances about working hours were considered common for the construction industry and were typically resolved informally.

Participants who did express concerns about a high rate of issues mentioned the workload pressure associated with resolving issues, and the stress linked to this. In addition, employers who felt they had put a lot of effort into creating a positive working environment for their employees expressed disappointment at a high rate of issues.

Understandably, SMEs reported that they were not concerned when the rate of issues experienced were low. However, there was a view that a complete absence of issues would be potentially problematic because it could indicate that issues were being ignored or were not being identified.

2.2.1. How SMEs felt about incidents arising

Emotions when issues arose were mixed. While one set of SMEs with a low rate of issues reported feeling motivated to resolve matters when they arose, others felt disappointed. SMEs reported feeling motivated because they were keen to resolve issues for the benefit of all employees and the working atmosphere. Micro and small-sized firms, in which workplace relationships were described as intimate and familial, were particularly motivated to resolve issues because they viewed preserving staff relations to be essential for running the business.

"Probably to other organisations, you're like, that's a lot of work for one complaint, but when you're in a small organisation, one little complaint like that can fester and grow arms and legs if you don't deal with it because everybody is working so closely with each other." (Medium-sized, manufacturing sector)

SMEs expressed disappointment when a grievance was raised or when disciplinary action had to be undertaken for poor performance, especially when they regarded staff to be generally cordial and well-performing. Some employers also reported feeling saddened by the prospect of needing to terminate employees' contracts. The financial impact that issues could have on their organisation also raised concerns among employers. Facing financial losses for handling the issue or generating settlement funds to resolve the matter was a particular concern for small businesses whose resources were in short supply. This was especially the case where issues escalated to a tribunal complaint.

"It was a scary moment because we didn't know what was going to happen, and we're only a small company. If he'd won, the amount of money he could have got from us could have broken us." (Medium-sized, public sector)

However, this fear of legal claims also played a role before issues had escalated to that stage, especially for employers who had had a negative experience of legal claims in the past.

2.3. Impacts of the pandemic on the cause of issues

The impacts of the pandemic on the cause of issues were divided. One set of SMEs said the pandemic influenced the disciplinary and grievance issues they experienced, while another set did not observe any changes.

Where the pandemic was thought to affect the types of issues SMEs experienced, this was linked to the impacts of home-working; reticence to return to work after being furloughed; mental health issues stemming from the stressful circumstances of the pandemic, and employees' safety concerns when returning to the workplace.

- Home-working: participants explained that COVID-19 regulations necessitating staff to work from home could impact employees' ability to perform their role. This caused disciplinary issues for some employees with a difficult home-life, as illustrated in one participant's comment:

"The issues we've had recently have been where people have had real difficulty working from home because they've had an essentially unhappy home life. That has an adverse impact on their ability to perform their job." (Small-sized, retail sector)

When enforced lockdowns came to an end and staff had to return to the workplace, SMEs faced some difficulties in getting their staff to return. While some participants explained that this was handled through an informal conversation, others had to take disciplinary action. For example, in one case, an employee's request to continue working from home due to child-care responsibilities resulted in disciplinary action.

This contrasted with other employers who took a more lenient approach to disciplinaries during the pandemic, as discussed in Section 4.2.2. Reticence to return to work also led to specific employees whose role could not be fulfilled from home to raise grievances on the basis that it was unfair that office-staff could work from home.

- Reticence to return to work: additionally, when returning to work after furlough, SMEs reported disciplinary issues as a result of poor performance that employers attributed to employees' mindset that they were having to do 100% more work for only 20% more pay.
- Mental health issues: the stressful circumstances of the pandemic were reported to have caused some employees to abuse drugs. In this situation, the employee was suspended because the employer viewed any situation involving drugs as 'instant suspension'.
- Safety concerns: employees were reported to have raised grievances about safety concerns when returning to the workplace. Due to the shift from 'pandemic-mode' to getting back to do everyday projects, certain SMEs recognised that the proper risk assessments and due diligence required for employees to return to a COVID-safe working environment were overlooked.

"I think we were still in that mode where we were just doing, doing, doing without thinking about the processes and making sure things were done right in terms of health and safety." (Micro-sized, public sector)

Where the pandemic was not thought to have affected the types of issues SMEs experienced, this was attributed to:

- appropriate adjustments: participants explained that they had devoted a lot of effort to show their staff that they were valued in order to boost morale and motivation. For example, by paying higher than the furlough cap or ensuring they were fair and transparent when communicating decisions related to any changes caused by the pandemic
- working from home: in contrast to the experiences described earlier in the section above, since employees were working from home, SMEs said they encountered fewer grievances because staff were not interacting as much, hence preventing any personality clashes or bullying
- job retention: given the difficult circumstances the general population were facing with job insecurity, some participants speculated that they did not have disciplinary or grievance issues as a result of the pandemic because staff were grateful to still have their job after the furlough scheme had ended
- conflict avoidance: employers described being less rigid if a disciplinary problem arose due to the pandemic. They also observed that while employees expressed frustrations about pay cuts or changes in roles and responsibilities, they did not raise grievances
- existing rate of issues: some participants explained that the pandemic did not cause any issues because they did not have many issues in general

3. Policies and procedures

This chapter discusses participating SMEs' disciplinary and grievance policies and procedures. It begins with a description of the ways in which SMEs delivered their HR function. It then explores what their policies and procedures contained, how they were developed, and whether staff were involved in their development.

Key findings

- There were 4 distinct approaches taken by SMEs to delivering their HR function. Those SMEs whose owner or manager delivered the HR function tended to be micro or small businesses. Other SMEs had dedicated internal HR staff, and these tended to be small or medium-sized businesses. Both of these groups made use of a range of formal and informal support. Another group of SMEs, of all sizes, had no dedicated HR staff, and made use of external HR consultants. Lastly, there were SMEs that took a hybrid approach, with both internal HR staff and external consultants. These tended to be medium-sized businesses.
- In general, SMEs' policies and procedures fairly comprehensively covered the principles set out in the the Code for disciplinary and grievance procedures. However, there was some variation, and some relatively consistent gaps and mismatches, both in terms of alignment with the Code and in terms of how well policies and procedures equipped SMEs to deal with the kinds of

issues they experienced. Not all policies and procedures gave examples of what was considered gross misconduct, despite the Code requiring this. There was also variation in the extent to which policies and procedures explained the right to accompaniment.

- There is brief advice in the Code about what to do in the case of overlapping or linked disciplinary and grievance issues, but it was rare for policies and procedures to cover this, despite it being a circumstance which widely caused difficulties for SMEs.
- Those SMEs that wrote their own policies and procedures tended to base them on examples or guidance from Acas, the CIPD, and others. SMEs whose policies and procedures were written by external HR consultants tended to go through a collaborative process of editing and refining, to ensure that they fit the specific needs of the business. Staff were not, in general, involved in the development of policies and procedures, and efforts to educate staff and ensure that they fully understand the policies and procedures were minimal, despite the Code requiring this.
- The absence, or lack, of confidence in an organisational policy could compromise confidence in the fairness of the resolution process. Employers could feel vulnerable to issues escalating into legal claims, therefore opting to make costly financial settlements rather than attempting to address the problem through their disciplinary or grievance procedures.

3.1. How HR functions were delivered in SMEs

Participating SMEs varied in whether they employed dedicated HR staff who dealt with disciplinary and grievance issues, and whether they used the services of an external HR specialist. As a result, there were 4 broad categories of SMEs – as shown in Figure 1 – which are referred to as 'owner or manager', 'internal', 'external', and 'hybrid' throughout the rest of this report. The 4 categories were well represented across different sectors and, to a lesser extent, across business sizes. The remainder of this section discusses each of the 4 categories in turn.

Figure 1: HR functions in SMEs

	No dedicated HR staff	Dedicated HR staff
No external HR provider	<p>Owner or manager</p> <p>Either the owner or a senior manager of the company was responsible for delivering the core HR function. Other staff might help, but they were not dedicated HR staff. External advisors, such as solicitors or HR consultants, may have been used for advice, but this was on an ad hoc basis. Some elements of the HR function – such as payroll – may have been outsourced.</p>	<p>Internal</p> <p>There was at least one member of staff whose main responsibilities were HR-related. They may have had other responsibilities alongside their HR responsibilities. Within this group of SMEs, there were some that accessed external HR support, but this was in an ad hoc way. This could have been via a trade body, an insurance provider, a solicitor, or a bank.</p>

	No dedicated HR staff	Dedicated HR staff
External HR provider	<p>External</p> <p>There was no member of staff whose main responsibilities were HR-related. The company engaged an external HR consultant or service, who provided guidance on all HR issues, which was closely followed by the company. The service may have included insurance and may have involved representing the company at tribunals and covering legal fees, provided the company followed the guidance closely.</p>	<p>Hybrid</p> <p>There was at least one member of staff whose main responsibilities were HR-related. The company also engaged an external HR specialist who had a significant level of input into the way the company delivered the HR function. The company had a contract or subscription for these services, rather than engaging the specialist in an ad hoc manner.</p>

Owner or manager

SMEs in this category tended to be small or micro-sized businesses. Besides owners, there were a range of senior managers that took responsibility for HR, including CEOs, managing directors, operations managers, and finance directors. SMEs in this category made use of support services on an ad hoc basis, including solicitors, Citizens Advice, Acas and HR consultants. There were also instances of owners and managers drawing on informal support to help them navigate disciplinary and grievance issues, such as friends and acquaintances who work in HR or employment law.

Example of an SME with an owner or manager HR function

At this small (18 employees) e-commerce company, HR work is largely done by the operations manager. Policies and procedures are created by the operations manager's predecessor in the role. Employment contracts are written by the managing director. The company has engaged with an employment lawyer for advice on some occasions. In a recent disciplinary case, the managing director took informal advice from a friend who was an employment lawyer.

Internal

SMEs in this category tended to be small or medium-sized businesses. Although these SMEs all had a member of staff whose primary responsibilities were HR-related, HR was not always an explicit part of the employee's job title; there were assurance directors, operations managers, assistants to CEOs, and others. This category could be split between those SMEs that made use of formal support on an ad hoc basis, and those that did not.

Sources of formal support included HR consultants, solicitors, trade bodies (such as the Federation of Small Businesses), and insurance companies. Those SMEs that did not draw on formal support either had highly experienced and qualified internal HR staff or drew on older resources. In one case, a company director relied on materials produced by an employment lawyer who had previously been employed by the company.

Example of an SME with an internal HR function

At this medium (170 employees) construction company, there is a dedicated HR manager. The company chairman is the HR director, but has little day-to-day involvement. The HR manager writes the policies and procedures, supports line managers with more difficult cases, and makes sure that procedures are followed correctly. They have access to a helpline via the company's insurance and, as a member of the CIPD, they have access to information online.

External

SMEs of all sizes – micro, small and medium – were represented in this category. The decision to outsource HR to an external consultant tended to be for 1 or both of 2 main reasons. Firstly, businesses felt they were too small to justify having dedicated HR staff: they could not afford another full-time staff member, and there would not be enough work for that staff member to do. Secondly, external HR consultants provided insurance for companies, and would represent the company at any tribunals, but this was conditional on companies following advice to the letter. As a result, interviewees felt protected by their HR consultancies, and reassured that the business would survive any serious issue.

"You might stress about the disciplinary or... the grievance, but you're not stressing about your compliance with the law. Somebody's taking that off your hands." (Small-sized, manufacturing sector)

Example of an external HR function

At this small (25 employees) manufacturing company, the managing director (MD) takes responsibility for HR, but engages an external HR consultant, who wrote the employee handbook. In a recent disciplinary case, the consultant provided guidance and letter templates, which the MD followed to the letter. The MD felt that the consultant was better value for money than employing HR staff. Because of the consultant, the MD felt no need for additional training of any kind.

Hybrid

SMEs in this category tended to be medium-sized businesses. Dedicated HR staff tended to engage with their external consultants for more serious issues, or for issues that occurred only rarely. External consultants were involved in the development of policies and procedures or updating them in light of changes to the law. The service could be part of an insurance package, meaning that companies were required to follow the advice given to them in order to receive their insurance.

Example of an SME with a hybrid HR function

At this medium (55 employees) furniture company, the office manager is responsible for HR, including coordinating disciplinaries and grievances, and developing the policies and procedures. An external HR consultant provides advice on employment law and health and safety, in addition to insurance. The consultant visits the business several times each year to provide updates on changes to the law, and to review the policies and procedures. In a recent disciplinary case, the consultant reviewed and provided guidance throughout. The company must not take disciplinary action without the HR consultant, due to the insurance arrangement.

Transitions between types of HR function

Where SMEs had moved, or were in the process of moving between categories, this was for a variety of reasons. Those that had moved from the owner or manager category to the external category did so because:

- as a company expanded, the HR demand on the owner or manager increased, leading to a decision to outsource at least some of the workload
- a difficult disciplinary or grievance case prompted the decision to hire an external agency, to ensure that the company was better prepared and protected for future cases

Those that had moved in the other direction – from an external approach to an owner or manager approach – did so because they felt other services (such as a trade body) sufficiently covered their needs and continued to use the resources they had acquired from the external agency.

3.2. Policies and procedures

This section discusses the nature of the written disciplinary and grievance policies and procedures that SMEs used, including their content, how they were developed, and the extent to which staff were involved in their development.

Those SMEs that did not have written policies and procedures for disciplinaries and grievances felt that the need had not yet arisen, and those that had only recently developed them did so following a disciplinary or grievance issue. These were not new companies,

ranging in age from 16 to 25 years, and were micro or small businesses, with owner or manager HR functions. For example, one small business, whose finance director took responsibility for HR, had recently dealt with a disciplinary issue without having any policies in place, and believed that, in the absence of a layered management system, the organisation was not obliged to carry out hearings so instead dealt with issues very informally. An employee had cost the company a significant amount of money over several years due to accounting errors, and the decision was taken to dismiss the employee. However, out of concern for the employee's wellbeing and financial security during the pandemic, the company provided a payout: 'we agreed on a redundancy package, if you like, for the want of a better term'. The company had no policies because "it's a small company and the need hasn't arisen".

The participant felt:

"There's nothing that [we] could have done differently. It was handled well, it was handled rightly, it was handled fairly." (Small-sized, administration sector)

Example of a business that only recently developed policies and procedures

This micro business had been without policies and procedures for 16 years since it was founded. The company director felt they had the attitude of a family business, with all employees treated well and issues dealt with informally. They had not felt a need for formal procedures. When an employee left and raised a grievance against the company, which was almost taken to a tribunal, the company was advised to hire an external HR consultant. The consultant handled the grievance, and developed policies and procedures for the company. The director felt that having the consultant "makes sure you don't fall in the same hole again." (Micro-sized, manufacturing sector)

3.2.1. What prompted the use of formal procedures?

The Code sets out principles for handling formal disciplinary and grievance situations in the workplace. If an employer or employee does not follow the Code, this does not make them liable to tribunal proceedings. However, if a disciplinary or grievance issue is escalated to an employment tribunal, the tribunal will take the Code into account when considering the case.

The foreword to the Code encourages both employers and employees to resolve disciplinary and grievance concerns informally where this is possible and appropriate. SMEs stressed the value of attempting to resolve issues informally before moving to formal processes, and there was a widespread view that this was particularly critical in SMEs, where personal relationships can be a key part of the business functioning successfully. Written policies and procedures also tended to begin by discussing the importance of attempting to resolve issues informally first.

SMEs moved from informal to formal approaches, or moved straight to formal approaches, because:

- issues with employee performance or conduct were persistent and had not improved following informal interventions – in general, SMEs did not precisely define how many times an issue needed to occur. For timekeeping and attendance issues, one SME allowed "3 strikes" before moving to an informal conversation, followed by a 6-month review, and then formal disciplinary action if the issue persisted
- issues with performance or conduct were sufficiently serious – this was variously defined, but could have included cases of gross misconduct, or issues that could have affected the company financially or reputationally
- an employee had raised a grievance and had explicitly requested a formal process

More detail on informal approaches to handling disciplinaries and grievances can be found in chapter 4.

3.2.2. What did policies and procedures contain?

Disciplinary and grievance policies and procedures drew – explicitly or implicitly – on the Code and the accompanying guidance that Acas provides. The Code provides basic principles and practical guidance on formal disciplinary and grievance procedures, and compliance with the Code is taken into account in relevant employment tribunal cases. The foreword to the Code and the accompanying Acas guidance provide more detail and encourage both employers and employees to resolve disciplinary and grievance

concerns informally where this is possible and appropriate, but these do not have to be taken into account by tribunals.

In summary, the key principles in the Code are that it:

- states how employers should notify employees of a disciplinary case, and how employees should notify employers of a grievance
- states that necessary investigations should take place to establish the facts of a case, and provides some limited information about what this should involve
- states that suspensions with pay should be as brief as possible, and that it should be made clear that a suspension is not a disciplinary action
- states which meetings should be held, how they should be arranged, who should be invited to attend, and what they should cover
- outlines employees' statutory right to accompaniment at meetings by a fellow worker, a trade union representative or a trade union official, and sets out that employees should be given the opportunity to appeal against disciplinary and grievance decisions
- states that policies should be set down in writing, be specific and clear; that employees (and representatives where appropriate) should be involved in the development of policies; and that employees and managers should be helped to understand and use them. It also states that policies should contain examples of actions that the employer considers as gross misconduct
- sets out factors relevant to taking appropriate decisions about the different types of disciplinary action (for example a first written warning, a final written warning, dismissal, or a contractual penalty such as demotion) and how employees should be informed of decisions
- explains that disciplinary procedures may be temporarily suspended when an employee raises a grievance during the disciplinary process, and that where disciplinary and grievance issues are related, they may be dealt with concurrently if appropriate

In general, SMEs' policies and procedures for disciplinaries and grievances aligned very closely with the Code. There was no clear relationship between the comprehensiveness of an SME's policies and procedures and the size, sector, or the nature of the HR function. There were, however, some areas of variation, and some relatively consistent gaps and mismatches, both in terms of alignment with the Code, and in terms of how well policies and procedures equipped SMEs to deal with the kinds of issues they experienced.

- SMEs across the sample had experience of overlapping or linked disciplinary and grievance issues, yet it was rare for policies and procedures to explain what would happen in such cases. The Code provides only brief guidance on this, and the only procedure document to mention it used the exact wording used in the Code:

"Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently." (Micro-sized, public sector)

- Staff (or their representatives) were not, in general, involved in the development of policies and procedures, despite the Code requiring this. The Code also requires that companies make efforts to educate staff and ensure that they fully understand the policies and procedures, but such efforts were minimal (as discussed in Section 3.2.4).
- There was variation in whether policies and procedures included examples that the employer considers to be gross misconduct, despite the Code stating 'disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct'.
- There was variation in the extent to which policies and procedures explained the right to accompaniment. Whilst the Code does not state that policies and procedures should explain the right to accompaniment, it does state that employees should be notified of disciplinary meetings and this notification should 'advise the employee of their right to be accompanied'.
- It was rare for policies and procedures to directly mention or cite the Code.

- There was variation in how clearly policies and procedures explained which disciplinary actions could be taken in response to which types of offences and when. At one extreme, there was little, if any, information about this. At the other, there was a detailed tabular breakdown.
- Employees could only claim unfair dismissal if they had been employed for at least 2 years, unless they were claiming for an 'automatically unfair' reason such as union membership or whistleblowing. SMEs' policies and procedures did not tend to specify whether or how they applied during the first 2 years of employment, during probationary periods, or during other distinct periods of employment. However, one disciplinary procedure stated:

"During the first 2 years of your employment, the company is not obliged to follow these procedures in full and reserves the right to proceed immediately to dismissal, should it consider this to be the appropriate course of action." (Medium-sized, manufacturing sector)

3.2.3. How were policies and procedures developed?

SMEs who had owner or manager or internal HR functions tended to write their disciplinary and grievance policies and procedures themselves and accessed a variety of sources of support and guidance when doing so. Those SMEs with external or hybrid HR functions tended to have policies and procedures written for them but were typically involved in refining and editing them to suit the particular needs of the business. Additionally, there were SMEs (across all 4 types of HR function) whose policies and procedures were developed by a mixture of internal and external sources. These 3 groups are addressed in turn.

SMEs with internally developed policies and procedures

Policies and procedures that were written by owners, managers or HR staff within SMEs were based on a variety of sources. There were SMEs who had based their policies and procedures very closely on the Code and accompanying Acas guidance and found Acas's step-by-step guidance on procedures particularly useful. Other sources of support included the CIPD, who publish guidance on their website. There were also instances of informal support, such as an owner of a micro business asking a friend who works in HR to provide a template.

SMEs with externally developed policies and procedures

When SMEs first hired an external HR consultant, there was typically an initial period in which the policies and procedures were written and agreed. HR consultants produced initial drafts, and then worked collaboratively with SMEs to edit and refine these to ensure they met the company's specific needs. Annual reviews of policies and procedures were undertaken, either by company owner or managers, by the HR consultants, or by trade bodies.

SMEs with a mixture of internal and external processes for developing policies and procedures

There were 2 main ways in which internal and external processes were mixed in the development of policies and procedures. For one group of SMEs, their policies and procedures were initially provided by an external consultant or trade body, and were then edited by the owners or managers, without engaging with whoever initially provided them. Another group of SMEs drafted their own policies and procedures (from scratch, or based on the Code), which were then reviewed and amended by an external consultant at a later date, potentially following a difficult disciplinary or grievance case:

"What starts life as a generic maybe grievance policy or something, is honed to better match how we do business." (Medium-sized, public sector)

3.2.4. Were staff involved in the development of policies and procedures?

Policies and procedures were typically included as part of employee handbooks and were provided to staff at the start of their employment. Other approaches included posting the policies and procedures on an intranet or printing and posting them on the wall of

the office.

Instances of SMEs actively involving their staff in the development of their policies and procedures were extremely rare in the sample, despite the Code stating that this should occur (as shown in the below extract). At just one SME, staff were consulted on what they thought were examples of misconduct, and these examples were then written into the policies. At another, senior management made revisions to the policies, and staff were invited to provide feedback on these changes.

Acas Code of Practice, Paragraph 2

"Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. These should be set down in writing, be specific and clear. Employees and, where appropriate, their representatives should be involved in the development of rules and procedures. It is also important to help employees and managers understand what the rules and procedures are, where they can be found and how they are to be used."

Active attempts to ensure that employees read and understood policies and procedures were also limited. Staff were notified about updates to policies and procedures either as they occurred, or annually. More formal attempts to ensure understanding included online training or asking new joiners to sign to say that they had read and understood the policies and procedures. Despite these attempts, there was a widespread feeling among SMEs that staff did not read or engage with policies and procedures.

In general, interviewees did not highlight this as a significant problem: employees tended to read and engage with written procedures once they needed to. However, there was a view that employees could be better informed about what kinds of performance and behaviour issues could lead to disciplinary grievances.

"I guess I wonder whether... employees really like reading all of those! So, in all honesty, do I think everyone read them? Well, no, probably not, but yes, no one raised any issues or concerns." (Small-sized, retail sector)

4. Approaches to resolution

This chapter explores SMEs' experiences of resolving disciplinary and grievance issues, comparing informal and formal approaches and the steps taken within each.

Key findings

- SMEs had adopted a wide range of approaches to resolving disciplinary and grievance issues, from very informal to very formal. The choice of approach was determined by several interlinked factors: business need, concern for employee welfare, perceived severity of the issue and the existence of a disciplinary or grievance policy or procedure.
- There was a consensus that taking an informal approach, at least at an early stage, could lead to a better resolution process. This was considered especially important in SMEs due to the close working environment and relationships. However, the research found that informal approaches were sometimes used inappropriately (when a formal approach may have been more appropriate or when issues were not taken seriously), or ineffectively (where they were rushed or used superficially).
- In more exceptional circumstances, SMEs with workers on zero-hours contracts were able to circumvent formal processes altogether, simply by ceasing to offer work. This points to a need for further consideration of what employers' obligations towards such workers in potential disciplinary or grievance situations are or should be.
- Employers generally agreed that suspensions should only be used in very serious situations where the individual continuing to attend the workplace posed a risk of damage to the business or others or to carrying out their work responsibly, for example due to drug or alcohol use. Outside of these situations, it was felt that avoiding inappropriate suspensions was in the interests of employers and employees. On the other hand, investigations were viewed as general good practice because they facilitated

a fair judgement.

- There were limited experiences of mediation among participating employers. Where mediation was used as a means of dispute resolution in the workplace, it was in cases where communication and relations between parties had broken down. SMEs were sometimes advised to use mediation by external HR consultants. In other cases, participants had experience of using judicial mediation as a preliminary step used to explore settling a legal claim before going to a court or tribunal hearing.
- The effectiveness of the resolution process was influenced by a range of factors. Close relationships between management and staff could stop employers and employees from raising issues. Managers could ignore issues due to being averse, or finding it awkward, to initiate procedures, with employees then feeling confused when an issue was raised formally without warning because it had been allowed to get too serious.
- Conversely, close relationships could also mean more open dialogue and awareness of employees' personal circumstances, which facilitated identification and empathetic resolution of problems. Poor management practices, such as line managers failing to escalate issues to senior managers when appropriate, could also be problematic. Staff time and monetary constraints posed challenges but were also reported to support a more streamlined process, involving fewer people and less bureaucracy.
- Confidence in dealing with disciplinary and grievance issues varied widely. Employers were more confident if they had prior experience of handling disciplinary and grievance cases, access to reliable forms of expert advice or support, trust in and positive relationships with employees, and if the issue at hand was relatively clear-cut. On the other hand, confidence was undermined by more complex issues, a fear of legal action, aversion to confrontation, and a concern for employee welfare.

4.1. Approaches taken to resolving issues

As discussed in chapter 3, the foreword to the Code on disciplinary and grievance procedures encourages taking an informal approach in the first instance if possible and appropriate. Acas guidance advises moving to a formal approach where informal approaches have been exhausted, or in the first instance if the issue is considered too serious to be classed as minor, such as sexual harassment.

Formal approaches should adhere to a set, transparent procedure and meet certain communications requirements, for example putting certain communications in writing rather than only verbally. This section looks at how SMEs described informal and formal approaches respectively.

4.1.1. Steps taken as part of informal approaches

Informal approaches to resolving disciplinarys and grievances primarily comprised of on or off-record conversations taking place face to face or over the phone.

Whether these informal conversations were described as a 'coffee' or 'chat' or a 'meeting', their aims were to:

- gain an understanding of the employee's perspective, including mitigating factors in cases of poor performance such as poor health, bereavement or a need for further support and training
- offer support, counselling sessions or re-training to improve employee performance
- act as a 'warning' or pre-cursor to formal action

SMEs varied in how formal they perceived certain actions to be, and often the lines between informal and formal actions were blurred. For SMEs who had an internal or external HR function, any instance of an investigation or suspension tended to be viewed as formal.

However, for SMEs whose HR function was delivered by owners/managers and who lacked written procedures, investigations and suspensions could also fall under an informal approach. In addition, whilst the notion of an 'informal chat' was widely thought to imply it was off-the-record, in other instances informal conversations were documented in writing.

"We do have an informal action form, where it might just be a one-to-one conversation with somebody just reminding them of following a certain process [...] That's documented and is just a note on file. It's not considered formal and no warnings are issued, it's just a record of a conversation for improvement." (Medium-sized, manufacturing sector)

4.1.2. Steps taken as part of formal approaches

Formal approaches tended to follow a written procedure. They could encompass meetings (generally documented in writing), an investigation, a suspension, a hearing and a series of warnings, both verbal and written. As is discussed in depth in 4.1.4, SMEs varied in which of these elements they used, according to their overall approach to resolving issues, the staff and finances they had available, and their previous experiences of handling issues. The sequencing of these actions depended on SMEs' written procedures and the circumstances. Case illustration 1 outlines the formal steps that an employer took in a performance-related disciplinary case.

Case illustration 1: Small organisation – software company (external HR)

A new employee was found to be consistently under-performing, according to a series of monthly KPI (key performance indicators) meetings which formed part of the company's probation system. A disciplinary process was initiated with a letter, drafted by the company's external HR company, which informed the employee of a formal disciplinary meeting. The meeting was chaired by the employee's line manager and an independent individual took notes. The employee was given the chance to explain their underperformance. Minutes from meeting were shared with the HR company and employee. The decision was taken to dismiss the employee. The dismissal letter included the option to raise an appeal.

Suspensions tended to be used sparingly and ranged from formal to informal. Less formal suspensions usually involved employers asking employees to go home until further notice, though examples like this were not consistently labelled suspensions. At the formal end, suspensions involved employees being asked to stop work for a period, and this being communicated with other staff.

In line with the Code, suspensions during the disciplinary process were not described by participants as a disciplinary action in themselves, but were generally seen as a necessary aspect of the process in certain situations (as discussed in 4.1.4). In one instance, 'suspension from work without pay for up to 5 days' was listed in a policy as a potential disciplinary action that may be taken as an outcome of the disciplinary procedure, 'as an alternative to dismissal'.

Investigations also took different formats, ranging from very informal 'conversations' with the employee to find out what happened and why, to more formal and comprehensive evidence-gathering exercises.

Irrespective of formality, investigations were more widely used than suspensions and played a central role in the resolution process, particularly where cases involved allegations which needed to be substantiated. This tended to be in grievances, or in disciplinary cases pertaining to misconduct. They were often used as a mandatory step within a policy or procedure, when triggered by a breach of policy or in order to proceed to the next stage. For organisations with an external HR function, this step was often recommended or required by them.

In misconduct cases, the Code requires different people to carry out the investigation and the disciplinary hearing 'where practicable'. Whilst generally SMEs recognised this as good practice and sought to enact it where possible (as discussed in 4.1.3), smaller organisations could find it difficult or impossible to do so due to a shortage of appropriate staff.

Mediation is a process which seeks to resolve disagreements between 2 parties. A neutral person, the mediator, seeks to help parties work towards a resolution. Mediation could either be offered within the workplace, or within the legal system (judicial mediation). Mediation of any kind was not widely used among participating SMEs. Indeed, awareness and understanding of mediation was limited. Where workplace mediation was used there were 2 main models: the first involved use of an internal mediator, who was trained in mediation or was deemed to be impartial because they worked in a different department. The second model involved use of an external mediator. Judicial mediation is described in Case illustration 2.

Case illustration 2: Micro-organisation – estate agent (owner or manager HR function)

In this scenario, a disciplinary case was opened because an employee's negligence had resulted in stolen property and the employer was seeking compensation. The employee, supported by their union, disputed the case. The employer raised a county court claim in an attempt to recover the money. The court offered a free mediation service as a mandatory step before the case was brought to a judge. The mediation took place over the phone, and the mediator relayed messages between the 2 parties. Through the mediator, the employer made an offer to the employee. The mediator analysed the evidence and advised the employee to agree to the employer's

request, predicting he would lose in court. The employee accepted the offer.

In some instances, mediation involved direct contact between the 2 parties, with the mediator present, while in others, the mediator relayed all communication between the 2 parties, without the parties corresponding directly.

The factors informing use of suspensions, investigations and mediation are discussed in Section 4.1.4.

4.1.3. Who was involved?

The size and HR function of an organisation appeared to determine which individuals were involved in handling disciplinarys and grievances. In some instances, this also depended on the stage of the process.

2 main models emerged:

- Line management – one group of organisations used line management structures for handling and, where necessary, escalating issues. Micro-sized organisations and those whose HR function was delivered through an owner or manager were less likely to fall into this group. In this model, more senior managers would only get involved at formal stages of the resolution process.
- HR or senior leadership – in another group of organisations, the same individual or individuals, handled every informal and formal disciplinary process. This was either a HR manager or a director. This was either because they were the most senior staff members, the only people with HR expertise, or because they did not line manage anyone and so were considered neutral.

Across both models, there were instances where a designated individual was deliberately not involved at early stages, so that they could play an impartial role at a later stage, such as judging the evidence from an investigation or reviewing an appeal. This was felt important to establish the employee's trust in the process.

Third parties were involved where staff or expertise was lacking or was unsuitable internally. HR consultants were brought in at formal stages to oversee disciplinary and grievance processes or certain aspects, such as investigations. Within charities, trustees handled issues that concerned the CEO as this required higher-level scrutiny since staff within the organisation reported to the CEO.

Other parties who were reported to be involved in disciplinary and grievance processes were individuals accompanying or representing employees in meetings, such as union representatives. Besides this, independent experts were brought in to support with investigations; for example, into whether the employee was at fault for damages to company equipment.

4.1.4. What informs the approach taken?

What informs the formality of the approach?

As discussed in chapter 3, there was consensus among SMEs that taking an informal approach, at least in the first instance, could lead to a better resolution process for both the employer and employee. The factors affecting SMEs' decision-making around the formality of their approach are explored in turn below.

Business need

Considerations around business need, namely reducing the financial impact; minimising stress for both parties; and avoiding risk to employee retention, motivated employers to take an informal approach. Retention concerns were expressed by employers who found it difficult to recruit staff because they worked in very specialised or rural SMEs, and therefore preferred to resolve issues informally.

"Our company's so little, we're rural, it's hard to recruit people. We do shy away from formal intervention for as long as possible."
(Small-sized, construction sector)

In contrast, there were 3 main scenarios in which SMEs felt formal approaches were more likely to achieve the best outcome for the business:

- Where formal approaches were viewed as the only mechanism to achieve the desired or anticipated outcome. Examples included where the persistence or seriousness of the issue meant that the employee being dismissed was perceived as inevitable or desirable.
- Where poor performance impacted on other staff. This was viewed as particularly problematic in smaller businesses where the impact on wider staff was greater because they had to pick up the poor performing employees' work. Here, the preference was to identify and address performance issues quickly, and formally.
- Where organisations had negative past experiences with informal approaches: for example, where dealing with issues informally resulted in the problem going on for too long or getting out of hand.

The approach that was felt to be best from a business perspective was sometimes dependent on the perceived character or motivations of the employee in question. Where employees were thought to be motivated by a financial settlement, employers were sure to closely follow a formal process in order to protect themselves legally. This tended to occur in situations where employees subject to a disciplinary process felt they were likely to be dismissed, which led them to raise a grievance.

The suspected financial motivations of employees were sometimes inferred at the early stages of a grievance process, or later when the prospect of a tribunal claim became more likely. In some instances, employees were explicit about their aims: "She said, and this is word for word, 'What have I got to do to get paid out to leave here?'".

Conversely, where the employee was not perceived to be a threat in this way, and where there was otherwise felt to be a good, trusting relationship with the employee, an informal approach could be preferred:

"If we think the person who's raised, who we are in a disciplinary scenario with or who we have a grievance from is a toxic character, we would be much more careful with doing the process very, very fiercely, fiercely by the book. If we think they are a more reasonable individual, with whom we feel we have a much higher degree of trust and rapport, and they're more of a known quantity, then we might be more likely to take a slightly more nuanced or informal, less tick-box approach to it." (Medium-sized, healthcare)

Supporting employees

For disciplinary and grievance issues relating to a clash between 2 employees, taking an informal approach in the first instance was widely considered to be the fairest way to treat the employee(s) involved and to offer the best chance of supporting them through the issue.

Participants who felt strongly that their relationships with their employees went beyond the purely professional were particularly likely to put the emphasis on supporting employees:

"I would have given everybody the space and the time and whatever they needed, because they're our employees. They're our family." (Micro-sized, manufacturing sector)

Exceptions to this were instances where it was thought that treating a grievance formally was the best way to show the employee who raised it that the issue was being taken seriously. For instance, this applied in cases of sexual harassment, or where the employee felt strongly about the issue or requested a formal approach.

In some cases, employers also made an effort to support employees against whom a grievance had been raised. In one example, an employer felt that an informal approach would have helped to minimise the negative impact of the grievance on the 'accused' employee, but also that the 'accuser' had a right to a formal process. To support the 'accused', they sought to make the process as fair as possible by ensuring everyone felt heard and was happy with the conclusion.

Organisational procedures

Organisational procedures laid out the steps to be followed when disciplinary and grievance issues arose and included both informal and formal approaches. Steps for informal approaches did not tend to be elaborated on, beyond stating that an informal conversation should be had in private.

Policies could require that an informal approach precedes a formal approach, and an informal approach could be also mandated by policy for specific situations, for example, when an employee in their probationary period was felt to be under-performing. As discussed in chapter 3, formal approaches were mandated by policies after certain triggers, for example an employee raising a grievance; after the necessary informal steps had been exhausted; or due to the seriousness of the issue (if defined as such in the policy).

In some circumstances, procedures were not closely adhered to (as discussed in 4.2.4). However, there were several reasons for which SMEs placed importance on closely following their procedures. For SMEs motivated by business needs, this was a way of protecting themselves against potential legal or financial consequences. SMEs who had previous experiences of losing money through an employment tribunal or financial settlements were likely to be guided by this. SMEs also preferred this approach when they lacked certainty that they were 'in the right'.

Another significant factor was if they felt they could not weather the financial hit of a lost court case, due to their small size, and in some cases due to financial vulnerability as a result of the pandemic. In some instances, SMEs were bound to their procedures because they received 'indemnified advice' (meaning that they received insurance and advice from the same HR provider, with the insurance being conditional on following the advice).

A lack of policies could also affect the approach taken. In one SME with no policies in place, issues were dealt with informally, in part due to a belief that the organisation was not obliged to carry out hearings for disciplinary issues.

Nature and severity of the issue

Grievances were more likely than disciplinaries to be dealt with formally from the outset. This was because they often necessitated investigations into allegations and because the submission of a grievance could 'trigger' formal action in its own right. The approach taken to disciplinaries, including whether an informal approach was taken at all, was dictated by the seriousness and persistence of the issue.

For both disciplinary and grievance issues, the approach taken was strongly tied to the perceived severity of the issue at hand, with more formal approaches taken for more serious issues. In some cases, an assessment of severity was made instantly, while in others, an investigation was required to make this assessment.

However, SMEs did not always assess severity in the same way. Whilst physical violence was widely considered to warrant an immediate formal response, views diverged on issues such as bullying and harassment. One group of SMEs reported a 'zero tolerance' attitude towards bullying and harassment, particularly in industries such as construction where bullying was described as commonplace. This meant that claims of bullying resulted in immediately taking a formal approach. In contrast, others first sought to informally investigate whether the bullying was genuine or rather amounted to a personal disagreement or personality clash, before taking formal action.

Nature of the employment contract

The security or insecurity of an employee's contract could affect the approach taken by the employer. As described above, issues arising with employees in their probation period were sometimes approached in a different way. Case Illustration 5 in section 4.2.3 demonstrates how insecure employment contracts (for example zero-hours contracts) also made it possible for employers to effectively dismiss workers without going through formal processes, simply by ceasing to offer more hours of work. This approach was taken where it was felt that there were insufficient grounds for initiating a formal process.

What informs the use of investigations?

Investigations were regarded as being appropriate in a wide range of situations, because they facilitated a fair judgement. Investigations had 2 main purposes. They could be a genuine fact-finding exercise to provide evidence to be considered by the person determining the outcome of a case or, where employers already had a desired outcome in mind (namely, dismissal), they served more as a box-ticking exercise, including a way of gathering the evidence necessary to support a decision to dismiss.

As discussed in 4.1.2, investigations came in different guises with employers taking a more relaxed to a more formal approach. The nature of the investigation depended on the cause of the issue. In disciplinary cases relating to instances of misconduct, such as violence or racist comments, investigations tended to rely heavily on testimonies of anyone who witnessed the incident, or on CCTV if it was available. They would also allow employees to give their account of the event.

Not all organisations used investigations for disciplinarys related to poor performance, but where they did, investigations were either focused on understanding the mitigating factors to do with a case, or on collating the evidence needed to assess or prove the poor performance.

"An employee who's been with us for two-and-a-half years, and we've decided that we don't want him anymore, and I have no documentation whatsoever [...] I'd look at service levels, I would look at prior documentation, any appraisals, any performance reviews, [...] I would look at capability and conduct. So yes, honestly, it's a bit of a tick list." (Small-sized, Agriculture)

What informs the use of suspensions?

Unlike investigations, there was a widespread view across sector and size subgroups, that suspensions should not be used freely. They were thought to be warranted only in relatively serious situations where the individual posed a risk of damage to the business or others, or where they were unable to carry out their work, for example due to drug or alcohol use.

For employers motivated by practical reasons, suspensions were avoided because they were perceived as costly (where employees were suspended on full pay), and affected staff resourcing and workload. Where reasons were associated with organisational ethos, employers noted that as conspicuous measures, suspensions could affect the atmosphere in SMEs, therefore avoiding them helped to protect the confidentiality of those involved and to avoid gossip.

Avoiding suspensions was also thought to support a fair process. It was felt that suspensions could incentivise rushed investigations due to incurred costs. For some, suspensions went against the idea that employees should be treated as 'innocent until proven guilty'. This was driven by a recognition that an employee returning to work after a suspension could face a difficult atmosphere, even though the suspension itself was not a disciplinary action.

Those who used suspensions most freely did so because the nature of the work required a more rigorous company policy in a given area and therefore created a wider set of actions which could be considered serious misconduct. For example, a company with a strict IT policy suspended a particular member of staff when they appeared to have breached that policy. In this situation, a suspension functioned to remove the employee from the workplace until an investigation could verify the misconduct, or provide an alternative explanation, and a decision was made.

Another reason that suspensions were more frequently used in smaller organisations was to separate employees who were in conflict where they could not be separated at work. In these situations, it tended to be the employee who had had the grievance raised against them who was suspended, but in certain cases employers would suspend both. Though for some SMEs this would only be necessary if physical violence was a threat, others referred to this as an action they would take as a result of a 'disagreement'.

"We would have to probably suspend either one or both of them, which if you've only got a small department could be an absolute nightmare because it might mean that stuff doesn't get done, so it's balancing that, isn't it, between actually what needs to be done and what the risk is really." (Medium-sized, manufacturing sector)

SMEs in some instances used approaches that were akin to suspensions, but which sought to avoid some of the perceived drawbacks. This included requiring employees to move to a different role, for example to work on lower risk tasks that did not involve interacting

with customers. However, it was noted that this was not always an option for smaller organisations.

What informs the use of mediation?

Mediation was used to provide a neutral space to talk through issues, to re-establish communication between parties and to reach a common ground. In this way, it was used in cases where communication and relations between parties had broken down, or where issues were less clear-cut. SMEs were sometimes advised to use mediation by an external HR consultant or used it as a preliminary step to explore settling a legal claim before going to a court or tribunal hearing (judicial mediation).

Workplace mediation was not deemed to be necessary or appropriate in situations where there was strong evidence of misconduct or when dismissal was deemed inevitable. In such situations, it was felt that there was a need for the process to move on as quickly as possible, and that mediation would be a hindrance to this. There was also a view that needing mediation was embarrassing – revealing a shortcoming of the employer – even if it would help, as it implies that each party is behaving immaturely. Embarrassment may therefore act as a barrier to the use of mediation.

Where workplace mediation was perceived as effective, it was because it had achieved the goal of re-establishing communication and had succeeded in bringing a calm perspective to a heated situation. Employers tended to have a more positive view of mediation when the outcome was aligned with what they wanted.

"The mediation can be very good for the, well, in our scenario, the employer side, even if they kind of exist to support the [...] employee." (Medium-sized, public sector)

A perceived obstacle to mediation being effective, however, was when the employee was seen as unwilling to compromise. It was felt that certain employees viewed mediation as a pre-cursor to settlement discussions rather than an attempt to re-establish or improve communication and find common ground, which undermined the process.

In one case, where an external mediator had been brought in by the employer to explore what kind of support might be offered to an employee for a drug and alcohol problem which had resulted in their making a mistake, it was observed how the mediation had broken down due to the employee's attitude:

"They come to things with this idea that [...] we're going to have to give them a pay-out because we've always done something wrong. Whereas we come to mediation acknowledging that the company's invested loads of money into these people [...] So we want to keep them here and keep them working, [...] quite often what we are offering them, although it's reasonable, it's not what they want, and because it's not what they want, they're not willing to accept it" (Small-sized, construction sector)

4.2. Factors affecting the resolution process

A range of factors either enabled or inhibited the resolution process at different stages. They are outlined in Figure 2 and discussed in turn below.

Figure 2: Factors affecting the disciplinary and grievance issues, before and during resolution

	Before the resolution process	During the resolution process
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Staff relationships	Avoidance of confrontation Mistrust of management Open dialogue and empathy	Avoidance of face-to-face confrontation by taking a formal written approach Lack of open dialogue prolongs resolution process Poor management, for example failure to escalate issues
Pandemic	More time to identify and resolve issues Limited monitoring of performance due to unusual circumstances	Virtual settings not conducive to effective communication Training for managers about how to handle disciplinaries and grievances not carried out Reluctance to take stringent action due to concern for employee welfare
Specialised industries	Reluctance to take early or formal action due to threat of turnover	
Resources		Lack of adequate resourcing leading to a prolonged resolution process

4.2.1. Before the resolution process

In the early stages, staff relationships affected the way employers took action in response to disciplinary and grievance issues. This was thought to affect SMEs in particular, where staff tended to be closer. On one hand, SMEs described how close relationships between managers and employees meant that managers were averse to or found it awkward to initiate informal action or formal procedures. This led to issues being ignored for too long and employees feeling confused when an issue was raised without warning, or the issue requiring a formal approach straightaway because it had been allowed to get too serious.

Conversely, close relationships were thought to help identify and resolve problems, such as performance-related issues. In such cases, open dialogue and awareness of employees' personal circumstances meant that employers could spot issues quickly and respond empathetically.

In relation to grievances, problems arose where staff relationships were characterised by mistrust. SMEs recalled situations where employees doubted their managers would take issues seriously, and therefore did not raise grievances when they should have done, for example in a case of sexual harassment. In one such situation, it was felt that the employee who did not raise the grievance was unaware of their rights as an employee, due to being new to the world of work.

As discussed in section 4.1.4, SMEs in specialised industries or rural areas where it was difficult to recruit, expressed reluctance not only to take formal action but also early action due to fear of employee resignation. This resulted in delayed intervention, meaning problems were likely to have exacerbated by the time they were dealt with, therefore requiring a formal approach.

The pandemic played a positive role for some SMEs which had their normal operations paused by allowing them to dedicate more time to identifying and investigating issues. Conversely, some employers did not monitor employees' performance as closely as usual because the company was not running as normal:

"Because the company has been in disarray, it's not been business as normal. You can't run a business as normal when you've got staff who have been furloughed for nearly a year. You can't have appraisals [...] because the whole situation is not normal." (Medium-sized, manufacturing sector)

4.2.2. During the resolution process

The resolution process was hindered by close relationships between staff, poor management of issues and a lack of adequate staffing or financial resource.

The nature of relationships between staff and management could prevent a swift and open resolution process. Close personal relationships could result in the wish to avoid confrontation, leading managers to approach issues in a formal written way, to avoid a face to face conversation. In other situations, a lack of open dialogue between management and employees could prolong the resolution process because issues were not raised through the right channels and therefore took longer to pick up and address.

It was evident that poor management could impede effective resolution. This was reported to happen when line managers failed to alert more senior staff to issues, meaning they were not escalated until they had become too severe. This was especially problematic where line managers tried to resolve problems quickly or superficially themselves rather than addressing them properly or when they did not take issues seriously enough.

A lack of adequate resourcing affected the resolution process in different ways. This was shaped in part by employer size, sector and the nature of their HR function. A lack of resourcing referred to both a lack of staff to carry out meetings and investigations, particularly for micro-sized organisations, and a lack of time and money to dedicate to resolving issues. For these organisations, having to deal with HR issues on top of their regular workload led to a lengthier resolution process than organisations with more resources. Organisations which had no dedicated HR function were particularly likely to mention a lack of time to identify and tackle issues because of the need to balance commitments to their day job, as in Case illustration 3.

Case illustration 3: Micro organisation – charity (owner or manager HR function)

This charity is dependent on external funding, which can only be used for projects and not for covering core costs. When a disciplinary case arose, they were not equipped to handle the problem. Not having a dedicated HR person or budget meant they had not kept their policies and procedures 'up to date'. They therefore lacked confidence in dismissing the employee out of fear of an employment tribunal claim. A lack of resource also meant they had to balance the disciplinary process against their other work commitments, resulting in a slow and stressful process:

"Because we're a small charity, and, ok, I'm the CEO, it's like I'm doing everything anyway, so I didn't really physically have the time. We didn't have the resources basically to do all these things we're supposed to do, and, plus, we didn't have the money, the manpower, and the finance as well."

While this was viewed negatively by some, others viewed lacking an HR department and having a small workforce as positive for the resolution process. This was because it was perceived to avoid bureaucracy and decisions being made by committee, as described in Case illustration 4.

Case illustration 4: Small organisation – vehicle hire (owner or manager HR function)

This organisation has no HR function and no policies and procedures relating to disciplinaries or grievances. The participant felt this is a key strength, which allows them to deal with issues on a case by case basis, and without having to jump through bureaucratic hoops. In the absence of a 'layered' management system, they were not able to escalate the problem upwards or and believed also that they were not obliged to carry out hearings. Instead of seeing this as a problem, they felt it could work in the favour of both parties, because

it allowed them to:

"[do the] right thing [...] for the person, [rather than] what HR says you have to do, or that's what X, Y, Z says you have to do [...] you're not bound by having to go through umpteen decision-makers, you can just have a real conversation about what the member of staff needs or what the company's going to do."

Where the pandemic was thought to have affected the handling of issues, this affected SMEs in the following ways:

- Ability to handle issues in person – due to coronavirus (COVID-19) restrictions and regulations preventing employers from carrying out disciplinary processes in person, difficulties were faced when facilitating meetings with employees who lacked the requisite equipment (for example smartphones) or technological know-how to carry out video calls. This led to words being misinterpreted over the phone, which consequently prevented participants from having productive conversations, meaning that it took longer to get to the root of the problem.
- Following policies and procedures – participants explained that initially, HR guidance had not been adapted to fit in with circumstances relating to the pandemic. For example, when sending letters to employees using a template which pre-dated the pandemic, employers were left feeling uncertain about their decision to change the wording, even though they interpreted government guidance to work from home as advising them to hold disciplinary meetings virtually rather than face-to-face.
- Downsizing – where SMEs had to significantly downsize as a result of the pandemic, this meant that fewer staff could deal with handling problems.
- Employee welfare – participants expressed a reluctance to take stringent disciplinary action against employees during the pandemic. For example, when deliberating whether the outcome should be dismissal, employers were concerned about the risk of leaving the employee in a difficult position of finding other employment opportunities.
- Training – in some organisations, due to staff being on furlough, managers' individual development plans were not being addressed. Therefore, training aimed at managers on disciplinaries and grievances were not being carried out.

4.2.3. Confidence in dealing with issues

Participants' feelings of confidence fell onto a broad spectrum, ranging from a complete lack of confidence to full confidence. As discussed below, participants' experience and training, the availability of internal or external support, relationships between employees and management and the nature of the issue affected levels of confidence in each given case.

The factors affecting levels of confidence varied across different stages of the process. For example, a fear of confrontation impacted confidence at the early stages while external support boosted confidence at the formal stages, where it was believed that following the process rigorously was of more importance.

Experience and training

Participants ranged from having less than 1 year to over 30 years of experience in their current role. Some had received formal training in HR, for example being CIPD qualified, while others had received no formal training at all. Levels of hands-on experience with handling disciplinaries and grievances was also wide-ranging. Overall, having more training and experience increased participants' confidence. This was particularly the case when participants had handled a broad range of cases in terms of cause and severity. Where they lacked confidence, this was due to a lack of training and exposure to certain types of disputes or stages of the process.

Advice and support

Participants' confidence in handling disciplinary and grievance issues was also affected by access to reliable forms of expert advice or support. This included internal contacts, such as an in-house employment lawyer, as well as formal and informal external contacts and support. SMEs tended to seek external support for more serious issues, when an informal approach had failed or because an insurance contract bound them to follow the advice of an HR consultant. Those who used contracted out HR services widely reported that this contributed to feeling confident and assured in their approach:

"I think in general [the line managers] are confident, but I think that confidence comes from the fact that they know that the HR facility has got their back. They can go into it confidently because they know that anything they do is going to be by the book. If we didn't have that, then quite rightly I don't think they would be confident. I don't think I would be confident." (Small-sized, retail sector)

These external sources of support guided employers on when to move to the next stage of a process, including making something formal. They also provided tailored assistance, such as giving employers advice on what questions to ask in meetings and providing recommendations on final decisions, including advising employers to settle.

Being able to refer to impartial Acas advice and use them as a 'sounding board' increased confidence among SMEs with less experience of navigating disciplinarys and grievances.

Participants with social contacts who could advise them (for example, lawyers or HR professionals) said this increased their confidence in handling issues.

Relationship to the employee

Confidence in dealing with an issue was also associated with employers' perceptions of employees' character and motivations. Where employees were thought to be seeking a pay-out or had hired a no-win no-fee solicitor, confidence was lower, due to a fear of being 'caught out'. Whilst the engagement of a solicitor indicated that the process had progressed from a workplace disciplinary or grievance issue to a legal claim, for some employers there was a pervasive fear of going to a tribunal which shaped their views and actions from very early stages. Anticipating a legal case caused worry among employers about failing to follow the correct process and this being held against them.

Conversely, a concern for employee welfare could undermine confidence, for reasons similar to those outlined in section 4.2.2. Employers reported feeling concerned about hurting employees' feelings, and guilty at the prospect of putting them out of a job. Navigating this internal conflict made it difficult to deliver outcomes contrary to what the employee had hoped for.

In one example, a participant expressed their struggles when carrying out disciplinary procedures for an employee with attendance issues due to ill health:

"I really struggled with that because I know this young lady was really ill. I'm 90 per cent sure none of it was rubbish. She really did have these problems, but it was starting to really affect the client base that she was supporting massively. I really struggled with that because she was lovely, and I knew it was a genuine issue, but I had to take a step back and think, well, from a company point of view, how is this working with the company? So that was a real tough one." (Medium-sized, public sector)

Nature of the issue

Confidence varied depending on whether employers thought the problem had a straightforward explanation and solution. SMEs appeared to feel more confident about dealing with absence or performance issues that could be easily explained.

Examples included consistent lateness, which was easily resolved by changing shift times to account for commuting, and issues stemming from pregnancy or known health conditions:

"Sickness is quite easy once you get to the bottom of what something like that is. If people are open and honest, then it's quite easy to resolve." (Small-sized, manufacturing or retail sector).

Confidence was also higher in very serious cases, such as gross misconduct, that had clear-cut processes and outcomes. In these cases, following procedures 'by the book', often with the support of a HR expert, was felt to safeguard employers against potential challenge through legal proceedings.

On the other hand, SMEs felt less confident when it was difficult to establish the facts in order to arrive at an appropriate outcome. For example, when interviewees gave inconsistent accounts of the issue under investigation, decision-makers struggled to reach an

obvious solution. Alternatively, employers could lack confidence in whether the details of the case provided sufficient grounds for different potential outcomes (for example dismissal). This could result in employers not confronting issues in an open or constructive way, as shown in Case Illustration 5.

Case illustration 5: Medium organisation – healthcare (owner or manager HR function)

In this situation, employee misconduct in a client-facing role led the employer to stop giving the employee work. The employee was on a zero-hour contract and the employer had no obligation to give them hours. This approach was taken because they felt they could not trust the employee with clients, yet did not feel they had enough grounds to dismiss them. The employer's hope was that the employee would ultimately resign.

"You could argue that we could have, at that point, said, 'We're going to terminate your employment', but we might not have had sufficient grounds on which to terminate the employment, so it would have led to problems. We would have, potentially, maybe ended up with an unfair dismissal scenario on our hands. It was a bit of a lose-lose for us anyway. Yes, I suppose [...] the can was kicked down the road."

4.2.4. Where approaches taken in practice varied from written policies and procedures

There were 5 main reasons why approaches taken in practice deviated from the process laid out in a procedure.

These were:

- complexity of a case – in certain situations, particularly linked disciplinary and grievance cases, the sequence of events followed did not match the sequence laid out in procedure because of multiple interacting elements in a case. In these situations, it was understood that some flexibility was needed to respond to events as they happened. A key challenge of complex cases was having to spend additional time and effort ensuring that each element was correctly addressed

"It's a difficult one, isn't it, because this person actually resigned and then rescinded it, so that makes it complicated. The process would have been completely different if he hadn't have resigned because we would have gone through the performance-management process and disciplinary process, but that's where it all gets a bit confusing when someone is - they've rescinded their notice and they're bringing a grievance." (Medium-sized, food sector)

- taking a flexible approach where judged appropriate– for some, following procedures consistently, regardless of personal feelings, was seen as part of being a good manager, while others preferred to enact procedures based on an assessment of the employee's character (as discussed in 4.1.1):

"Normally, we would have to do a full disciplinary process here [...] but my hunch is telling me that this was a freak, one-off. It was an accident. It was a bit unfortunate, you're a good person, you've been working with us for a long time. We have a good relationship, we trust each other. What we're going to do is, I'll write up a small report maybe of the scenario that occurred, and we just leave it." (Medium-sized, healthcare sector)

- organisational culture and skills– where managers failed to follow the correct procedure, for example on performance management, this was ultimately attributed to a culture in the organisation or wider sector of not openly talking about workplace conflict or disciplinary issues and to inadequate training of management staff
- policies incompatible with organisational structure – policies and procedures were not followed where they required levels of authority or resources that SMEs simply did not have. This was the case in a micro-sized organisation where the owner or manager dealt with HR issues and had used a policy found online. In this situation, the policy required staff to escalate any grievances according to a line management structure which did not exist:

"Most of it doesn't actually work, unfortunately [...] it says first attempt is just to communicate with your line manager, which is me. Second attempt if that fails is to make a written declaration to your senior manager, which at the same would be me. If that fails, to write to the director, which is me. Also, if your objection or grievance is with your line manager, then you have to write to someone more senior than your line manager, which would be the director, which is me." (Micro-sized, Food)

- the pandemic – restrictions made it impossible to carry out aspects of the process in the way that was stipulated, for example face to face meetings (discussed in section 4.2.2)

5. Outcomes and perceived impacts

This chapter discusses the outcomes of the disciplinary and grievance issues described by SMEs and perceptions of their associated impacts. It explores employer accounts of the effects of disciplinary and grievance issues on different parties and on employers' general approach to handling issues.

Key findings

- A range of outcomes was experienced by SMEs in relation to both disciplinary and grievance issues. In some instances, processes culminated in employees losing their jobs – either as an outcome of a disciplinary process, or where employees resigned before a disciplinary process had concluded.
- Outcomes where employees remained in employment included implementing performance management plans, written warnings, further training or a combination of all of these measures.
- Outcomes were determined by several interlinked factors: the severity of the issue, the formality of the approach taken, the extent to which the employer and employee felt that continuing in employment was appropriate or desirable for either party, and the employer's anticipation of a legal claim.
- Employers' feelings towards the outcomes of issues were shaped by their views of how well they had handled the process, and linked to this, how fair the outcome was perceived to be. The impact on the organisation was also important; dismissal, resignation or a financial settlement were viewed positively if morale was restored or financial losses were minimised. Employers also valued outcomes that led to improvements in employee relations and performance, such as training for staff.
- While the resolution process had led to some positive outcomes, SMEs reported a range of negative impacts on employees, managers and the organisation as a whole. For employees, they included negative career implications and mental health impacts. For managers, they involved workload pressures and stress. On an organisational level, disciplinary and grievance issues had financial impacts for employers due to the time and cost of resolving disputes and the costs of financial settlements.
- Lessons learnt by employers prompted a range of changes to their overall approach. This included strengthening their training offer; improving internal communication; intervening on issues sooner; seeking more advice and support and keeping records of issues for future reference.

5.1. Outcomes of issues

The outcomes of disciplinary and grievance issues described by SMEs in this report ranged from warnings to dismissals for disciplinary issues, and from apologies, to adjustments to working practices, to financial settlements for grievances.

5.1.1. Disciplinary outcomes

Termination of employment

Dismissal was a widespread outcome for issues involving a formal disciplinary approach, often including investigation or suspension. For more severe issues – such as racism, sexual harassment and gross misconduct, as referred to below – terminating the employee's contract tended to be seen as the only appropriate outcome:

"We obviously have a zero tolerance for anything like that and there was no other outcome other than dismissal via gross misconduct."
(Medium-sized, professional services sector)

In exceptional circumstances, employees were given a 'redundancy' package in instances where the employer felt sympathetic to their sudden loss of income through termination. Here, the reason for dismissal was misconduct rather than redundancy. The employer wanted to pay the employee so that they were not left in a vulnerable financial position during the pandemic, and was loosely using the term redundancy to describe a payment accompanying the dismissal, 'for want of a better word'. Nonetheless, dismissal was viewed by employers as inevitable when handling more severe issues.

"The outcome was always going to be the same because it was a gross misconduct. It wasn't like an issue that we could overcome to continue her employment." (Small-sized, food sector)

Resignation was a second way in which disciplinary resulted in employees losing their jobs. Again, this outcome tended to be associated with more formalised approaches and severe issues. In these instances, dismissal may have been anticipated by the employee, or they no longer felt that they could stay at the company. For example, in a case where an employee was found to have mishandled organisational funds, the employee resigned before she could be dismissed.

"We had to suspend her, and then we sacked her for – well, before we sacked her, she resigned, because we were going to sack her on gross misconduct." (Small-sized, manufacturing sector)

Continuation of employment

Where disciplinary action resulted in outcomes other than employees' dismissal or resignation, the outcomes included implementing performance management plans, written warnings, further training or a combination of all of these measures. Naturally, the actions taken reflected the nature of the issue at hand, whether capability-related or lower-level misconduct, and these issues tended to be less serious.

Closer performance or conduct management was used in cases surrounding consistently poor performance or attitude. Examples included regular 1-to-1 meetings between employees concerned and management and the implementation of performance management plans. However, it was noted that if poor performance continued, the approach would become more formalised:

"I felt it would be beneficial for both parties for the one-to-ones to take place. However, it's been made very clear that if it happens again, then we would take the formal route." (Medium-sized, manufacturing sector)

Issuing warnings, typically in writing, was a response to less serious or isolated issues, such as one-off instances of poor attitude.

"At that stage it was an informal conversation to say, 'Look, this is what's happened. This is what we've found out. What's going on?' [...] And he did own up to it, so we did give him a written warning." (Small-sized, professional services sector)

In a case that was ongoing at the time of the research interview, an SME was considering a combination of performance management approaches, recouping losses due to damages, obtaining an apology, as well as offering training. Here, the employer was clear that they were looking for the employee to show some improvement and accountability as pre-conditions to remaining in employment with the company.

"It'll be discussed with him what he thinks is the best way forward. Like, will he go to retraining and be completely retrained, will he accept his liability for the damages, will he apologise [...] If he can't do those things, then he can't work with us any longer." (Small-sized, construction sector)

5.1.2. Grievance outcomes

Termination of employment

For grievances, reaching a settlement was the main outcome resulting in employees losing their jobs. Settlements could either be reached during the workplace grievance (or disciplinary) process, when an employer or employee proposed it and the other party agreed, or following the grievance (or disciplinary) process, after a legal claim had been raised by the employee. Though only the

former is within the scope of this report, it is important to acknowledge that participants did not always clearly distinguish between the two types of settlement, and that the anticipation of a legal claim could be a strong influence on the feelings and actions of employers throughout the resolution process.

Settlements typically involved a one-off payment to the employee to resolve their grievance against the employer, whilst agreeing that the employee's employment would terminate. These settlements were agreed both before and after a formal legal claim had been made. While settlements were made in some cases at the end of a long investigation and grievance process that ultimately did not resolve the employee's grievance, in other cases settlements were sought more readily, so as to resolve the issue as quickly and efficiently as possible.

The approach taken was driven by employers' perceptions of the time, resources and stress likely to be involved if the process were to progress to a legal claim. An aversion to going to employment tribunal characterised the approach of employers from all sizes and sectors.

For example, in a case where an employee attributed an injury to unsafe working conditions, the employer decided to make a payment to the employee as part of a settlement:

"It cost us £26,000 altogether, but in the bigger picture, it didn't matter. Let's just get it paid and get rid of it. I don't need the grief. That's how we just moved on." (Small-sized, manufacturing sector)

In addition to reaching a settlement, there were more exceptional circumstances in which employment was terminated after raising a grievance. This was in particularly intractable cases, such as unresolvable differences of opinion on organisational restructuring, where a mutually satisfactory resolution could not be reached and the employee raising the grievance resigned.

5.1.3. Employers' feelings towards outcomes

Employers' feelings towards the outcomes they experienced were underpinned by their views of how well they handled the process and their perceptions of the impact on the organisation.

Handling of the process

A key reason for employers reporting satisfaction with case outcomes was feeling that they had handled the process appropriately and had reached the 'right' outcome. Employers often took comfort in knowing they had followed procedures 'by the book', as this offered them a level of protection if cases were ever taken to court. Fairness and transparency were also valued by employers. In one example, an employer took pride in providing regular updates to employees involved in the process, as well as offering copies of key documentation such as records of investigations.

Employers also reported feeling satisfied with outcomes if they felt the process involved hearing all sides fully, thus leading to an outcome that they felt everyone regarded as fair.

"I do think it was all dealt with really fairly. I think that the investigator did a really good job. I think everybody felt heard and I think that everybody was happy with the conclusion, which is not always the way it works is it?" (Medium-sized, manufacturing sector)

Where grievances were resolved through settlements, employers acknowledged the benefits of avoiding an employment tribunal but reported feeling dissatisfied if they perceived that justice had not been served. This was particularly the case where employers felt that they had taken the easy route by issuing a settlement payment instead of attempting to rectify or reprimand an issue.

"It was less effort to pay this person off than to go through the courts. I wanted to take her to court to prove that this woman was a liar, because the investigation indicated that she was a liar. Her accusations were completely and utterly untrue, and I was not happy with my fellow directors about that, the consensus was that we just pay her off and move on." (Medium-sized, manufacturing sector)

Employers also reported dissatisfaction with an outcome if they felt they had not stepped in soon enough to address issues, for example in cases involving inappropriate language or behaviour. This resulted in resolution processes being long and drawn out and issues escalating unnecessarily, forcing the organisation to take a formal approach.

"I think that maybe if there had [...] been intervention by letter sooner, we maybe wouldn't be at this point [...] we wait too late and then it's a bigger issue, whereas maybe if we had have intervened sooner, it would have been a smaller issue." (Small-sized, construction sector)

Impact on the organisation

Employers were satisfied with the outcome of dismissal or resignation for severe issues both due to perceptions of fairness and the impact that the employee was having on the organisation, such as disrupting workplace morale or creating financial losses.

"It was affecting the morale of the sales team [...] we want to make sure that people see that actions are happening and that it's not affecting everybody else's morale, especially with us being a small team." (Small-sized, manufacturing/retail sector)

Other outcomes were also thought to have improved employee relations and established more communication between management and employees, leaving employers feeling satisfied. Examples included provision of training on interpersonal relationships, and emotional counselling for an issue involving mental health difficulties.

"That's been resolved and she's much, much better, and it's quite a nice working atmosphere at the moment. I have to go back to her after a month and say to her, 'Is everything all right? Is everything fine?' 'Yes.' From our talk, she's been much better." (Small-sized, manufacturing sector)

As discussed above, employers reported satisfaction at reaching a settlement in grievance issues, where this meant that they could avoid an employment tribunal and the resources that this would require.

"It consumes thousands and thousands, maybe tens of thousands of pounds of emotional energy and effort, and maybe legal services around time, of your business to fight these things. We kind of have a policy that we don't ever go to court on stuff, we just pay people off." (Medium-sized, healthcare sector)

Employers reported feelings of dissatisfaction where they felt that the organisation could have saved time, money and other resources on issues which became larger or took longer than was proportionate to their severity, particularly where an informal approach may have been equally or more effective. These resources could have been better spent elsewhere, with efficiency seen as particularly important for small businesses due to their limited capacity.

5.2. Impacts of disciplinary and grievance issues

The disciplinary and grievance issues experienced by participating SMEs were reported to have had a range of impacts on employees, managers and the organisation as a whole. This section discusses the impacts SMEs reported and the ways in which they motivated some employers to make changes to the way they approached the resolution process.

5.2.1. Impact on different parties

Impact on employees

Participating employers described a range of ways in which employees were affected by disciplinary and grievance processes. It should be noted however, that these findings were limited because the research did not directly include employees.

Employers noted that career implications were a key area of perceived impact for employees. As well as experiencing job loss in cases of dismissal or resignation, employers said that employees who kept their jobs following disciplinary action could be less likely to be promoted or to be given more responsibility. Alongside this, the employees' reputation within the organisation could be tarnished.

Where disciplinary processes led to improved performance, this was viewed as positive for employees.

Employers explained that the resolution process had mental health impacts (such as stress and worry) on employees, particularly in cases where the process was long or the outcome was delayed.

Positive and negative impacts were seen on employee relationships. For example, while staff relations had benefited from outcomes which had seen aggressive behaviour cease, in other cases employee dissatisfaction with the handling of an issue had worsened relationships between colleagues.

Wider staff members were also reported to have been affected by their colleagues going through a disciplinary process. In instances of suspension during an investigation for example, this caused additional workload pressures for other team members, as well as concern for the welfare of the suspended colleague:

"Staff invest emotionally in other staff members, and to see a member of staff go, it could be a colleague or a friend, that affects them. It affects also them in terms of them having to work harder and pick up slack and means that we become under-resourced in an area, that they have to then jump on and fill that gap." (Micro-sized, education sector)

Impact on managers

Participants explained how staff who were responsible for handling disciplinary and grievance issues were impacted, including owners, senior managers, line managers and HR staff. A key impact on these individuals was the workload pressure and associated stress that handling disciplinary and grievance issues could create, particularly if their main role within the business was not HR-related. In such cases, these members of staff found it difficult to balance their day-to-day duties alongside the tasks required by the resolution process, including managing performance, conducting investigations and attending meetings and hearings.

"These people are relatively busy anyway, you give them a disciplinary to deal with, even with the assistance we get, it is a time-consuming process." (Small-sized, retail sector)

Employers' confidence in handling disciplinary and grievance processes in the future was also impacted positively or negatively by previous experiences, though for some it stayed the same. Where employers' confidence had increased, they reported feeling less likely to repeat past mistakes and more prepared for future issues, including knowing where to go for support and advice.

One employer for example, who had handled a more severe issue subsequently involving an employment tribunal, felt prepared for whatever the future held.

"I'd never be scared to go to court again. If I feel we're in the right, I would back it to the nth degree, and we did all feel that we were in the right." (Medium-sized, public sector)

In addition, there were examples of disciplinary action leading to positive impacts, such as better employee performance. This had increased employers' confidence that the dispute resolution process was worthwhile and that their approach had been effective.

Among employers whose confidence had been knocked, a contributing factor was experience of handling grievances that had not been resolved to the satisfaction of employees, resulting in legal claims being made to an employment tribunal, at which point it became necessary to deal with 'no-win no-fee' solicitors. These employers felt less confident in their chances of succeeding in a legal claim against them due to such solicitors being strongly financially motivated to achieve their desired result and being perceived to have more resources to hand.

"For the grievance [that progresses to a legal claim], I would say from an employer's point of view, if somebody's got a grievance, they'd take it to a point, you're not going to win [...] he's going to get it one way or another." (Small-sized, manufacturing sector)

Uncertainty as to whether the outcome reached was fair or 'right' could also undermine employers' confidence in handling disciplinary and grievance issues in the future. This included feelings of guilt and anxiety associated with dismissing an employee following a

disciplinary.

Employers with greater experience in dealing with disciplinary and grievance issues tended to remain confident throughout the resolution process and beyond. They felt that the issues they managed had been handled fairly, with procedures being followed and/or the result being the only 'right' or possible outcome. These employers typically felt they were highly knowledgeable about their own internal procedures as well as employment law. In addition, they had experience of handling multiple disciplinary and grievance cases and had access to suitable sources of support.

Impact on organisations as a whole

On an organisational level, SMEs described being negatively affected by the resource and cost implications of handling disciplinary and grievance issues. However, there were also positive outcomes for the organisation as a whole, where disciplinary or grievance issues led to improved working practices and manager training.

As mentioned, the work required during the dispute resolution process, such as conducting investigations and disciplinary meetings, was described as resource intensive and this was thought to affect productivity. Organisations were also financially impacted by the costs associated with lower productivity and of reaching settlements, along with expenses such as HR consultants and mediators.

In some cases, SMEs made changes based on learning from the disciplinary and grievance cases they had experienced.

There were 2 broad types of impact – identifying shortcomings in procedures and identifying poor work or management practices.

The impacts of identifying shortcomings in procedures were:

- acting sooner or more readily. One change implemented by employers following these outcomes included pursuing informal action more readily at the first signs of an issue, such as evaluating performance or issuing verbal warnings. Relatedly, some employers amended their disciplinary and grievance procedures by shortening the timescales between different steps in order to resolve issues sooner
- seeking more support and advice. SMEs who reflected on their lack of internal knowledge and expertise described seeking out more advice or support sooner in the form of an HR consultant, Acas or other sources
- keeping records of issues. Employers reported establishing formal record-keeping procedures. These were seen as useful in the event of formal action at a later date, especially employment tribunal claims:

"I think that's something I've learned over the last 3 or 4 years, that you need to refer back to a date, time, and what was said. For instance, at my computer, where I've had to have a number of conversations, I've thought to myself, hmm, I might need to refer to that one day, and I make those notes. I leave them there just in case." (Medium-sized, manufacturing sector)

The impacts of identifying poor work or management practices included:

- increasing training provision. Disciplinary and grievance issues had prompted increased training provision to improve performance among underperforming employees, as well as training on management styles and interpersonal relations for managers
- improving internal communication. Where disciplinary and grievance issues were thought to have stemmed from poor communication between management and employees, SMEs described addressing this by requiring regular check-in meetings and involving employees in organisational decisions such as policies on the use of company equipment by staff

6. Information, support and training needs

This chapter explores SMEs' views of the support they accessed, further support needs and barriers to accessing support. The chapter then turns to look at SMEs' awareness and views of the Code.

Key insights

- SMEs had used a range of sources of information or support on handling disciplinary and grievance issues, often in combination. They were: external HR services; Acas; trade bodies and associations; online resources (websites, articles and video tutorials); solicitors and HR literature.
- Professional HR services were well-regarded for their personalised, responsive and clear advice. They were perceived as good value for money due to the peace of mind they offered, including packages with insurance cover for disputes resulting in an employment tribunal claim. A recurring view among those who paid for external HR services was that their needs surrounding disciplinaries and grievances were fulfilled by this source alone.
- Acas's services were widely used and cherished. The Acas website played an important role for SMEs as a free, high quality and comprehensive resource and those who had attended Acas training and seminars on disciplinaries and grievances found them useful. Some participants believed Acas should do more to raise SMEs' awareness of available training and information sessions.
- Areas in which additional help was wanted were: training on disciplinary and grievance issues and how to handle them both informally and formally; advice and guidance on informal resolution and unexpected situations; sector-specific support and financial help for SMEs.
- The main barrier to accessing support was cost. Staff availability posed an additional barrier to accessing training for smaller firms who could not easily release staff to attend courses. Though not widespread across the sample, there was a misconception among some employers that Acas sided with employees and this stopped some SMEs from accessing Acas advice.
- Awareness and use of the Code depended on whether participants were in HR-focused roles. Those who were aware of and used the Code did so for detail or clarification. Their confidence was boosted by the knowledge that they were following good practice. There was a view among some non-HR specialists that the principles-based nature of the Code was too open to interpretation for their level of skills or knowledge.

6.1. Experiences of information and support

6.1.1. Views of sources of information and support

Participants accessed one or more of the following sources of information or support:

- external HR services, who provided a wide range of paid-for services
- Acas, including their website, email communications, helpline and training
- trade bodies and associations, who provided a range of HR services, legal advice and information on HR and employment law
- online, including GOV.UK, online articles and video tutorials on YouTube
- solicitors, specialising in employment law
- literature, publications for example HR Advisor and People Management magazine

They were used for:

- general advice and guidance on dispute resolution at different stages of the process
- documents and templates
- fact-checking, particularly on employment law
- webinars and training on disciplinary and grievance issues and related themes for example performance management

A wide range of external HR services were used by SMEs. They were delivered by specialist HR consultants, with some also being provided by trade bodies or associations and by banks. The support included one-to-one advice and guidance; development and updates to organisational policies and procedures; provision of documents and templates (for example letters and written warnings); attendance and minuting of meetings, insurance cover and access to legal professionals; and training provision.

These services were well-received and were considered good value for money. SMEs appreciated being able to access HR services quickly and in a range of ways, with face to face visits being offered by some providers, as well as phone and email contact. Of particular value was that the advice was tailored to the company and issue at hand.

"They know our business really well and they know the types of challenges that we encounter really well, so they instinctively, in the context of a 30-minute phone call, know what to do. It's like job done, for £80." (Medium-sized, care sector)

As discussed in chapter 4, external HR consultants gave SMEs peace of mind. Insurance cover offered reassurance from a legal and financial perspective and SMEs did not have to worry about keeping abreast of changes in employment law or keeping their policies up-to-date. For those in senior roles, their workload was eased because managers could seek advice from HR providers directly. SMEs also took comfort in being able to speak openly with HR consultants and in receiving clear instructions on what to do in return.

"[Their advice is] also very black and white, which sometimes you need when you're dealing with things like this. [...] You just want to be able to say what you need to say and not be judged. You just want frank advice, and that's what it is. It's frank advice and not going round and round." (Medium-sized, manufacturing sector)

Criticisms of external HR services were limited, with 2 main points raised. First, the advice was perceived as very 'by the book'. This meant that SMEs did not always follow or preferred not to seek the advice from external HR services where a more informal or 'off the record' approach was deemed more appropriate. However, this contrasted with other SMEs feeling reassured by the strict and formal nature of the advice because it meant they were following a set procedure.

Second, seeking advice from an HR consultant could be seen as time-consuming due to the thorough nature of the detail given. This led some SMEs to seek counsel primarily for newer issues that they were less confident about.

The information and training provided by Acas were generally highly regarded and widely used by participating SMEs.

"I went on Acas [website]. There's a brilliant grievance and disciplinary workbook. It's not a workbook, but an information pack which just gives so many clear steps. So that's now printed off and my bible." (Medium-sized, professional services)

The website was described as the first 'port of call' for quick access to information on employment law or on what steps to take next. As a free resource it was considered invaluable for cash-strapped SMEs. The information on the Acas website was thought to be comprehensive, though there were mixed experiences of how easy the information was to find, with some participants reporting challenges locating what they were looking for.

SMEs who had attended Acas training and seminars on disciplinaries and grievances, or related issues such as mental health in the workplace and managing absence, reported high levels of satisfaction with the services provided. Overall, SMEs expressed demand for more training on disciplinary and grievance issues (as discussed in section 6.2) and thought Acas should do more to raise awareness of available training and information sessions among SMEs.

As mentioned, participating SMEs had accessed different types of support from trade bodies and associations. The HR services they provided appeared to be similar in nature to those offered by specialist HR consultants though with more sector-specific resources. Webinars such as those offered by the CIPD were also considered useful for keeping up to date with changes in legislation.

Participants from across the sample described looking online for information on disciplinary and grievance issues. They visited GOV.UK and the CIPD websites and conducted general online searches for articles on specific issues. For SMEs without in-house or external HR expertise and whose resources were constrained, online information on employment law, video tutorials and free templates and documents found online were viewed as particularly valuable and meant they could avoid paying for support.

Case illustration 6: Micro organisation – real estate agent (owner or manager HR function)

The owner or manager of this micro-sized company does his own online research and tries to interpret what the UK law says himself before seeking professional advice. This is because he thinks professional advice is expensive and does not feel he has the resources for it. He would consider getting professional help if he faces a situation that online materials cannot address.

There were limited instances of solicitors being engaged by employers directly and cost was a key barrier to this. Where solicitors were used by employers, this was to access professional legal advice to support and enhance the process.

"You can't stop that somebody might step out of line and do something wrong at work, where you've got to do a disciplinary. What you can get is professional advice to help ease the load or ease the, yes, help with the disciplinary, not just helping you, but help the person who's got the disciplinary, so that it's fair for them." (Small-sized, manufacturing sector)

6.1.2. Support needs and gaps

The areas in which participating SMEs felt the need for additional help included training, advice and guidance, sector-specific support and financial help.

SMEs from across the range of HR functions expressed an appetite for further training on:

- the types of issues that can cause disciplinary and grievance cases
- strategies for stopping problems from worsening and for handling issues informally
- how to handle cases which were less clear-cut, where it is not obvious what to do
- procedures for different parts of the process such as formal meetings
- training for employees on what behaviours can lead to disciplinary action

As well as training related to disciplinary and grievance issues specifically, more general training was thought to be needed on good contemporary management practices, both for newer and longer-standing managers.

"Educating the line managers to understand the basic processes, what's good practice, and how things should be done [...] especially the ones that have been around 20 or 30 years, things, dare I say, used to be slightly different, in that you could pull an employee aside and pretty much say and do anything." (Small-sized, food sector)

There were 2 main areas in which SMEs said they needed further advice and guidance. The first was around what to do when faced with an unexpected or unusual situation and the second was around how to effectively handle issues informally.

"I think that it would be very good to be able to understand how we could more informally deal with issues in a way that works, like what is proven as to be effective in how to informally deal with issues, because in our experience it's not, and it just ends up turning into a formal issue." (Small-sized, construction sector)

SMEs were interested in sector-specific support if they worked in sectors with particular rules or constraints. For example, specific guidance for those offering financial services and for whom regulatory as well as employment law apply. Support and training aimed at the charity sector was suggested because the sector was thought to lack the necessary HR knowledge and the resources to acquire it.

A final area of support was financial support. Participants emphasised the importance of free advice for SMEs, given professional advice could be unaffordable for some businesses. It was thought that an equivalent to Legal Aid could be made available for small businesses who were particularly financially constrained.

6.1.3. Format of support

There were 2 mediums through which participants wanted support to be delivered. One was more online support including online forums for peer support, video tutorials from Acas available through streaming platforms and online portals for resources, including those geared towards specific industries.

"There are no online portals that we can use whereby we can specifically find information that is geared towards my industry. That is a resource I would love to have." (Small-sized, finance sector)

With much of the available support being delivered online or on the phone, there was also appetite for in-person advice, support and training.

"A real human in the room is sometimes more helpful than or can feel more beneficial to a scenario than a human on the telephone or/and a bunch of [written] information [...] on different scenarios." (Medium-sized, care sector)

6.1.4. Barriers to accessing support

Not all SMEs felt the need for further support. For one group, this was due to the perception that their needs were already being met by existing sources of support. For example, a recurring view among those who paid for external HR services was that their needs were fulfilled by this source alone.

A more exceptional reason for not wanting further support was believing it was not needed. This was a view held by an organisation who chose not to have policies or procedures for disciplinarys and grievances, and in which the owner preferred to handle each case with minimal input from others.

"It just means that we're able to be a bit more human. Well, you're more mindful. You don't have a HR department with 18 different people to go through and lots of different people that need to make a decision. You just make decisions and get stuff done." (Small-sized, retail sector)

Similarly, some employers felt no need for additional training, preferring instead to learn on the job or to seek guidance from HR consultants in the rare event an issue arose.

The main barrier to accessing training and professional support among those who wanted it was cost.

"I think for organisations like us, we're very small; we have very little money. Again, there's only so much we can do really. We know we have to [put] these things in place, but there's no money around for it really." (Micro-sized, charity sector)

Alongside cost, challenges with staff availability posed an additional barrier to accessing training for smaller firms who could not easily release staff to attend courses.

Though not a widespread issue, perceptions of bias could also prevent some SMEs from seeking support. This was due to the belief that it was inevitable that the employee would win where matters had escalated to a tribunal or court claim, or that certain sources of support favoured employees. For example, though not widespread across the sample, there was a misconception among some employers that Acas sided with employees and this stopped some SMEs from accessing Acas advice.

"I think that companies like Acas, the impression I've got is that they always err towards supporting the employee and never the employer. That's my impression of Acas." (Medium-sized, manufacturing sector)

"I think the way that most businesses view Acas is they're kind of more for the employee than the employer." (Small-sized, retail sector)

One SME explained that this perception stemmed from the impression that Acas sets out requirements of employers, for example in the Code, that they believed exist to protect employees' and not employers' interests. For this SME, this notion was reinforced by Acas being the route through which employees must register their intention to make a claim to an employment tribunal.

It should be noted that past research points to SMEs making similar assessments, believing Acas helpline advice adopts an 'employee's perspective' with advisers simply working to ensure that the employer complies with legislation, so their advice was perceived to be designed to 'make sure the employee is alright' (Hann, 2012).

6.2. Awareness and experiences of the Acas Code of Practice

As discussed in chapter 3, many of the policies and procedures shared by participating SMEs were closely aligned with the Code. Nonetheless, there were 2 groups of SMEs: those who were aware and those who were unaware of the Code.

Those who were unaware of the Code tended to have owner or manager, hybrid and external HR functions (go to chapter 3 for further detail on these categories). This meant that these participants were not HR specialists themselves and may not have been directly responsible for developing disciplinary and grievance policies and procedures or handling cases. For instance, those who delegated the development of policies and procedures, and much of the handling of issues to external HR services, had no direct use for the Code.

Participants who were aware of the Code tended to be in HR-focused roles at SMEs with internal and hybrid HR functions. Among these participants, use and views of the Code varied. Those who had not recently used the Code had outsourced their HR function and did not feel the need to consult the Code. Others said their policies and procedures covered the Code and so referred to them instead. A final group had not felt the need to use the Code recently, claiming that they had grown more knowledgeable and experienced in their role and therefore knew implicitly how to follow the Code without explicitly referring to it.

"I suppose as I've matured and grown with the job, I've not felt I've needed it as much." (Medium-sized, social care sector)

Participants who were actively using the Code said it boosted their confidence because it meant they felt surer that they were following good practice. The Code was often used in conjunction with their Code-based policies and procedures for detail or clarification. SMEs described using the Code to look up procedural steps; to check what should be covered in letters or formal meetings; to look into aspects they were unsure about; or as a refresher if they had not had a disciplinary or grievance case recently. Participants also described referring line managers to the Code to ensure they had a reliable reference point while they enacted procedures.

Where the Code was seen to have drawbacks, this was due to its principles-based nature, which was perceived to leave the Code too open to interpretation. This was a view expressed among participants in organisations with hybrid HR functions, who performed some HR-related duties but were not qualified HR professionals themselves. These participants lacked confidence in their own interpretation, due to their self-proclaimed lack of HR expertise, but nonetheless had support from an external HR specialist in dealing with disciplinary and grievance matters.

7. Conclusions

Using 40 in-depth interviews with SMEs from across a range of sectors, this research sought to understand contemporary experiences of dispute resolution procedures inside the workplace, from the perspectives of employers, and to identify SMEs' support needs. This chapter presents conclusions from the research.

What issues lead to disciplinary and grievance cases within SMEs?

A broad range of issues underpinned the disciplinary and grievance cases experienced by participating SMEs, with disciplinaries stemming from gross misconduct to poor timekeeping and grievances relating to sexual harassment to disputes about pay. The issues were diverse in terms of how severe, persistent, complex and intractable they were, and this led to the use of a variety of resolution approaches and outcomes.

As would be expected and found in previous research (Wood et al, 2014), the frequency of disciplinary and grievance cases appeared to be linked with organisation size. SMEs' feelings about the rates of issues they experienced was influenced by how commonplace they were perceived to be for the sector. This meant that in smaller organisations, or for issues which occurred more rarely in their sectors, employers tended to have less experience of, and confidence in handling, disciplinaries and grievances. It may be that these employers, particularly those lacking access to internal or external HR expertise, could be usefully targeted as in need of greater

support.

While the analysis demonstrated that employer size was linked to the frequency of disputes, it appeared that good employment relations in a wider sense may also play a role in preventing workplace conflict. Employers believed that fostering a positive 'company culture', regular open dialogue between employees and managers and implementing effective HR practices contribute to lower rates of disciplinary and grievance cases.

Examples include careful recruitment exercises, clear communication about roles and expectations and effective performance monitoring as good practice in this regard. This indicates that alongside specific training on handling disciplinarys and grievances, SMEs may benefit from greater awareness of the benefits of good employment relations practices in general, as well as support to help them implement such practices.

What policies and procedures do SMEs have in place?

Perhaps reflecting the broader rise in written workplace procedures for handling disciplinary and grievance issues in recent decades (ibid), SMEs from across the sample had policies and procedures in place. SMEs' policies tended to be closely aligned with the principles of the Acas Code of Practice on disciplinary and grievance procedures (the Code).

However, there were relatively consistent gaps and mismatches between the Code and policies such as not giving examples of what counted as gross misconduct, or not explaining the employees' right to accompaniment. There were also mismatches between the range of scenarios a policy covered and the range of scenarios experienced by SMEs, most prominently, with regard to linked disciplinary and grievance cases.

Such cases could be particularly complex and there were instances of employers lacking confidence that they were taking the correct steps. Whilst the Code does briefly cover this situation, it does not explain in detail what steps should be taken. SMEs may therefore benefit from an elaboration of the Code in this section, alongside improved signposting to advice and support on what to include in policies and procedures in relation to complex cases involving overlapping disciplinary and grievance procedures.

In addition, instances of SMEs actively involving their staff or their representatives in the development of their policies and procedures were rare in the sample, as were efforts to educate staff and ensure that they fully understand the policies and procedures, despite the Code stating that this should occur. This suggests the need for raising awareness of this requirement among SMEs to help strengthen the quality and buy-in of organisational policies within workplaces and to support employees' understanding of their rights and responsibilities at work.

The nature of SMEs' policies and procedures were to some extent linked to the way their HR functions were configured. Those with external or in-house HR support tended to have policies tailored to their organisations. In contrast, in some SMEs whose HR function was handled by an owner or manager, there were examples of policies not existing at all or not being fully fit for purpose. For instance, some policies were not 'up to date' or were drawn from online templates but not tailored to the organisation.

The absence of or lack of confidence in an organisational policy could compromise confidence in the fairness of the resolution process. Employers could feel vulnerable to issues escalating into legal claims, therefore opting to make costly financial settlements rather than attempting to address the problem through their disciplinary or grievance procedures. This suggests that investing in organisational policies and procedures and in keeping them up to date could potentially save employers money, as well as stress and feelings of vulnerability, in the event of a disciplinary or grievance issue arising in future.

How do SMEs deal with the issues that arise?

Echoing existing evidence (Harris et al, 2008; Earnshaw, Marchington and Goodman, 2000), there was consensus that taking an informal approach, at least at an early stage, could lead to a better resolution process for both parties. This was considered especially important in SMEs due to the close working environment and relationships. However, the research found that informal approaches were sometimes used inappropriately (when a formal approach may have been more appropriate or when issues were not taken

seriously). Similarly, the evidence showed informal approaches could be used ineffectively (too quickly or superficially), or were skipped altogether where they may have been effective in bringing about an early resolution of issues.

These behaviours were underpinned by perceived business need, including fears around staff retention in specialised industries or rural areas; close relationships between managers and employees in smaller firms that meant managers felt uncomfortable intervening; and by inadequate management practices, such as when line managers failed to escalate issues to senior staff appropriately.

These findings, alongside SMEs' calls for more guidance on effective techniques for early and informal resolution, suggest that this is a key area for further advice and training. In more exceptional circumstances, SMEs with workers on zero-hours contracts were able to circumvent formal processes altogether, simply by ceasing to offer work. This points to a need for further consideration of what employers' obligations towards such workers in potential disciplinary or grievance situations are or should be.

The evidence suggests that formal approaches, and the resolution process overall, were affected by a lack of financial and staff resource, including HR expertise. SMEs appeared to be in need of advice and support for less straightforward cases, particularly where it was difficult to establish the facts and arrive at a fair or obvious outcome. SMEs' confidence, particularly around addressing grievances, was also undermined by the belief that the system would be weighted towards the employee if the matter escalated to a legal claim. This belief was compounded by negative past experiences of dealing with 'no-win no fee' solicitors. These problems intersected for micro-sized organisations and those where the owner or manager dealt with HR without specialist support, indicating that this group were in particular need of support.

In contrast, it was clear that SMEs who had access to in-house or external HR specialists benefited from this support. As echoed by existing research evidence (Hann, 2012; Earnshaw, Marchington and Goodman, 2000), those with external HR services provided by trade associations and private HR consultancies, valued the accessible and tailored nature of the advice. They gained peace of mind from following clear instructions, including indemnified advice. These services were considered good value for money, especially given the strength of concern around being taken to an employment tribunal as a resource-constrained SME.

Nonetheless, some SMEs indicated that seeking advice from external HR practitioners could formalise issues too quickly. These findings highlight a key tension between employers' preference for closely following defined steps laid out in a procedure to safeguard themselves from legal consequences versus the desire to resolve issues informally. These findings further corroborate the need for additional support to better equip SMEs to deal with issues informally where appropriate, as highlighted by previous research (ibid).

The research established that for some SMEs, the COVID-19 pandemic changed the volume and nature of disciplinary and grievance issues experienced. This was linked to the effects of home-working; furlough; mental health and COVID-19 safety concerns. The pandemic also affected SMEs' ability to address these issues.

On one hand, a lull in work freed up resource to identify and resolve issues while on the other, remote meetings impeded effective dialogue with employees who lacked IT skills or equipment. This suggests that as the nation emerges from the pandemic, employers may benefit from guidance on how to make decisions about the appropriate mode of disciplinary and grievance meetings in different circumstances, including with a view to avoiding less IT savvy employees being potentially disadvantaged.

The exceptional circumstances of the pandemic also appeared to lead to greater leniency in outcomes. Employers were sympathetic to the unusual circumstances of the pandemic and were reluctant to dismiss employees at a time of heightened insecurity in the wider labour market. It was also apparent that for some SMEs, wider preventative or good practice measures were put on hold during the pandemic, for example, performance management or training in disciplinary and grievance issues. It is important that as SMEs transition out of the pandemic, good practice measures are reinstated and not compromised by new working arrangements (such as long-term remote working).

How do disciplinary and grievance matters affect SMEs?

The research found that disciplinary and grievance cases affected SMEs and the different parties involved in both positive and negative ways. Negative impacts included financial losses, mental health impacts on those involved and increased workloads for managers handling procedures. In the best cases, addressing issues effectively set an example for others, mended relationships and improved standards of work.

Dealing with a problem early on, informally if possible, was felt to minimise stress and the financial impact on SMEs. However, these benefits were not realised when issues went unaddressed or when financial settlements were made prematurely during the resolution process to make issues 'go away' and to avoid the potential for future legal claims. Even in situations where the issue was not felt to be dealt with in the best way possible, positive impacts were nonetheless felt when disciplinary or grievance issues highlighted shortcomings in procedures, identified poor management practices (leading to additional training) or when paying financial settlements minimised stress and workload for employers.

Other positive outcomes were experienced when disciplinary and grievance issues led to seeking training and support for employees, for example training on interpersonal relationships and mental health counselling. These initiatives were reported to improve employee performance and employee relations and facilitate more open communication between management and staff. This suggests that promoting these forms of training and support as a 'preventative' measure could help SMEs establish healthy communications practices and improve employee satisfaction, potentially helping to identify and address problems at earlier stages. However, cost is likely to be a barrier for some SMEs.

What additional advice, training and support is required?

SMEs identified additional advice and training needs around different disciplinary and grievance issues, including how to handle them, both informally and formally, what to do when faced with an unexpected or unusual situation, and strategies for stopping problems from worsening. The need for such advice and training was also apparent in the diversity of phrasing and terminology used to describe the issues underpinning, and processes associated with, disciplinarys, grievances, investigations and suspensions.

The language used suggests that workplace problems were not always being consistently recognised: for example, 'grievance' was used to describe a wide range of phenomena, from employee unhappiness to legal claims. Similarly, formal and informal processes were sometimes blurred and this manifested in 2 main ways.

Firstly, where informal approaches resulted in formal outcomes, such as informal conversations resulting in employers issuing written warnings, thus contravening the Code. Secondly, an action taken to address a disciplinary or grievance issue could be perceived by SMEs as more or less formal or informal depending on the nature of their HR function: for example, some carried out 'informal' investigations and suspensions.

In addition, grievances and legal claims were often conflated in the way employers referred to them, and investigations were sometimes used incorrectly to support a pre-determined outcome rather than to objectively gather evidence.

The findings indicate that support needs were most pronounced among SMEs without access to specialist HR support and those who faced time and financial constraints during the resolution process. Those in the former group, who stand to benefit most from being familiar with the Code, did not tend to be aware of its existence, but the confidence of those who were aware of and used the Code was boosted by the knowledge that they were following good practice.

Raising awareness is therefore key, though likely to have a more positive impact when this is matched with an offer of one-to-one support in order to help navigate more complex situations, especially given the view among some non-HR specialists that the principles-based nature of the Code was too open to interpretation for their level of skills or knowledge.

Cost was a key barrier to accessing support across the sample of SMEs. As highlighted by existing evidence, this underlines the importance of the provision of and signposting to free information, advice and training to SMEs, especially those without access to internal or external HR practitioners (Harris et al, 2008). In addition, online resources (for example videos, portals and Acas's free e-learning modules) could play an important role given constraints on staff availability for training in some SMEs.

In addition to time and cost barriers, the findings suggest that a lack of understanding and awareness of different types of support may prevent some SMEs from making full use of available resources. Some participating SMEs wanted more information about Acas, and free and paid-for training and information sessions on disciplinary and grievance and wider related issues. This suggests that SMEs may benefit from targeted promotion about Acas and its services. In addition, reflecting earlier evidence sources (Harris et al, 2008), the research found that some SMEs perceived Acas as serving employees more than employers. Emphasising Acas's impartial nature in communications with SMEs may therefore help overcome any related barriers to using its advice services.

While in recent years, mediation has grown in prominence as a dispute resolution tool, there is evidence that it is more likely to be used in larger workplaces (Wood et al, 2014). In a 2011 poll of businesses, only 4% of managers in SMEs had used mediation, with a lack of awareness being a key barrier to use (Williams, 2011). Indeed, the limited experiences of and understanding of mediation among SMEs who participated in this research suggest that raising awareness of mediation and how it could help may increase uptake of this option.

Summary

This research illustrates the broad range of disciplinary and grievance issues experienced by SMEs today and the diversity of approaches taken to resolve them. The findings demonstrate that SMEs experience a combination of barriers to effective dispute resolution, with those who lacked either internal or external HR expertise in particular need of support. These SMEs tended to have less time and resource to allocate to issues, less hands-on experience of dealing with them and, in some instances, policies that were not fit for purpose.

Where these factors converged, resolution processes could be protracted for all parties, unfair for employees (for instance where, contrary to the Code, formal warnings were issued after an informal process), and could work against the employer's own interests (for instance, where there were negative impacts on the wider organisation such as costly settlements). Identifying and targeting these organisations with further support should therefore be a key priority.

Finally, this report presents the views and experiences of employers, who were the focus of the research. For this reason, the report does not feature the perspectives of employees and other relevant parties such as trade union officials and external HR providers. This highlights a need for further research with these groups to develop a fuller picture of the themes explored in this report.

Appendix A – References

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Appendix B – Research methodology

Recruitment

An opt-out approach was used to recruit participants for this research. A sample of SMEs was obtained from Experian, a credit reporting company which holds publicly available information on businesses. SMEs were first contacted by email, which informed them about the research. A one-week period followed whereby SMEs had one week to opt out of further contact. Those wishing to opt out were then removed from the sample file. NatCen then made follow-up phone calls to SME contacts to explain the research, determine eligibility, and arrange interviews with those willing to take part. The individual interviewed at the organisation was the main member of staff who dealt with disciplinary and grievance issues. Each participant was given £75 either as an online shopping voucher for themselves or as a bank transfer to the organisation or a charity donation.

Sampling

The sample design and selection of participants used a purposive approach. This is widely used in qualitative research and selects participants on the basis of key characteristics that are expected to affect the views, experiences or behaviours that are the subject of the study. The sample was intended to achieve a mix of SMEs of different sizes, sectors and HR function (Table B:1) (The quotas were all met with the exception of falling one short in the public administration, education and healthcare sector, and one short in the owner or general manager category of HR function).

Secondary characteristics which were monitored and screened included what types of issues that had experienced, whether they had used investigations and suspensions, whether they had written disciplinary and grievance procedures, whether they used mediation, and whether their organisation recognised a workplace union (Table B:2).

Appendix table B:1 Sample breakdown by primary characteristics

Sampling criteria	Characteristics	Achieved sample
Size	Micro (5 to 9)	11
	Small (10 to 49)	16
	Medium (50 to 249)	13
Sector	Manufacturing, utilities, construction and transport	11
	Professional and administrative services	11
	Public administration, education, and healthcare	7
	Retail, food, accommodation, arts and entertainment	11

Sampling criteria	Characteristics	Achieved sample
HR function	Exclusively in-house HR function	14
	Contracted out HR function, at least in part	12
	Owner or general manager	14

Appendix table B:2 Sample breakdown by secondary characteristics

Sampling criteria	Characteristics	Achieved sample
Disciplinary or grievance	Disciplinary	15
	Grievance	12
	Both	13
Suspensions or investigations	Investigation	15
	Investigation and suspension	10
	Neither	15
Written disciplinary and grievance procedures	Yes – disciplinary matters	2
	Yes – both disciplinary and grievance matters	37
	No – neither	1
Mediation	Yes	19
	No	20
	Don't know	1
Unionisation	Yes	6
	No	34
Firm age	5 to 10 years	5
	11 to 20 years	17
	21 to 30 years	5
	31 to 40 years	8
	41 to 50 years	1
	50 or more years	2
	Not known	2

Data collection and management

A topic guide, designed in collaboration with Acas, was used to guide the interviews. The themes covered included:

- contextual information about the participant, organisation and disciplinary and grievance issues at the workplace
- approaches to dispute resolution
- experiences of dispute resolution
- information and support

Interviews were recorded and transcribed with participants' permission. The data was managed using NatCen's Framework approach which allows in-depth exploration of the data by case and by theme (Ritchie et al, 2014).

Appendix C – Issues underpinning disciplinary and grievance cases

Appendix table C:1 Issues experienced leading to disciplinaries and grievances

Category	Types of issues leading to disciplinaries	Types of issues leading to grievances
Gross misconduct	<ul style="list-style-type: none"> • Physical violence towards a colleague • Theft of company belongings • Invoice fraud 	Sexual harassment or misconduct
General misconduct	<ul style="list-style-type: none"> • Insubordination, for example refusal to carry out assigned tasks • Inappropriate behaviour towards colleagues and customers, for example rudeness and poor customer care • Inappropriate behaviour resulting from alcohol or drug usage, for example threatening language, drinking and driving, calling co-workers out of hours • Plagiarism 	
Bullying and harassment		Issues with senior staff's behaviour and communication
Negligence	<ul style="list-style-type: none"> • Damages to company belongings • Causing company resources to be stolen 	

Category	Types of issues leading to disciplinarys	Types of issues leading to grievances
Unfair treatment		<ul style="list-style-type: none"> • Obligations to travel long distances • Rules being enforced too heavy-handedly • Unprofessionalism and favouritism
Discrimination		<ul style="list-style-type: none"> • Unfair treatment towards employee based on racial prejudices • Not accommodating part-time work
Poor performance	<p>Capability</p> <ul style="list-style-type: none"> • Health capabilities making it difficult for employee to fulfil their role <p>Not doing job correctly</p> <ul style="list-style-type: none"> • Repeating errors that should be easily avoidable • Not responding to client needs and giving incorrect advice • Not following processes correctly 	
Poor timekeeping or unauthorised absence	<ul style="list-style-type: none"> • Absences, for example continuous, excessive and unexplained leave, taking more holiday than allowed • Lateness • Falsification of working hours • Not recording time properly • Not attending scheduled meetings • Not completing work in time 	
Health and safety	<p>Health and safety breaches</p> <ul style="list-style-type: none"> • Driving incidents, for example collision with pedestrian 	Unsafe working conditions

Category	Types of issues leading to disciplinarys	Types of issues leading to grievances
Pay, terms and conditions	Insurance, for example points on driver's licence surpassing limit for insurance coverage, preventing employee from fulfilling role	<ul style="list-style-type: none"> • Issues with pay • Due to organisational restructuring