

Exploring Informality in relation to Disciplinary  
Disproportionality of Black, Asian and minority  
ethnic employees.

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# Abstract

Overrepresentation of employees from Black, Asian and minority ethnic groups in records of formal workplace disciplinary processes in the English public sector is well established. A key causal mechanism identified for this disciplinary disproportionality involves avoidance of taking informal action by front-line managers (FLMs) for Black, Asian and minority ethnic employees. This results in either premature formal action, or a matter escalating and becoming too serious to be handled informally. This mechanism motivates the focus of this study on informal processes. The other focus, written policy and procedure, is informed by literature identifying the need for safeguards against prejudice and bias, and FLMs' desire and need for guidance regarding informal action, and tendency towards following formal procedure in preference to it.

The research aims to explore organisational intentions regarding informal processes through the lens of HRM-signals that the documents send, and in relation to how policy might allow or deter differential use of informal action. The study thematically analyses disciplinary, performance, and capability policy and procedure documents, obtained by freedom of information request, from a representative sample of 128 English local authorities (LAs).

The study contributes empirically by identifying the HRM-signals sent by the documents in relation to informal action and the transition to formal action, and by categorising in detail the approaches to procedure that the signals represent. It finds by every criterion analysed, a lack of consistency and standardisation meaning that a large variety of approaches is taken. Methodologically, the utility of analysis of written policy and procedure is shown to be a rich source of data about organisational intentions, and how these can be interpreted in relation to potential mechanisms of unfair discrimination. A second methodological contribution is the value of the use of HRM-signalling as a theoretical framing for such analysis. Theoretically, the main contribution is the development of ways to conceptualise and model HRM-signalling delivered by written policy and procedure, the resultant intended processes, termed *action pathways*, and their potential to allow or deter unfair or inconsistent action and disciplinary disproportionality.

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## Author's Declaration

I declare that this thesis is a presentation of original work and I am the sole author. This work has not previously been presented for a degree or other qualification at this University or elsewhere. All sources are acknowledged as references.

# Chapter 1. Introduction

This study explores HRM-signals sent by written policy and procedure regarding informal management action to address matters of employee discipline, performance, and capability. It seeks to explore the procedural approaches to informal action that these signals represent and how written policy and procedure potentially allow or deter differential use of informal action by front-line managers (FLMs) with employees from different ethnic groups. The motivations for the study and the form it takes are introduced below.

## 1.1. Motivations for this study

The year 2022 brought two high-profile examples from the English public sector of the over-representation of employees from Black, Asian and minority ethnic groups<sup>1</sup> in records of formal workplace disciplinary processes. An interim report from Baroness Louise Casey's review of standards of behaviour and organisational culture at the Metropolitan Police Force that focuses on the misconduct system, finds that

*"In every year of data, Black, Asian, and Mixed Ethnicity officers and staff are substantially more likely than their White colleagues to receive a misconduct allegation. In the most recent financial year, Black officers and staff were 81% more likely to receive a misconduct allegation than their White colleagues, Asian officers/staff were 55% more likely and Mixed Ethnicity officers/staff 41% more likely" (Casey, 2022, p.16).*

This was closely followed by Nazir Afzal OBE's review of organisational culture at London Fire Brigade that found that Black, Asian and minority ethnic employees are more than twice as likely to be formally disciplined than white employees (Afzal, 2022). Both examples are provided by independent reviews commissioned in reaction to tragic events. In both, disciplinary disproportionality is a small part of the review's remit, but both brought disciplinary disproportionality into the national news (BBC News, 2022a; BBC News, 2022b).

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<sup>1</sup> The term Black, Asian and minority ethnic is used because of its common use in the UK in both academic and organisational contexts. I recognise that other terms may be used more commonly in other countries and that the term is problematic and unsatisfactory. I try to reduce this by avoiding turning the term into an acronym. I see the concepts of race and ethnicity as socially constructed, contested, and changing. Use of this term is not meant to imply either homogeneity of opinion or experience of people who might self-identify or be identified by others as belonging to Black, Asian or minority ethnic groups. I also understand that the construction of whiteness is highly significant when referring to ethnicity.



Other recent examples of disciplinary disproportionality related to ethnicity in the English public sector come from local government and the National Health Service (NHS). Dudley Metropolitan Borough Council in its 2019 and 2020 annual equality data monitoring reports, show Black, Asian and minority ethnic employees 90% and 80% more likely respectively to be formally disciplined than white employees. This example is accompanied by union accusations that an independent report into reasons for the disproportionality is being delayed or censored by the Council (UNISON & UNITE Unions, 2022), and similarly to the examples above, brought disciplinary disproportionality into the news (BBC News, 2022c).

The NHS Workforce Race Equality Standard (WRES) shows that in almost half of NHS trusts Black, Asian and minority ethnic employees are 25% more likely to be formally disciplined than white employees (WRES Team, 2023). In some trusts this number is significantly higher, including London trusts, where the likelihood is 47% more. It must be noted that the level of disproportionality for Black, Asian and minority ethnic NHS staff has shown a downwards progression since WRES reported 2016 data, when Black, Asian and minority ethnic employees were 57% more likely overall to be formally disciplined and twice as likely or more in 74% of trusts (Kline et al, 2017; WRES Team, 2023).

Whilst these recent and high-profile examples highlight the fact that disciplinary disproportionality exists in parts of the English public sector, awareness of this phenomenon is not new. The broad motivation for this study is a small body of literature over 25 years, both from academic and organisational sources, identifying disciplinary disproportionality as a phenomenon, exploring its causes, and proposing ways to prevent it.

The literature identifies a number of potential contributing factors to disciplinary disproportionality, that are elaborated in Chapter 2. A key causal mechanism for disciplinary disproportionality, and one that the literature is remarkably consistent in identifying, relates to the use or avoidance of informal action. This involves FLMs avoiding taking informal disciplinary action with Black, Asian and minority ethnic employees when compared to white employees, resulting either in formal action being taken prematurely when informal action could have been taken, or a matter escalating and becoming too serious to be handled informally, also resulting in formal action (Tamkin, 2000; Archibong and Darr, 2010). The result, either way, is that when this occurs, Black, Asian and minority ethnic employees are overrepresented in records of formal disciplinary processes. This

mechanism motivates the specific focus of this study on informal processes as related to disciplinary disproportionality.

## 1.2. Conceptual framework

The form that the research design takes is motivated by literature addressing two key organisational areas related to the causal mechanism of differential use of informal action leading to disciplinary disproportionality. The first is informality itself and the second conflict management. Informality was identified as important because its avoidance is fundamental to the mechanism. Conflict management was chosen because the literature relating to this area includes the management of disciplinary and performance matters, including informally, and the role of the FLM.

Exploration of use of the term informal in extant literature in relation to organisational structures and processes made clear that the way that the term is used specifically in relation to organisationally sanctioned processes such as those addressing disciplinary issues, is unusual, possibly even unique, when compared to the way that the term is used in relation to other forms of organisational informality. Informality within disciplinary processes is organisationally sanctioned in that it is governed by organisational policy and procedure and is instigated from the top down by management representing the organisation. In contrast, in literature concerned with other matters, informality is generally characterised by factors such as being organisationally unsanctioned, outside organisational structure or policy, or as originating from the bottom-up (as discussed in Chapter 3).

Informality in extant literature is also related to differential employment experiences for employees belonging to minority social groups, including employees from Black, Asian and minority ethnic groups, that I categorise in terms of access, recognition, and voice (as discussed in 3.2). Whilst the causal mechanism identified by the disciplinary disproportionality literature has made informality important to the design of the study, these two insights from the literature suggest that informal action as part of disciplinary process is also worthy of exploration as a distinct form of informality and for the wider tendency that it may have negative implications for Black, Asian and minority ethnic employees.

Literature related to conflict management shows that there are also barriers to the use of informal action more broadly than in terms of those related to differential use of informal action with Black, Asian and minority ethnic employees (Saundry et al, 2015). This includes avoidance by FLMs of the use of informal action in general, and despite a stated preference for informal action, in practice a tendency to use formalised approaches that follow written procedure (Saundry et al, 2015). Written policy and procedure are shown to be influential for FLMs (Harris et al, 2002; Saundry and Wibberley, 2014; Saundry et al, 2015).

What is clear from the disciplinary disproportionality and conflict management literature (discussed in Chapter 2 and Chapter 4) is that there are a multitude of factors that may contribute to the avoidance of informal action both in relation to Black, Asian and minority ethnic employees and more generally. Although good practice and ways to resolve these issues are identified, these are long-term undertakings related to changing hearts, minds, cultures, relationships, and skill sets. They cannot be assumed or be relied upon to be attempted or be successful. This means that fail safes are needed against differential treatment of Black, Asian and minority ethnic employees whatever its cause.

The conceptual framework for the study is comprised of the points raised by the literature above, and a theoretical framework that includes literature that informs the study results and three key theoretical assumptions. The literature that informs the study results relates to: pathways; mapping and modelling of processes; and management interaction approaches. The key theoretical assumptions are: 1) that human resource management (HRM) is delivered by signals (Bowen and Ostroff, 2004; Ostroff and Bowen, 2016); 2) that policy and procedure documents are a valid source of data (Atkinson and Coffey, 2004); and 3) institutional racism as a structure within which to conceptualise organisational responsibilities regarding unfair or inconsistent experiences or outcomes for Black, Asian and minority ethnic employees.

### **1.3. Research topic & objectives**

Based on the literature introduced above and explored in detail in the chapters below, the aim of the research is to explore informality in written disciplinary, performance, and capability policy and procedure through the lens of the HRM-signals the documents send, and in relation to how policy might allow or deter differential use of informal action and other factors leading to disciplinary disproportionality. The objectives are to identify the signals regarding and approaches to informal action by English local authorities (LAs) in

their disciplinary, performance, and capability policy and procedure documents and to identify mechanisms by which elements of the approaches might allow or deter factors leading disciplinary disproportionality. The research questions reflect these aims and objectives:

1. What HRM-signals about informal action are sent by written policy and procedure?
2. What procedural approaches to informal action do these signals represent?
3. How does written policy and procedure potentially allow or deter the differential use of informal action and other factors leading to disciplinary disproportionality?

## 1.4. Methodology

Critical realism is chosen as a broad research approach. Two pieces of documentary research were carried out. The first analysed employment tribunal decision documents (ETDs) to explore whether and how tribunal judges take informal action into account in their decision-making process and to provide further context. The second analysed a large, representative sample of English local authority (LA) disciplinary, performance and capability policy and procedure documents to directly answer the research questions.

## 1.5. Contributions

The key empirical contribution of my research is that it is the first example of the use of such a large, representative sample of policy and procedure documents to explore in depth the informal processes described in English public sector written disciplinary, performance and capability policy and procedure. My study finds that, by every criterion by which I have analysed informal action and the transition to formal action in the documents, LAs take a variety of different approaches. My study also finds differences of approach between disciplinary and performance or capability document types.

The research also makes methodological and theoretical contributions. The first methodological contribution is to show the utility of purely documentary research that analyses written policy and procedure. The study has shown that such documents can be a rich source of data about the intentions and stated values of organisations and can be interpreted in relation to potential mechanisms of unfair discrimination. A second methodological contribution is the value of the use of HRM-signalling as a theoretical framing for the analysis of written policy and procedure.

The theoretical contributions are relevant to the areas of HRM-signalling, HRM, equality, diversity, and inclusion (EDI), and organisational and management studies. These contributions relate to ways to conceptualise and model the HRM-signalling delivered by written policy and procedure. I have developed an analytical approach for exploring the resultant intended processes that I term *action pathways* that are created by these signals, and their potential to allow or deter unfair or inconsistent action and disciplinary disproportionality. A theoretical contribution is also made to research and literature related to institutional racism. I offer a theoretical mechanism by which written policy and procedure can become a site of institutional racism. I also suggest that not acknowledging the risk of prejudice or bias and not guarding against it, including in written policy and procedure, is an element of institutional racism in itself.

## 1.6. Structure of thesis

Following this introductory chapter, my thesis is structured as follows. Chapter 2 to Chapter 5 set out the literature that has motivated the study and the form that it takes. Chapter 2, presents the body of evidence for the broad motivation for this study, the existence, causes, and possible measures against, the problem of disciplinary disproportionality. Chapter 2 also highlights a key mechanism that leads to disciplinary disproportionality, that relates to differential use of informal action during disciplinary processes. This key mechanism provides the narrow focus of my research on informal disciplinary action and potential for its differential use. In reaction to the disciplinary disproportionality literature, Chapter 3 and Chapter 4 explore two important organisational areas in relation to which disciplinary disproportionality develops: informality and conflict management. These literatures motivate the form that the research design takes. Chapter 3 establishes informal action in policy and procedure as important for exploration in its own right, as well as in relation to the mechanism creating disciplinary disproportionality. This is both because it is an unusual form of informality and also because informality in general is associated with differential outcomes for employees from minority groups. Chapter 4, in the context of conflict management, identifies barriers to the use of informal action. It also shows the importance of written policy and procedure to FLMs. Alongside Chapter 2, it highlights the need for fail safes against differential treatment by FLMs of employees from minority groups.

Chapter 5 presents my theoretical and broader conceptual frameworks. Section 5.1 explores literature that creates the theoretical framework. This is first literature leading to theoretical assumptions, about HRM-signalling, documents as a data source, and institutional racism. Second, it is literature about pathways, mapping and modelling of processes, and management interaction approaches, that inform the study results. Section 5.2 then summarises the broader conceptual framework that the points raised, and theories presented, by the literature in Chapter 2 - Chapter 4, and section 5.1, create. This chapter leads to my research questions.

Chapter 6 describes the methodology for the study. It presents my assumptions about ontology, epistemology, human nature, and methodology, and the resulting choice of critical realism as a research approach. This chapter also presents my research design, involving two pieces of documentary research: 1) a preliminary exploration of how informal action is addressed in employment tribunal decision documents; and 2) analysis of a large sample of written policy and procedure documents from English local authorities (LAs) (local government or councils). Methods for both pieces of work are described and explained, including sampling, data collection, terminology and conventions, coding and further analysis. The ethical approach is described.

Chapter 7 presents the employment tribunal decision (ETD) document analysis findings and discusses them. This chapter establishes that although informal action is not frequently addressed in employment tribunal decisions, that it may be given equal weight to formal action in ETDs in terms of whether a respondent is seen to have acted. Tribunal judges may scrutinise the use or non-use of informal action and base decisions on what they find.

Chapter 8 and Chapter 9 present the findings of my analysis of local authority (LA) policy and procedure and discuss them. Chapter 8 explores what local authorities (LAs) signal about their approaches to informal processes and the transition to formal processes through written policy and procedure. This chapter considers: the positioning of informal action and investigation within the documents; organisational expectations and assumptions about when informal or formal action should be taken or not taken; the implications of informal action at the time it happens and later; and the involvement of other members of staff in addition to the front-line manager (FLM) in decision making. Differences of approach are described in detail and differences between document-types highlighted. Chapter 9 discussing these findings, identifies a notable lack of consistency and

standardisation regarding informal action between the documents. The implications of the forms the differences of approach take and possible reasons for them are considered. *Action pathways* are introduced as a method to conceptualise the processes that the documents describe. The research questions are revisited and answers to them summarised.

Chapter 10 is a conclusion. This addresses my study's empirical, methodological, and theoretical contributions, its limitations, further research, and a summary for practitioners. This is followed by Appendix A - Appendix G, Abbreviations and Glossary, and a Reference List. The Abbreviations and Glossary section may be particularly helpful in understanding Chapter 9 and Chapter 10 because of the detailed level of technical analysis of the documentary data and number of new terms proposed.

## Chapter 2. Disciplinary disproportionality

### 2.1. A body of evidence

As stated in the introduction, recent high-profile examples of disciplinary disproportionality in the English public sector are just the most recent contributions to a body of evidence spanning over 25 years. Between the mid-1990s and the year 2000, there were reports of disproportionality in complaints about doctors to the General Medical Council (Dillner, 1994; Esmail and Everington, 1994); the over-representation of Black nurses in records of internal disciplinary processes (Carter, 2000); and of local authority employees, again in records of internal disciplinary processes (Tamkin, 2000). The literature evidencing and exploring disciplinary disproportionality in the form of over-representation of Black, Asian and minority ethnic employees in records of formal workplace disciplinary processes does not just consist of academic research. It is comprised of internal reports, often equality and diversity data monitoring reports; reports from stakeholder organisations such as unions; and, as we have seen, independent reviews. This is a literature closely related to practice. Academic research in this area is often commissioned by the organisation concerned. Numerical evidence of disproportionality is sometimes obtained by freedom of information request. As well as evidencing disproportionality, reasons for it are explored qualitatively, often with recommendations for practice. Disciplinary disproportionality may be the main focus or a small element of the work. Disciplinary disproportionality in records of internal formal disciplinary processes has been demonstrated or stated in a spectrum of English public sector organisations:

- the Police Service (Morris et al, 2004; Smith et al, 2012; Hagger Johnson et al, 2013; Smith et al, 2015; Wunsch et al, 2016; NPCC, 2020; Casey, 2022; 2023);
- the NHS (Archibong and Darr, 2010; Sehmi, 2015; Kline et al, 2017; WRES Implementation Team, 2019; 2020; Archibong et al, 2019a; WRES Team, 2023) and relating to NHS nurses (Sprinks, 2012; 2014) and midwives (RCM, 2012; 2016);
- Local Government (Tamkin, 2000);
- the Crown Prosecution Service (2012); and
- the Fire Service (Afzal, 2022).



Disciplinary disproportionality has also been explored in relation to the regulation of professionals, a proportion of whom are public sector workers (Dillner, 1994; Kandola, 2010; Humphrey et al, 2011; Bar Standards Board, 2013; 2015; 2021; Williams, 2013; De Bere et al, 2014; West et al, 2017). Some authors identify disproportionality in referrals or complaints to a regulator. For example, where complaints from the public are not disproportionate but those from managers are (West et al, 2017). West et al (2017) also found that complaints from employers about Black, Asian and minority ethnic nurses and midwives are more likely to progress to an investigation stage, and employer complaints in general are more likely to progress beyond investigation meaning that disproportionality in complaints from organisations may be magnified by disproportionality in the regulator's fitness-to-practice process. Three police service studies also find disciplinary disproportionality in internally raised misconduct cases but no disproportionality in those triggered by complaints made by the public (Wunsch et al, 2016; NPCC, 2020; Casey, 2022). What makes such disproportionality in complaints to regulators from employers highly relevant to this research, which is concerned with internal disciplinary processes, is that this is an indication that managers may play a role in disciplinary disproportionality.

Disciplinary disproportionality is not ubiquitous. In some public sector organisations studied it has not been identified, for example, Transport for London, Central Government, and Department for Work and Pensions (Archibong and Darr, 2010). Studies that do not find disproportionality are rare though because it seems that often studies are prompted by known disproportionality. In services comprising multiple organisations, such as the NHS or the police service, there is no suggestion that disproportionality exists in all trusts or forces, for example. Lack of comprehensive or centralised data-recording may prevent the presence or absence of disciplinary disproportionality being explored or the depth of analysis researchers would like to carry out (Archibong and Darr, 2010; Afzal, 2022; Casey, 2023). Nonetheless, it is clear that the existence of disciplinary disproportionality in the English public sector over at least two decades is well established as a phenomenon, including where this is demonstrated over a number of years within the same organisations.

## 2.2. Causes

The literature locates causes of disciplinary disproportionality in individual actions, organisational factors, and often both. Participant attributions of causes seem to depend partly on their role within the organisation and sometimes their ethnic group.

### 2.2.1. Individual versus organisational causes

Some participants in the extant research studies, usually white managers, believe that disciplinary disproportionality is the result of Black, Asian and minority ethnic employees' behaviour, with the implication that the disciplinary system does not treat employees from different ethnic groups differently (Carter, 2000). Black, Asian and minority ethnic employees on the other hand are likely to interpret disciplinary disproportionality as evidence of manager or system bias (ibid). Bias seems more likely in cases where, for example, managers see Black, Asian and minority ethnic employees in group terms, for example as "troublemakers", "difficult to manage", or "dishonest", or when the commitment, motivation, or attention to detail of an ethnic group is questioned (Carter, 2000; Tamkin, 2000; Archibong and Darr, 2010, Sehmi, 2015; Smith et al, 2012; 2015). In other cases, the picture is more complex. Archibong and Darr (2010) and Sehmi (2015), both referring to clinical NHS staff, identify behavioural differences that might cause Black, Asian and minority ethnic employees, particularly those from overseas, to be disciplined. Examples given relate to role expectations proposed to differ by national context, such as in levels of autonomy expected from UK nurses and norms around timekeeping, and broader cultural norms such as levels of eye contact and directness of communication (ibid). These behaviours might be unacceptable in the UK national and NHS organisational contexts but would not represent deliberate misconduct (Archibong and Darr, 2010).

If the handling by formal disciplinary means of behaviours that may be caused by different role expectations or national and cultural norms, such as the examples above, is examined from an organisational rather than individual perspective, two questions are raised. The first is whether such levels of assimilation to local culture are so necessary that these issues are disciplinable. Several authors suggest that if front-line managers (FLMs) were more culturally competent and more willing to explore potential disciplinary situations, that behaviour resulting from different cultural norms could either be understood and accepted or, if that is not possible, handled without recourse to formal disciplinary processes (Archibong and Darr, 2010; Sehmi, 2015; NPCC, 2020). The second question is whether employees have been suitably inducted so that they are aware of local cultural norms and role expectations. Several authors find that such induction is absent or insufficient (Archibong and Darr, 2010; Sehmi, 2015; West et al, 2017). It seems highly likely that what might be termed *unintended cultural norm misconduct* could be managed informally or avoided completely.

Sehmi (2015) identified some misconduct as an expression of staff frustration, for example, when staffing levels are inadequate and staff are under unreasonable pressure, or manager-team relationships have broken down. It was suggested by some of Sehmi's study participants that Black, Asian and minority ethnic employees are working under more extreme pressures related to working in a racially biased environment. In this situation misconduct has occurred, but a formal disciplinary route may not resolve underlying issues. WRES (2020) presents a case study where an approach that focuses on support not punishment for employees who make a medical error, has reduced formal disciplinary cases, and built trust.

Returning to individual causes of disciplinary disproportionality, the role of FLMs is often highlighted in the literature. There is a recurring theme of FLMs handling disciplinary and potential disciplinary matters with Black, Asian and minority ethnic employees differently than with white employees. It seems clear from the literature that the role of FLMs in contributing to disciplinary disproportionality is much more significant than the role of Black, Asian and minority ethnic employees themselves. The causes of the identified differential treatment by FLMs of Black, Asian and minority ethnic employees compared to white employees depends again in part on whose point of view is being expressed. Black, Asian and minority ethnic employees and some staff representatives see this as evidence of FLM racism or bias (Carter, 2000; Smith et al, 2012; 2015). FLMs in the same organisations blame differential Black, Asian and minority ethnic employee behaviour (Carter, 2000) or fear of being accused of racism (Smith et al, 2012; 2015). Also, the theme of FLM fears of accusations of racism, bullying, or discrimination as a reason for different handling of disciplinary matters appears repeatedly in the literature, alongside fears of retaliatory grievance (Tamkin, 2000; Morris et al, 2004; Archibong and Darr, 2010; Smith et al, 2012; Sehmi, 2015; Wunsch et al, 2016; NPCC, 2020; Casey, 2022; 2023). There are also accompanying themes of FLM discomfort and lack of confidence in managing Black, Asian and minority ethnic employees as being a cause of differential treatment (ibid). Archibong and Darr's (2010) study also identified fear of litigation and of challenging cultural difference. What seems to be missing in these cases is strong relationships and good communication between white FLMs and Black, Asian and minority ethnic employees (Archibong and Darr, 2010). Sehmi (2015) interviewed Black, Asian and minority ethnic managers who he identified as more skilled at both differentiating between misconduct and cultural differences and tolerating threats or risks of retaliation which he found applied to them in same way as to white FLMs.

Themes of FLM racism or bias also run through the literature as causes. At best, perhaps, are suggestions of cultural incompetence, that is an inability or unwillingness to recognise and, if necessary, address cultural difference (Archibong and Darr, 2010; Sehmi, 2015; NPCC, 2020). In terms of bias, as seen above, studies have reported negative stereotypical assumptions made by FLMs about Black, Asian and minority ethnic employee groups (Carter, 2000; Tamkin, 2000; Archibong and Darr, 2010, Sehmi, 2015; Smith et al, 2012; 2015). Bias is also identified in light of perceptions that FLMs use different criteria in relation to discipline with Black, Asian and minority ethnic and white employees (Archibong and Darr, 2010; Sehmi, 2015; Afzal, 2022; Casey, 2022), and that Black, Asian and minority ethnic employees are both over and under managed (Archibong and Darr, 2010) and mistrusted (Sehmi, 2015) by FLMs. The two recent independent reviews have documented overt racist bullying that is unchallenged or, at worst, participated in by management (Afzal, 2022; Casey, 2022; 2023). There is also an indication that formal disciplinary action may sometimes be used by FLMs as a form of racist punishment, victimisation, or warning to others (Sehmi, 2015).

Again, taking an organisational perspective to considering FLM influences on disciplinary disproportionality, the literature identifies contributing factors that may allow or contribute to differential treatment. Carter (2000) points to tensions between efficiency demands on FLMs and demands related to diversity and suggests that efficiency demands may dominate. Related to this, he also identifies that devolution of HR tasks to FLMs allows them discretion in decision making. FLMs are identified as lacking necessary skills related to managing difference and managing conflict (Archibong and Darr, 2010), as lacking time to develop skills (ibid), and feeling unsupported by human resource practitioners (HRPs) or senior managers (Tamkin, 2000; Morris et al, 2004); Sehmi (2015) refers to “an absence of collective responsibility” (p.197). There is a suggestion that ineffective equality and diversity initiatives may have over-sensitised FLMs to risk rather than helping them to feel confident to work with difference (Morris et al, 2004). In addition, FLMs are not held accountable for decisions, and actions are not always appropriately challenged by HRPs (Archibong and Darr, 2010). In terms of policy and procedure, disciplinary policy and procedure are criticised as difficult to use (Tamkin, 2000). Poorly designed performance management or capability procedures are also implicated, as well as FLMs not using these appropriately and instead using disciplinary procedure (Archibong and Darr, 2010; Sehmi, 2015). There are also broad criticisms of HR functions, a lack senior management support of FLMs, and FLM training (Afzal, 2022; Casey, 2022).

More broadly, organisational cultures are associated with disciplinary disproportionality in the literature. First of these is cultures where assimilation is demanded, and associated with this, difference is viewed negatively (Carter, 2000; Archibong and Darr, 2010; Afzal, 2022; Casey, 2023). Second of these is cultures described as institutionally racist, where there is an acceptance or denial of differential treatment, where bias or racism are not challenged by leadership and possibly dismissed as banter, and structures of accountability for FLMs and other fail safes are not in place (Afzal, 2022; Casey, 2022; 2023). Both of these cultures exclude Black, Asian and minority ethnic employees from informal support structures and management mechanisms (Archibong and Darr, 2010; Afzal, 2022). This is highly significant because a combination of exclusion of, and poor communication with, Black, Asian and minority ethnic employees leads to both informal sources of support and formal policy being less accessible, and, in turn, to an underappreciation of how to navigate the disciplinary process (Archibong and Darr, 2010). This lack of necessary know-how is echoed by Sehmi (2015) including norms that could only be learned informally such as the benefits in a disciplinary situation of showing insight and, where appropriate, remorse. Black, Asian and minority ethnic employees also do not feel well supported by HRPs (Sehmi, 2015) or union representatives (NPCC, 2020). What is clear is that there are an array of factors contributing to disciplinary disproportionality. The next section turns from individual and organisational causes of disciplinary disproportionality to the causal mechanisms by which it arises.

### 2.2.2. Causal mechanisms

#### Avoidance of taking informal action by FLMs

There is notable consistency in the literature that explores causes of disciplinary disproportionality in that it shows that, despite the various factors potentially at play, a particular mechanism is in operation. Tamkin (2000) seems to have been the first to consider that disproportionality in the formal process may originate in differential use of informal action. Whether the reason is bias, fear, discomfort, or incompetence, there is a tendency for FLMs to not take informal action with Black, Asian and minority ethnic employees. This is either a way to avoid dealing with an issue, with the result that it may well escalate and need addressing formally later, or because an issue is prematurely handled formally from the beginning (Tamkin, 2000; Morris et al, 2004; Archibong and Darr, 2010; Smith et al, 2012; 2015; Sehmi, 2015; Wunsch et al, 2016; Kline et al, 2017; NPCC, 2020; Afzal, 2022; 2023 Casey). Either way this leads to more issues being addressed formally with Black, Asian and minority ethnic employees. FLMs are likely to handle

equivalent issues informally with white employees (ibid). Interestingly, premature formal action can be seen by FLMs as a way to demonstrate fairness or “doing things by the book” (Tamkin, 2000; Archibong and Darr, 2010) despite the fact that in practice this is unfair because equivalent disciplinary or potentially disciplinary issues are handled with white employees in a way with far fewer negative implications than are associated with formal action. Returning to avoidance, the mechanism of avoidance in a non-disciplinary, informal process causing disproportionality in a formal process is demonstrated in action by Milkman et al’s (2015) audit study in a higher education context. The study examined response rates for requests to discuss potential research studentships in advance of a formal application. These were sent by the researchers to potential PhD supervisors. Ethnicity and gender for the fictional students were signalled by names within the requests. Potential supervisors were biased in favour of white males. The bias against other groups was enacted by avoidance in the form of not replying.

Unaddressed misconduct and under-representation of white employees

The causal mechanism above explains the overrepresentation of Black, Asian and minority ethnic employees because of formal processes being used unnecessarily when informal processes would otherwise be used. Disciplinary disproportionality may also suggest the under-representation of white employees (Dillner, 1994; Hagger Johnson et al, 2013; West et al, 2017; Casey, 2023). It is clear that a double standard is sometimes in operation regarding the handling of disciplinary matters. As seen above, Black, Asian and minority ethnic employees may be prematurely and unnecessarily formally disciplined. The literature also finds tendencies to not address accusations made by Black, Asian and minority ethnic employees of serious misconduct such as discrimination or bullying by white employees formally when it would be appropriate to do so (Archibong and Darr, 2010; Afzal, 2022; Casey, 2022; 2023). In addition, another part of this mechanism contributing to under-representation of white employees in records of formal disciplinary processes is that Black, Asian and minority ethnic employees do not make complaints of discrimination or racist bullying when there is a culture of such complaints either being ignored or resulting in victimisation (Archibong and Darr, 2010; Kline et al, 2017; Afzal, 2022; Casey, 2022; 2023). In fact, NPCC (2020) takes this risk seriously enough to call for measures when internal complaints are made about employees to explore whether there is a possible “trigger incident” (p.2) such as whistleblowing or a complaint of unfair discrimination.

## 2.3. Prevention and good practice

The literature that explores reasons for disciplinary disproportionality sometimes proposes ways that it can be prevented and identifies good practice. Some of these measures have specific relevance for organisational policy and many relate to other factors. These parts of the literature are significant to my study because they give a sense of the depth and breadth of the changes likely to be needed to prevent disciplinary disproportionality. They are also notable in that some vital changes attempt fundamental transformation of organisational culture and personal values. What is less often discussed is the balance needed between these sorts of changes and measures that addresses the risks associated with them being less than completely successful. I have placed these recommendations into three broad categories: employee support, FLM development and support, and systemic or culture change to illustrate the breadth and depth of change needed.

### 2.3.1. Employee support

Recommendations for employee support relate to improved induction processes that ensure new employees understand local role-expectations and cultural-norms (Archibong and Darr, 2010; Sehmi, 2015; West et al, 2017). There is also a call for appropriate (culturally competent) HR and union support (Morris et al, 2004), and advocacy for employees for whom English is a second language (Archibong and Darr, 2010). There are also systemic change recommendations related to HR function below. Anonymous mechanisms for reporting bullying, harassment, or discrimination are recommended to support reporting when the threat of victimisation might otherwise prevent this (Kline et al, 2017; Afzal, 2022).

### 2.3.2. FLM development and support

Development and support for FLMs is a strong theme in recommendations. Improved training is called for, in both conflict management and equality and diversity related skills, including cultural competence (Tamkin, 2000; Archibong and Darr, 2010; Sehmi, 2015; West et al, 2017; Archibong et al, 2019b; WRES Implementation Team, 2019; NPCC, 2020). FLMs also need training in when to use performance management, when to use disciplinary processes (West et al, 2017), and the use of informal approaches (Wunsch et al, 2016). There is also a need for other development opportunities such as shadowing or mentoring (Tamkin, 2000). In addition to skills development, adequate HR and senior management support for FLMs (Tamkin, 2000, Morris et al, 2004) is recommended, including regular

discussion of potential disciplinary cases between FLMs and HRPs (Archibong and Darr, 2010). Again, these recommendations are closely related to those about necessary cultural and systemic change.

### 2.3.3. Systemic or culture change

There are calls for fundamental organisational cultural and system change. These visions for future cultures illustrate powerfully the depth of change that is needed. Perhaps the most compelling call for cultural change is by the NHS WRES Implementation Team (2019), quoting Coghill et al (2019, p.15), who call for a “compassionate and learning culture”. Another powerful recommendation is “creating a workplace where everyone is afforded dignity” (Afzal, 2022, p.80). Beyond the need for compassion and dignity within workplaces, is the need for organisational cultures of cultural competence (Archibong et al, 2019b) and open dialogue about race (Sehmi, 2015; Archibong et al, 2019b); of safeguarding employee wellbeing (WRES Implementation Team, 2019); and of zero tolerance of bullying and harassment and ensuring these are properly dealt with as disciplinary issues (Afzal, 2022). Casey (2023) calls for “cleaning up the met [Metropolitan Police Service]” (p.20) and complete reform of the conduct system. Similarly, Chapman (2014) calls for a disciplinary system (also for the police service) that is supportive, cooperative, positive and values led, within a culture of trust. There is also a recommendation to recruit for equality and diversity values and competence (Archibong and Darr, 2010).

A multitude of recommendations are made regarding systemic change related to detecting and preventing disciplinary disproportionality. Being able to identify the presence or absence of disciplinary disproportionality requires data monitoring and joined up data collection (Morris et al, 2004; Archibong and Darr, 2010; Kline et al, 2017; Archibong et al, 2019b; WRES Implementation Team, 2019; NPCC, 2020; Afzal, 2022). There are also calls for root cause analysis involving appropriate diversity groups (Archibong and Darr, 2010), and what might be termed monitoring of employee experience (Sehmi, 2015; Kline et al, 2017) and organisational culture (Afzal, 2022).

For preventing disproportionality, there are calls for changes to HR function (Tamkin, 2000; Afzal, 2022), such as for HR to be “the guardian of the welfare [of employees]” and to monitor policy implementation (Morris et al, 2004, p.12). Also, for ensuring that necessary resources are allocated (WRES Implementation Team, 2019; NPCC, 2020), for example, time for FLMs for professional development and for handling personnel matters. There are calls



for transparency of process (Archibong and Darr, 2010; Kline et al, 2017; Archibong et al, 2019b; Casey, 2023) and keeping informal channels of communication open (Morris et al, 2004). For better representation of Black, Asian and minority ethnic employees in leadership roles (Archibong and Darr, 2010) and avoidance of racial segregation (Sehmi, 2015). For alliance between stakeholders such as network groups and equality champions (Archibong et al, 2019b). For righting previous wrongs by reviewing complaints and taking action where they were not previously handled correctly (Afzal, 2022). West et al (2017) also call for greater awareness, in this case, in nursing and midwifery, of the experiences of Black, Asian and minority ethnic professionals; they recommend equality and diversity and cultural competence courses for students during training. There is also a role for external organisations; Archibong et al (2019b) call for regulatory bodies to challenge organisations with a pattern of unnecessary referrals of Black, Asian and minority ethnic employees.

The final category of recommendations, and those that directly influence the form that my study takes, relate to policy and procedure. Written policy and procedure should be usable and clear about whether a matter is disciplinary, performance, or capability (Archibong and Darr, 2010; Archibong et al, 2019b) and about when to take and not take formal action (Tamkin, 2000). It should result in a shared understanding of performance expectations (Tamkin, 2000) and address fair treatment (Archibong and Darr, 2010). There should be rigorous decision making (WRES Implementation Team, 2019). Archibong and Darr (2010) give an example of the use of “decision trees” (p.64) that guide manager decision making, including requiring motive to be considered, and specify who FLMs need to consult, although WRES Implementation Team (2019) states that though this might help ensure managers consider evidence, it may not prevent subjective decision making. Informal approaches should be encouraged (Wunsch et al, 2016), to be used wherever possible (Morris et al, 2004), and formal disciplinary action seen as a last resort (Sehmi, 2015). Mediation is seen as potential good practice as long as it is not used to avoid matters that should rightly be dealt with using formal disciplinary processes (Morris, 2004; Archibong and Darr, 2010). There should be accountability of FLMs for their decision making (Kline et al, 2017; WRES Implementation Team, 2019). Review of decisions to move to a formal disciplinary process by a board or a “lay member” and that decisions to suspend should be made by more than one person, and by no one with a conflict of interest, are seen as potential good practice (WRES Implementation Team, 2019, p.12). Written procedure could be made to require consideration of whether bias is an influencing factor (Archibong and Darr, 2010) or victimisation (NPCC, 2020). There is a call for informal

intervention designed to act as a “filter” to prevent Black, Asian and minority ethnic employees unnecessarily entering the formal process (Archibong et al, 2019b, p.3). Policy should be simplified and/or there should be reduction in the number of policies (Morris et al, 2004; Archibong and Darr, 2010; Archibong et al, 2019b). Sometimes there are calls to merge conduct and performance procedure (Chapman, 2014) and sometimes to make them distinct in the minds of FLMs (Archibong and Darr, 2010).

## 2.4. Implications for this study

The disciplinary disproportionality literature influences the design of this study in three ways. First, it identifies disciplinary disproportionality as an important problem because it has significantly negative impacts on the Black, Asian and minority ethnic employees who experience unnecessary and inequitable formal processes. These impacts are presented by the literature in terms of the injustice or inequity of differential treatment, the stressful, time consuming, and potentially stigmatising nature of formal action, and the formal disciplinary record associated with formal procedure, that may have implications in terms of internal progression or references for future employment. This provides the broad focus of the study on the prevention of disciplinary disproportionality. Second, what also seems clear from the literature is that the causes and potential solutions to disciplinary disproportionality are multiple and complex. Solutions are long-term, require significant change to hearts, minds, cultures, relationships, and skill sets, and come with no guarantee of success, let alone complete success. This means that fail safes against differential treatment are needed. As Kline et al (2017) state “organisations need to be more proactive and preventative in tackling workforce race equality, so that employers intervene and take prime responsibility” (p.132). This provides the focus on deterrence and fail safes against disciplinary disproportionality in written policy and procedure. Third, the phenomenon of differential use of informal action that is identified as a key causal mechanism of disciplinary disproportionality provides the focus on informal processes.

## Chapter 3. Informality

To further explore the context within which disciplinary disproportionality occurs, and in light of the causal mechanism identified in the disciplinary disproportionality literature involving differential use of informal action, it is valuable to consider how and where informality occurs within organisations, and the impact of informality particularly in relation to Black, Asian and minority ethnic employees.

A dictionary definition is presented to allow comparison with everyday use of the term. This everyday definition is likely to be how employees subject to informal action initially understand informality. The Oxford English Dictionary (Oxford English Dictionary, 2023) includes the following definitions for the adjective informal:

*“Not done or made according to a recognized or prescribed form; not observing established procedures or rules; unofficial; irregular.  
Characterized by absence of formality or ceremony; casual, relaxed.  
Designating the vocabulary, idiom, and grammatical structures suitable to everyday language and conversation rather than to official or formal contexts.”*

### 3.1. Organisational informality

Searching for literature regarding forms of informality in relation to organisations shows that there is not an ‘informality literature’ as such. The literature that focuses on, or significantly features, informality in the workplace is dispersed across a range of research areas with informality considered in a variety of ways. Rather than to act as a review of the research that this literature reports, the aim of this chapter is to explore specifically how the term informal is used across literature exploring informality within workplaces, how informality is distinguished from formality, reasons for informality, and the implications of informality for employees from Black, Asian and minority ethnic groups. To provide context, though, I briefly refer to the areas of informality identified in the literature in the section below and provide Figure 3-1.

#### 3.1.1. Where informality occurs

The informality described by the literature, sometimes as the “informal domain” or “informal organisation”, I summarise here as being related to how things are informally done, or “get done” (Ledeneva, 2018, p.vii), and how things are informally seen. Figure 3-1

graphically represents organisational informality and relationships between the informal and formal organisation. This is done with recognition that these are constructs and should not be reified (Blau and Scott, 1962, p.6).

How things informally get done is used here to refer to processes and relationships, deemed informal either using criteria that will be introduced below or without explanation of what makes them informal. The literature that I see as addressing how things informally get done, relates to: informal networks, informal learning, informal management control, informal participation, informal leadership and hierarchy, and, other informal practices and processes. Elements of the informal organisation related to how things get done, such as informal networks, informal policies, informal practices, organisational politics, or unwritten rules, are identified in section 3.2 below, as less accessible to employees from minority groups.

Turning to how things are informally seen, “Informal forces” (Alhejji et al, 2018) at both national and organisational levels can influence how things are informally seen. How things are informally seen is used here as shorthand to refer to a range of overlapping phenomena that relate to shared values, beliefs, and norms within an organisation. This is what might be signalled or transmitted by informal management control. Alhejji et al (2018) make a useful distinction between formal institutions, such as laws, and informal institutions, such as norms.

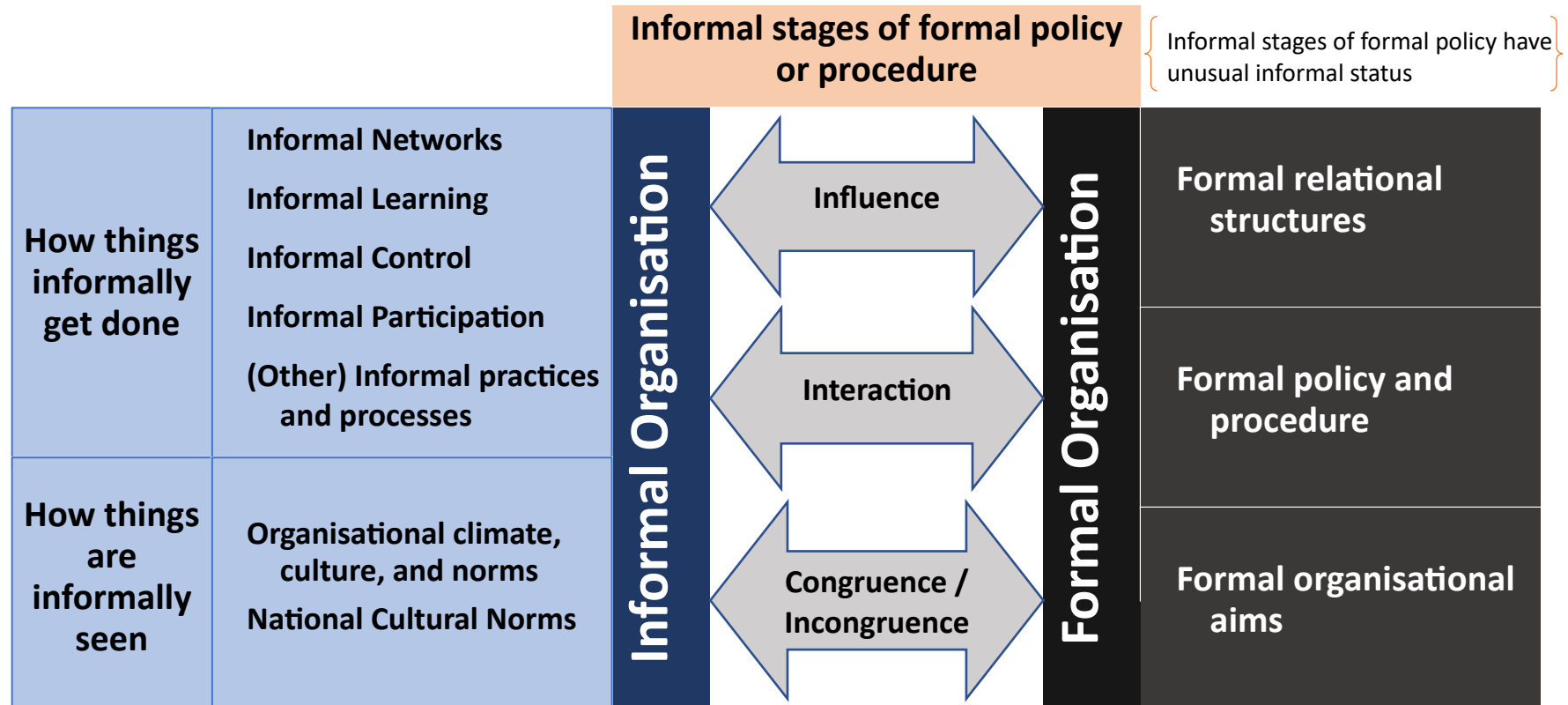
### 3.1.2. How informality is conceptualised

This section addresses what is meant by informality, why informality is used, and its relationship to formality.

What makes something formal or informal?

The literature demonstrates that use of the term informal, and what is meant by informality, is not at all standardised, or even always explained. Informality is also highly contextual, relative, and may operate for different reasons and in different, even opposing, ways. Something considered formal in one context might be considered informal in another. Differences in usage, and more specifically, usage in relation to the idea of formality, are related to a series of factors in the literature, such as whether a structure or process is organisationally sanctioned, its relationship to the formal organisation, whether it is planned or spontaneous, whether it is individual or general in nature, the motivation for it, and where it originates within the organisation. Each of these factors will be addressed in turn.

Figure 3-1 Organisational informality and relationships between the informal organisation and the formal organisation.



Between the informal and formal organisation:

- Influence and interaction may be, in combination, uni- or bi-directional, positive, or negative.
- Congruence and incongruence may also exist in combination.
- Even if there is incongruence, the informal may meet employee needs.

Informality may be identified using the concept of organisational sanctioning, where something is seen as informal if it is not organisationally sanctioned and formal if it is (DiMartino et al, 2018; Lee et al, 2021). If this delineation were applied strictly, it would exclude many structures or processes that are considered informal, but that rely on or involve, an element of organisational support or approval to exist or succeed (e.g., Schulte et al, 2020). Another delineation is in relation to whether a structure or process is planned or spontaneous, with spontaneity being associated with informality, and planning with formality (DiMartino et al, 2018; McAlpine, 2018; Barmeyer et al, 2019; Spraggon and Bodolica, 2018; Tucker, 2019). Again, this delineation excludes deliberate action outside of organisational structure (e.g., Schulte et al, 2020; Federman, 2020; Lee et al, 2021).

Another definition of informality is being outside of formal organisational structure or policy (Brunetto et al, 2018; Schulte et al, 2020; Dean and Perrett, 2020; Federman, 2020; Pan Fagerlin and Lovstal, 2020; Lee et al, 2021; Whetsell et al, 2021; Wu et al, 2021; Xiang et al, 2022). This is more flexible because it allows for both organisational support and for intentionality. Informality may also be seen to imply self-regulation as opposed to formal control (Tucker, 2013; Federman, 2020; Tannenbaum and Wolfson, 2022). This is used to classify learning, norms, climate, and culture as informal. Such delineation, if taken too literally, ignores the subtleties of control, where the external and internal elements of control and regulation may be too interrelated to disentangle (Grunwald-Delitz et al, 2019; Tucker, 2019). Another characteristic of the informal has been identified as being more personal or contextualised, more relationship-based or involving social interaction than the impersonal, codified, and socially distanced formal (Barmeyer et al, 2019). The informal has also been identified as being motivated by reasons related to individual wellbeing, as opposed to instrumental motivations for the formal (Mercier and Deslandes, 2019). This is certainly not always the case as informal structures and processes can often have instrumental motivation such as the list above of areas of informality in relation to getting things done. The informal is also sometimes seen as originating from the bottom-up and the formal from the top-down (DiMartino et al, 2018; Jeong et al, 2018; Spraggon and Bodolica, 2018). Table 3-1, below, summarises my categorisation of the ways informality and formality are distinguished or characterised.

The ways of delineating the informal from the formal presented so far do not allow for the informal stages or sections of written organisational policy or procedure to be categorised as informal. If we assume that these stages or sections are organisationally sanctioned, often codified to a greater or lesser extent within written organisational policy,

planned, used for instrumental reasons, and originated from the top-down, these are all characteristics used to identify formality in the literature. This raises questions about whether the status of these stages is truly informal or whether this is a very different type of informality to those addressed in the literature so far. These questions will be addressed further in Chapter 9.

*Table 3-1 Terms used to distinguish informality and formality in the literature.*

<b>Term</b>	<b>Formal</b>	<b>Informal</b>	<b>Citations</b>
<b>Sanctioned</b>	Organisationally sanctioned	Organisationally unsanctioned	DiMartino et al, 2018; Lee et al, 2021
<b>Relationship to formal organisation</b>	Inside organisational structure	Outside organisational structure	Brunetto et al, 2018; Schulte et al, 2020; Dean and Perrett, 2020; Federman, 2020; Pan Fagerlin and Lovstal, 2020; Lee et al, 2021; Whetsell et al, 2021; Wu et al, 2021; Xiang et al, 2022
	Inside organisational policy	Outside organisational policy	
	Published policy	Norms, climate, culture	
<b>Planning</b>	Planned	Unplanned, spontaneous	DiMartino et al, 2018; McAlpine, 2018; Barmeyer et al, 2019; Spraggon and Bodolica, 2018; Tucker, 2019
<b>Self-regulation / Regulation from elsewhere</b>	Regulation from elsewhere	Self-regulation	Tucker, 2013; Federman, 2020; Tannenbaum and Wolfson, 2022
<b>General / Individual</b>	Impersonal	Personalised	Barmeyer et al, 2019
	Codified	Contextualised	
	Less relationship /social interaction	More relationship / social interaction	

<b>Motivation</b>	Instrumental reasons related to organisational performance	Individual wellbeing reasons	Mercier and Deslandes, 2019
<b>Originated</b>	Top down	Bottom up	DiMartino et al, 2018; Jeong et al, 2018; Spraggon and Bodolica, 2018

### Reasons for informality

When informality is discussed, it may be in relation to very different processes or structures in very different contexts. Despite this, a theme of informality as a coping mechanism often emerges in the various areas of research using the concept of informality. Informality is identified as a way to cope with unexpected, uncertain, or changing situations, or ones an individual is ill equipped to handle; organisational weaknesses in policy or leadership; or an organisational context that does not consider employee needs or is unacceptable to employees (Tucker, 2013; Mowbray, 2018; Spraggon and Bodolica, 2018; Daly et al, 2019; Lahiri et al, 2019; Maxwell et al, 2019; Oedzes et al, 2019; Tucker, 2019; Dean and Perrett, 2020; Federman, 2020; Van De Mieroop et al, 2020; Lee et al, 2021; Wu et al, 2021; Xiang et al, 2022; Johnson, 2023). A theme of advancement is also identified. Informal structures or processes are used for individual advancement, for example such as through informal networks (McGuire, 2002; Dean and Perrett, 2020), advancement of skills by use of informal learning (Jeong et al, 2018; Federman, 2020; Tannenbaum and Wolfson, 2022); or the employee's own agenda, concerns, or point of view by use of informal voice channels (Mowbray, 2018; Wu et al, 2021). Also, to advance an innovation or value organisationally, such as professionals or others with shared interests forming informal groups to encourage and inform organisational change (Schulte et al, 2020). The list below, summarises my categorisation of reasons and motivations for informality within organisations from the literature:

- A coping mechanism, organisationally or individually, in reaction to:
  - An unexpected, uncertain, or changing situation (Daly et al, 2019; Oedzes et al, 2019; Spraggon and Bodolica, 2018), or



- One that an individual is ill equipped to handle (Daly et al, 2019; Federman, 2020);
- Organisational weaknesses (Spraggon and Bodolica, 2018) in policy (Mowbray, 2018; Daly et al, 2019; Maxwell et al, 2019; Wu et al, 2021; Xiang et al, 2022) or leadership (Lahiri et al, 2019; Oedzes et al, 2019; Tucker, 2019; Van De Mieroop et al, 2020); or
- An organisational context that does not consider employee needs or is unacceptable to employees (Tucker 2013; 2019; Dean and Perrett, 2020; Lee et al, 2021; Johnson, 2023).
- To facilitate
  - Individual advancement or development (e.g., through informal networks, connections, learning, or voice channels) (McGuire, 2002; Jeong et al, 2018, Mowbray, 2018; Dean and Perrett, 2020; Federman, 2020; Wu et al, 2021; Tannenbaum and Wolfson, 2022).
  - Advancement of an innovation or value (e.g., through informal group or hierarchy influence) (Schulte et al, 2020).

Once more, these reasons for informality are different to those that we might assume for informal stages or sections within written policy and procedure, which are not coping mechanisms or ways to advance personally or organisationally outside the formal structure or processes.

#### Relationship of the informal to the formal

Informal structures and processes may be in line with organisational aims or not, in line with formal policy or not, or in line with one but not the other (Brunetto et al, 2018; McAlpine, 2018; Mowbray, 2018; Spraggon and Bodolica, 2018; Grunwald-Delitz et al, 2019; Tucker, 2019; Warren, 2019; Van De Mieroop et al, 2020; Pan Fagerlin and Lovstal, 2020; Lee et al, 2021; Xiang et al, 2022). They may meet employee needs whether or not these are in line with organisational needs (Mowbray, 2018; Spraggon and Bodolica, 2018; Dean and Perrett, 2020; Johnson, 2023). Informal structures and processes are not independent of their formal equivalents; the informal and formal organisations interact (Pan Fagerlin and Lovstal, 2020; Lee et al, 2021; Wu et al, 2021). The informal influences the formal. One example is prompting rapid change to processes or information in reaction to unexpected or changing situations (Barmeyer et al, 2019; Daly et al, 2019). Another is changes that take time to be made in formal systems or influencing formal innovation that might not be made without the force of pooled specialist influence (Schulte et al, 2020). The formal also

influences the informal. For example, by supporting informal structures (Schulte et al, 2020), creating a context where the informal can occur (Jeong et al, 2018; Daly et al, 2019; Yakubovich and Burg, 2019), or inspiring the informal (Dean and Perrett, 2020). The formal and informal may interact positively for example to improve performance (Xiong and King, 2018; Pan Fagerlin and Lovstal, 2020) or interact negatively to impede it (Litwin and Eaton, 2018; Gomez-Solarzano et al, 2019).

Informality as positive or negative

How informality is seen in the literature, and particularly whether it is seen as positive or negative, depends largely on the author's point of view, and whether their priority is the organisation, the employee in general, or the underrepresented or excluded employee in particular. We have seen that informality may be seen as positive in terms of getting things done, coping, and getting on, and that informality can be in line with organisational aims, formal policy, and structure. We have also seen that informality can be seen as negative in that it can be in opposition to organisational aims, policy, or structure. The question of whether informality is a positive or negative phenomenon will be returned to following an exploration of the literature about informality in relation to employees from Black, Asian and minority ethnic groups.

### **3.2. Informality in relation to employees from Black, Asian and minority ethnic groups**

As stated above, in general, informal structures and processes that are not organisationally sanctioned may operate in support of, as well as in opposition to, organisational aims and may operate in the service of employee needs or to their benefit. There is a broad range of research, however, within several academic disciplines and fields, that implicates informal factors in differential treatment or outcomes for employees from what I shall term "minority groups"<sup>2</sup> for want of a better term. Literature was explored that related to informality and employees from minority groups within workplaces. Although the focus of this study is ethnicity, literature focusing on other minority groups, for example related to gender, sexuality or disability-status, are also considered relevant because the literature suggests that although there are differences in experiences and outcomes for

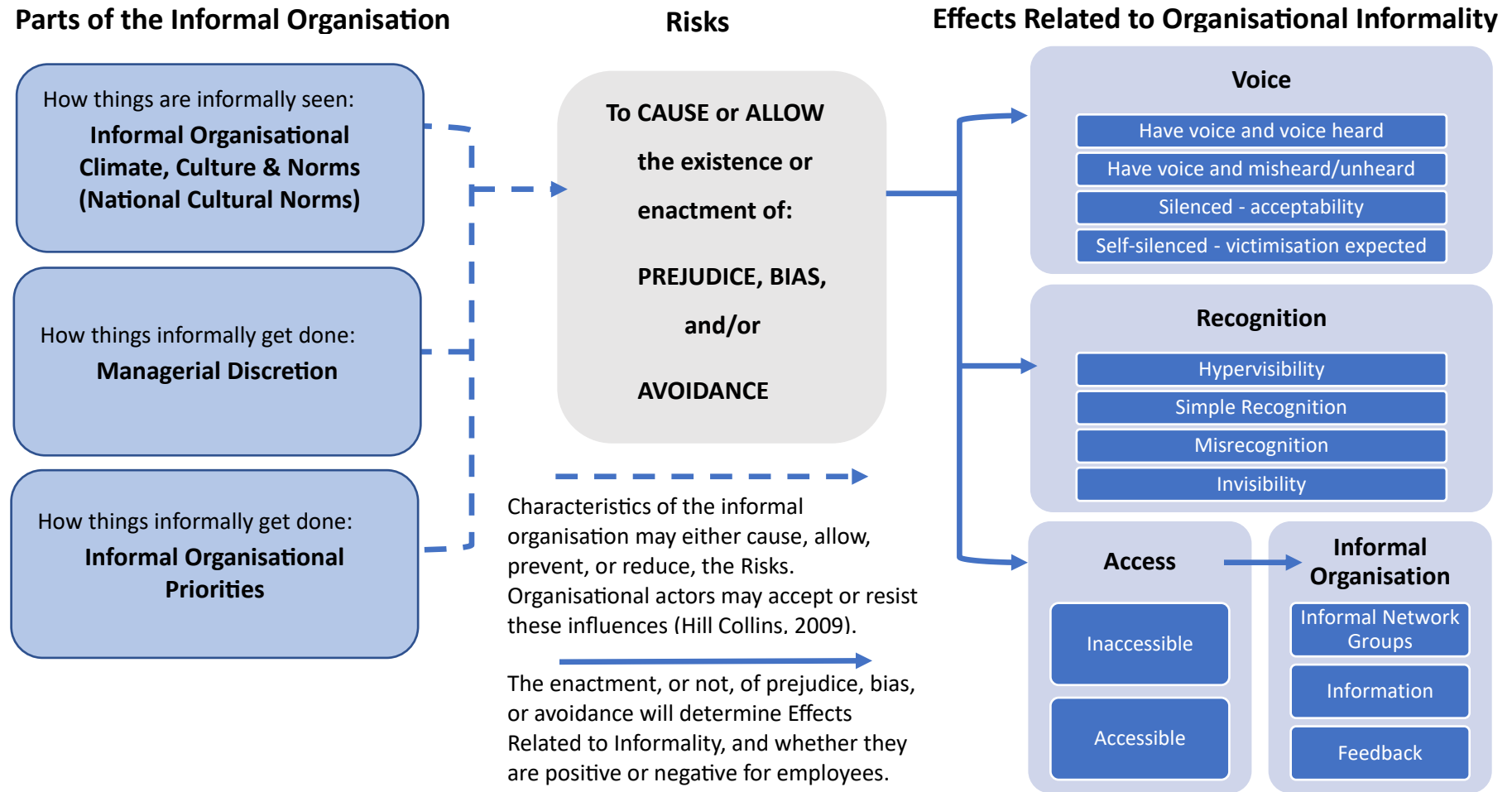
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<sup>2</sup> This term does not do justice to the complexity of all that is implied by the term "minority". It may refer to being a numerical minority, or only a numerical minority in terms of the demographics of those in positions of power. Minority may thus refer to not being members of the "dominant" group.

different groups (e.g., Likupe et al, 2014; Luksyte et al, 2013; Wilson and Maume, 2013), minority status in general is highly significant (e.g., Evangelista and Sims-Giddens, 2008; Howell et al, 2015, McGuire, 2002; Milkman et al, 2015). The significance is further illustrated by reversals of effect for employees with non-traditional minority status, such as a study showing disciplinary disproportionality in the form of the overrepresentation of men who are minority-male nurses (Evangelista and Sims-Giddens, 2008 a study not directly related to informality), and another study finding lower levels of recognition of the contribution of minority-male managers in an organisation where most managers are women (Howell et al, 2015).

Thematic analysis of the literature has led me to develop Figure 3-2, that describes parts of the informal organisation and differential effects on minority staff related to informality ('effects'). Relationships between *the two* are suggested via 'risks'. 'Effects' not related to informality have important implications but are not included in the figure or discussion in order to focus on literature reporting research where informality is central. The figure categorises parts of the informal organisation related to differential experiences and outcomes for employees from minority groups, again in terms of how things are informally seen and how things informally get done. How things are informally seen relates, as above, to organisational climate, culture, and norms and to national cultural norms. The elements of how things informally get done that are the focus here, are formal policy that encourages discretion or requires interpretation, termed 'managerial discretion', and incongruent formal and informal pressures, termed 'informal organisational priorities'. The 'risks' identified are related to organisational culture, climate, and norms either allowing or encouraging the existence of prejudice, bias, or avoidance; or norms, manager discretion, or informal priorities allowing the enactment of prejudice, bias, or avoidance. Avoidance is included separately to prejudice and bias to allow for the possibility of differential treatment for reasons other than prejudice or bias, such as lack of confidence or fear of criticism. Differential effects related to informality are categorised as related to voice, recognition, and access to the informal organisation. It is important to acknowledge that absolute boundaries between these distinctions do not exist. It is also worth noting that parts of the informal organisation appear in the figure both as causes of differential experience and treatment, and in relation to effects, as parts of the organisation that may be rendered inaccessible to employees from minority groups, or put another way, that such employees may be excluded from. The figure will now be discussed in detail.

Figure 3-2 Informality in relation to employees belonging to minority groups.



### 3.2.1. Parts of the informal organisation

#### *How things are informally seen*

Informal organisational climates, cultures, and norms, as well as making workplaces welcoming or unwelcoming (Wright, 2016) to employees belonging to minority groups, influence assumptions of others about them. Stereotypes and racialised or gendered norms, may shape informal assumptions about the race or gender appropriate for a given role (Puwar, 2001), or of appropriate dress (Puwar, 2001), use of language (Murray 1991, Puwar, 2001), or behaviour (Puwar, 2001). This affects perceptions of motivation (Likupe et al, 2014), suitability (Lukseyte et al, 2013), or even availability (Liff and Dale, 1994) of employees, with implications for recruitment, development, and progression. Managers and leaders have particular influence on such informal assumptions, as powerful role-models for how employees belonging to minority groups are perceived and evaluated (Falkenberg and Herremans, 1995).

As well as informal organisational climates, cultures, and norms, national cultural norms are identified in the literature as relevant to the experience of employees from minority groups. Markoczy et al (2021) (in a Chinese national context) explore the implications of informal status-devaluing because of gender and propose the role of stereotypes in the occurrence of status-devaluing of women. Alheji et al's (2018) research (in a Middle Eastern national context) demonstrates how informal institutions such as cultural norms (in this case also around gender), can undermine, and in fact derail, formal institutions such as equality law or organisational policy.

#### *How things informally get done*

Manager discretion and informal organisational priorities, both ways that things informally get done, are also identified as causing differential experience and outcomes for employees from minority groups. Lower levels of formalisation of policy, or policy that is ambiguous, requiring or allowing high levels of manager discretion, may also create a mechanism for discrimination by introducing more scope for differential treatment (McCamish, 2012; Rayner and McIvor, 2008, cited by Hodgins and McNamara, 2017; Maxwell et al, 2019). Reactions of line-managers to the conflicting pressures of their role, and the discretion awarded to them, may include an informal "strategy of inaction" (Townsend and Hutchinson, 2017, p.144) resulting in potential formal and informal responses to problems not being used.

Informal organisational norms, pressures, or influences on employees may exist potentially in conflict with formal policy. For minority employees there may be informal pressures to assimilate (Puwar, 2001), to not seek support from similar others within the organisation (Wright, 2016), or to not make use of organisational provisions such as family leave (Castaneda et al, 2015) for fear of criticism or victimisation, or to feel discomfort, guilt, or the need to compensate in some way for doing so (Maxwell et al, 2019). For managers facing conflicting pressures, those related to efficiency or prioritising profit, for example, may be more influential than organisational formal pressures and individual motivations in terms of ethical behaviour (Falkenberg and Herremans, 1995). Particularly relevant to this study are conflicts that line-managers may face between efficiency demands and equality policy (Carter, 2000), and opposing pressures to use formal and informal processes in preference to each other (Townsend and Hutchinson, 2017). Such conflicting demands may result in significant scope for manager-interpretation of how to resolve them.

### 3.2.2. Risks

For the purposes of the figure, the 'parts of the informal organisation' introduced above are seen to have 'risks' related to prejudice, bias, and avoidance. These will not be elaborated here but should be seen potentially both as a result of the informal organisation and as contributing to differential effects. An important point is that 'risks' can be caused, allowed, prevented, or reduced, depending on whether informal norms and pressures are accepted or resisted (Hill Collins, 2009). Risks of the enactment of prejudice or bias will be addressed further in the section discussing institutional racism (5.1.3).

### 3.2.3. Effects related to organisational informality

The literature suggests that employees belonging to minority groups experience a range of disparate effects in relation to informality within organisations, here these effects are considered in terms of voice, recognition, and access to the informal organisation. First, considering voice, exclusionary informal organisational climates and cultures may silence minority employees. This may take the form of a climate that creates a fear of victimisation (Henry, 2007; Castaneda et al, 2015), or of hypervisibility (see below for more about hypervisibility) (Castaneda et al, 2015), that causes employees to self-silence (Markoczy et al, 2021); as may organisational rhetoric that makes some beliefs unacceptable, including in relation to equality (Liff and Dale, 1994). Another manifestation may be where employees do not feel able to present all aspects of their identities that they would like to at work (Rennstam and Sullivan, 2017). Voices may also not be accurately heard or recognised

(Howell et al, 2015), here termed 'misheard', a phenomenon that will be discussed below. Issues around voice, are related to informal participation, employees' perception of whether they have the "authority, influence and information" (p.307) needed to carry out their role effectively (Litwin and Eaton, 2018).

Second, issues of recognition of minority employees take a variety of forms. Hypervisibility may manifest as inequitable scrutiny and surveillance (Puwar, 2001; Castaneda et al, 2015). Alternatively, employees may experience misrecognition (Puwar, 2001) or lack of recognition (Liff and Dale, 1994; Henry, 2007; Puwar, 2001; Howell et al, 2015). Recognition may be contingent on Black, Asian and minority ethnic employees "whitening" (Hill Collins, 2009, chapter 2), changing themselves to become more acceptable, in terms of their appearance, speech, or behaviour (Puwar, 2001; Hill Collins, 2009). The term recognition here is used in relation to recognition, misrecognition, or non-recognition. For example, of voice (contribution) (Howell et al, 2015), of person (Hill Collins, 2009), and of rank (Puwar, 2001). Also, significantly, non-recognition of characteristics or skills related to credibility, especially those valued for management positions such as loyalty and trustworthiness (Wilson and Maume, 2013). These have been termed "informal characteristics" (Wilson and Maume, 2013) and "soft things" (Puwar, 2001), and discussed in terms of difficulty proving oneself (Henry, 2007). This again may be related to lack of access to informal networks and the resulting reliance on formal processes for advancement, and to manager discretion, which will be discussed below.

Third, in relation to access, informal networks or structures within organisations offer opportunities for discretionary professional and career support, coaching and mentoring, information exchange (Castaneda et al, 2015), and the bypassing of formal structures in carrying out tasks (Rank, 2008; Brunetto et al, 2018; McGuire, 2002). However, membership of informal networks may be exclusive and influenced by stereotypes (Daly et al, 2019; Dean and Perret, 2020). Such exclusion from informal networks is seen as a significant factor in differential outcomes for employees from minority groups (e.g., Howell et al, 2015; McGuire, 2002). Organisational politics also represent informal processes, that appear to be less accessible to members of minority groups (Mackenzie Davey, 2008), and to be seen by members of such groups as both self-interested, and as representing inappropriate exercising of power (Mackenzie Davey, 2008; Wyatt and Silvester, 2015). Reduced access to information related to informal practices, or unwritten rules, possibly for reasons related to exclusion from informal networks, results in higher reliance on potentially less effective formal organisational routes (Wilson and Maume, 2013). Informal

policies also appear to be less accessible or visible to members of minority groups (Castaneda et al, 2015). In addition, informal feedback is less forthcoming to Black, Asian and minority ethnic employees (Croft and Schmader, 2012, Henry, 2007) with implications for performance and progression.

#### 3.2.4. Organisationally sanctioned processes

I now return to organisationally sanctioned informal processes, such as the ones described in written policy and procedure, that are the focus of this study. As discussed above (3.1.2) organisationally sanctioned informal organisational procedures have an unusual and arguably contradictory status, both in that they may be a requirement or recommendation of organisational policy and procedure, and in that they do not meet commonly used criteria for being identified as informal. Common examples are in relation to disciplinary and grievance policy (Acas, 2017) and bullying and harassment policy (Hodgins and McNamara, 2017). Statutory guidance from the UK Advisory, Conciliation and Arbitration Service (Acas, 2015), that assumes informal resolution as good practice for less serious disciplinary matters, is particularly influential in the design of policy because it is considered during employment tribunals. Such informal action is in principle positive when it allows simple problems to be resolved without stressful or stigmatising formal processes, but as the disciplinary disproportionality literature shows (Chapter 2), this form of informality is also associated differential treatment of members of Black, Asian and minority ethnic groups. To recap, how informal action is handled, and whether it is taken, is often at the discretion of FLMs (front-line managers) (Saundry et al, 2008; Teague and Roche, 2012; Saundry et al, 2019; Hann and Nash, 2020). It has also been shown that white managers may be reluctant to use informal action with Black, Asian and minority ethnic staff (Morris et al, 2004; Archibong and Darr, 2010; Smith et al, 2012) which may remove the opportunity to resolve disciplinary issues without the stigmatisation and stress of a formal disciplinary process, and lead to disciplinary disproportionality.



### 3.2.5. Informality as positive or negative revisited

Returning to the question of whether informality is viewed positively or negatively in the literature, we have now seen that informality may benefit the employees that it includes or is accessible to. Informality may, however, allow individual bias or biased culture to prevail to the detriment and exclusion of the employee subjects of that bias. The list below, summarises the positive and negative aspects of informality identified in the literature reviewed:

- Positives:
  - Getting things done;
  - Coping individually or organisationally;
  - Getting on – advancement as an individual, or of innovation or values;
  - Discretion to the benefit of some employees.
- Negatives:
  - Less organisational control / unpredictability;
  - Not always congruent with one or more of formal organisational aims, policy, and/or structures;
  - Negative or variable experience;
  - Exclusion or inaccessibility to some groups;
  - Bias can be hidden in informal processes;
  - Discretion to the detriment of employees who are excluded or disadvantaged by it.

### 3.3. Implications for this study

The literature related to informality has shown that informal stages or sections of organisational procedures such as disciplinary or performance procedures are different in nature to other organisational processes, structures, and relationships that are termed informal. This makes finding out more about such informal procedure of interest in its own right, as well as in relation to its potential differential use as identified in Chapter 2. In addition, the theme explored in this chapter of informality more broadly being associated with differential access or outcomes for employees from minority groups, strengthens the justification for the focus of the study on informal procedure. A second organisational area within which disciplinary and performance matters are enacted in organisations, conflict management, is also important to the focus of the study and the form that it takes. This will be explored in the next chapter.

## Chapter 4. Conflict Management

This chapter will explore literature related to the management of workplace conflict. This offers a different view to the disciplinary disproportionality literature in that it considers conflict management more generally, with little reference to Black, Asian and minority ethnic employees or differential treatment. There is a focus on organisations, front-line managers (FLMs) and human resource practitioners (HRPs) more than employees. In light of the literature showing differential use of informal action as a causal mechanism that contributes to disciplinary disproportionality, the focus in this chapter will be on factors relating to barriers to the use of informal action and thus to what the literature terms early resolution. A note about terminology is relevant here. The literature cited in this section, which includes a significant series of studies commissioned by the Advisory, Conciliation and Arbitration Service (Acas), addresses the management of conflict or dispute. When the term dispute is used in the literature, it may be either synonymously with conflict or as a type of conflict. I shall use the term conflict in preference to dispute, in line with Lynch's (2001) usage, as a broader category. This includes disputes, but also tensions that would not be categorised as dispute, but that could develop into it. The literature addresses employer-instigated conflict such as disciplinary, poor performance, attendance, and sickness matters, as well as employee-instigated conflict, such as grievances and intra-employee relationship breakdown between colleagues of similar rank. Employee-instigated conflict is seen as relevant, despite this study's focus on disciplinary disproportionality, because the measures taken to resolve issues such as relationship breakdown may deter related misconduct such as bullying (Saundry, 2012) or misconduct born out of discontent (Sehmi, 2015). Traditional disciplinary and grievance written policy and procedure exist in almost all workplaces in the UK (Wood et al, 2014; 2017). In addition to traditional processes, the literature also addresses early resolution, alternative dispute resolution (ADR), and integrated conflict management systems (ICMS). These approaches will be returned to below. Many of the issues identified echo or relate to those raised by the disciplinary disproportionality literature.

### 4.1. Barriers to informality

It is clear from this literature that there are barriers to informal resolution of workplace conflict in general, as well as those in relation to employees from Black, Asian and minority ethnic groups raised by the disciplinary disproportionality literature. This is despite a public policy context that seeks to encourage and facilitate informal action. The Gibbons Review

(Gibbons, 2007) recommended changes to the statutory Dispute Resolution Regulations (2004), which were seen as leading to unnecessary formalisation of internal disciplinary and grievance processes by making statutory processes too rigid, alongside other unintended consequences. In response to Gibbons' (2007) recommendations, and in order to encourage more internal and informal resolution of disputes, the Dispute Resolution Regulations (2004) were repealed by the Employment Act 2008, and a new Acas code of practice (2009) and accompanying guidance (2009) were published.

The Acas Code and Guide's influence is demonstrated in the reactions of organisations to the new 2009 Code, which was to update or introduce written policy and procedure (Rahim et al, 2011; Saundry and Wibberley, 2014; Saundry et al, 2016). As intended, the perception within organisations was that there was a new focus on informal resolution (Rahim et al, 2011) and adding reference to this in written policy and procedure was a key part of organisational responses (Rahim et al, 2011; Saundry and Wibberley, 2014; Saundry et al, 2016). Nevertheless, literature shows that barriers to informal action remained and remain.

#### 4.1.1. Front-line managers (FLMs)

A key barrier to the use of informal action relates to FLMs. This is significant because employees will experience human resource management (HRM) largely through the actions of FLMs (Purcell and Hutchinson, 2007). FLMs are largely responsible for initial and informal action (Saundry et al, 2008; Teague and Roche, 2012; Saundry et al, 2019; Hann and Nash, 2020) and disciplinary and performance matters have often been devolved to managers, at least in theory (Jones and Saundry, 2012; Saundry et al, 2015; 2022). There is a tendency for FLMs to avoid dealing with issues or to use formal action unnecessarily (Saundry et al, 2019). This represents a more generalised version of this tendency than the causal mechanism identified in the disciplinary disproportionality literature in relation to Black, Asian and minority ethnic employees. The phenomenon, in some cases identified as a strategy, for FLMs to avoid dealing with potential conflict at an early stage is widely identified (Jones and Saundry, 2012; Saundry, 2012; Saundry and Wibberley, 2014; Latreille and Saundry, 2015; Jones and Saundry, 2016; Saundry et al, 2016; 2019; 2021). Both phenomena, explored further below, occur broadly because, in the view of FLMs themselves and others in organisational roles, FLMs lack the confidence and skills to handle conflict independently (Jones and Saundry, 2012; Teague and Roche, 2012; Saundry and Wibberley, 2014; Jones and Saundry, 2016; Saundry et al, 2016; 2019; Hann and Nash,

2020; Saundry et al, 2021; 2023). For Jones and Saundry (2016) this is a “crisis of confidence” (title).

What becomes clear however is that though barriers to the use of informal approaches are indeed at one level related to FLMs, they are also strongly related to other organisational factors. For example, FLMs are insufficiently trained in HR or personnel management (Hutchinson, 2008; Hutchinson and Purcell, 2010) and specifically in dealing with HRM tasks involving conflict such as disciplinary matters, affecting their ability to handle such issues confidently and competently (Teague and Roche, 2012; Saundry and Wibberley, 2014; Saundry et al, 2015; 2016; Jones and Saundry, 2016; Sayers et al, 2018; Saundry et al, 2023). The importance of training is also highlighted in a different way by Cooke (2006) who described managers who, rather than lacking confidence in the absence of suitable training, were fully confident in their abilities with negative consequences in terms of punitive, inconsistent, and unfair approaches. In addition, when training is available, it may be optional and thus not received by all who might need it (Saundry et al, 2019; 2022; 2023). Training focused too much on compliance and the risk of legal challenge may cause managers to act rigidly or feel unable to act without advice (Harris et al, 2002; Saundry and Wibberley, 2014). The relationship between FLMs and the likely source of advice, HR practitioners (HRPs), may be complex. A relationship involving FLM dependence is identified (Saundry et al, 2019; 2021), which may be created by HRPs because of concerns about FLM abilities to act independently (Jones and Saundry, 2016). FLMs may also welcome a degree of dependence. Autonomy is sought by line-managers, but they also need and want specialist support and guidance from HRPs (Stanton et al, 2010) and may prefer, especially when inexperienced (Jones and Saundry, 2012), to act with support and guidance from HR specialist staff (Harris et al, 2002; Saundry et al, 2019). Confidence in using informal approaches may also come with experience as opposed to with training (Saundry et al, 2015) meaning that for inexperienced managers support may be a particular necessity. Saundry et al (2019) found mixed HRP opinions about whether FLM dependence on HRPs was positive or negative. The aim, associated with devolution, for FLMs to handle conflict independently may be unrealistic because of the time constraints faced by FLMs and level of necessary expertise (Saundry et al, 2019).

#### 4.1.2. Support from senior managers

As well as being insufficiently trained, and despite advice and support being needed, FLMs may be poorly supported by both senior management and HRPs (Hutchinson and

Purcell, 2010; Teague and Roche, 2012; Saundry et al, 2016; Jones and Saundry, 2016). How senior managers view the HR or personnel management part of the FLM role may create barriers to FLM effectiveness in these areas and specifically in the use of informal approaches to conflict. Senior managers may see this part of the role as a lower priority (Hutchinson, 2008; Hutchinson and Purcell, 2010) than the elements of the role aimed more directly at production or service delivery, resulting for example in not allocating adequate time to personnel tasks (Jones and Saundry, 2016). Senior managers may also believe that HRM or personnel matters represent a smaller proportion of the FLM role than they do in practice (Hutchinson and Purcell, 2010). FLMs incentives to use informal action may be reduced by their own performance not being measured in terms of HR/personnel management tasks (Harris et al, 2002; Hutchinson and Purcell, 2010; Teague and Roche, 2012; Hutchinson, 2008) and by informal action being less visible to senior management than formal action (Saundry et al, 2016). FLMs may also lack confidence because they feel that their decisions in relation to conflict management will not be endorsed by senior managers (Saundry and Wibberley, 2014; Jones and Saundry, 2016; Saundry et al, 2016; 2023).

#### 4.1.3. Support from human resources practitioners (HRPs)

The accessibility and quality of HRP-support to FLMs may be affected by how HR services are structured and positioned. The contracting-out to external companies of the HRM function, creation of remote shared services, and the increasing use of a business partner model for HRM, can all make HRP support less available, or less easily available, at early stages (Harris, 2007; Hutchinson, 2008; Hutchinson and Purcell, 2010; Saundry et al, 2017; 2019; 2021). The situation is complex. The business partner model makes HR specialist roles less involved in day-to-day matters, being associated with both a more strategic HR role and devolution of HRM tasks to managers (Hutchinson, 2008; Hutchinson and Purcell, 2010) and potentially acting as a bottleneck as the intermediary that organises more specialised personnel management advice (Saundry et al, 2017; 2019; 2021). These changes to specialist HR provision undermine relationships between FLMs and specialist HR staff. This has the consequence that the high-trust relationships that make successful informal resolution of workplace conflict situations more likely are not formed, in turn making formal approaches that follow procedure closely more likely (Jones and Saundry, 2012; 2016; Saundry et al, 2021). There is also a tendency for personnel-management-focused HR roles being seen by HRPs as undesirable and low status compared to more strategic roles (Harris, 2007; Saundry et al, 2017; 2019). At the same time, HRPs feel that

FLMs cannot be trusted to handle conflict independently (Harris et al, 2002; Saundry et al, 2019) and so find themselves giving guidance and advice from within HR structures less suited to accommodate this role (Saundry et al, 2017;2019). There is associated late involvement that is incompatible with early resolution (Saundry et al, 2019; 2021).

#### 4.1.4. Employee representatives

Moving to union involvement, despite the potential for employee representatives, particularly union representatives, to play a positive role in informal conflict resolution, there are also barriers to the use of informal approaches related to representatives (Saundry et al, 2008, Saundry and Wibberley, 2014; Jones and Saundry, 2016; Saundry et al, 2019). Where relationships between union representatives and FLMs are poor, an adversarial approach to conflict may develop and either, or both, manager and representative may be more likely to avoid informal approaches (Saundry et al, 2008; 2011a; Saundry and Wibberley, 2014; Jones and Saundry, 2016; Saundry et al, 2016). Both FLMs and HRPs, especially when inexperienced, may take a defensive formal stance perceiving union representatives to be more knowledgeable, experienced, and highly trained than they are themselves (Saundry et al, 2008; Jones and Saundry, 2012). Union representative lack of availability may also be a barrier to informal approaches (Saundry et al, 2016), including the fact that union representatives may not be awarded paid time for involvement in informal action (Saundry, 2012). Representatives are often not involved during informal conflict management (Saundry et al, 2008; 2016; Rahim et al, 2011). This may be particularly the case when conflict is employer-instigated because when an employee is planning to raise a grievance, they may consult their representative before acting, allowing early involvement (Saundry et al, 2019). Non-union representatives face particular barriers to involvement in both informal and formal action because they are often untrained and may be unsupported by the organisation in the representative role (Saundry et al, 2008).

#### 4.1.5. The public sector

Organisational sector may also be significant in terms of barriers to informal approaches. Devolution of HR tasks to FLMs is common within the public sector (Harris et al, 2002) which as seen above has implications in terms of barriers to the use of informality and, we will see below, preferences for formal procedure. Cooke's (2006) respondents (in an NHS setting) felt that a defensive culture meant that formal disciplinary action was more common as a way to demonstrate action in response to complaints and, similarly, Saundry

(2012) finds formal action taken in light of “public scrutiny” (p.9) in a local authority (LA). Harris et al (2002) comment on a focus on use of formal procedure related to a concern within the public sector with demonstrating fairness and perhaps related to this, Jones and Saundry (2012) find procedures “most formal and complex” (p.256) in public sector organisations. There is an understanding, however, that this sectoral preference for formality and procedure may be problematic both in terms of developing an “unstoppable momentum” (p.11) inconsistent with early resolution and encouraging a zero-sum approach that is seen as unhelpful to both sides (Jones and Saundry, 2016).

#### 4.1.6. Written policy and procedure

Written policy and procedure, or written guidance is sometimes identified as related to barriers to informal action. It may be seen as playing a part in formalisation of conflict management because of “detailed, lengthy and complex procedures” (Saundry, 2012, p.25). Saundry and Wibberley (2014) state

*“there was widespread recognition, within the sample, that written procedures did little to help to resolve disciplinary and grievance disputes” (p.4) and “there needs to be a shift in emphasis away from written procedures designed to ensure compliance” (p.3).*

The same authors call for resolution before procedure is enacted. Jones and Saundry (2016) found written guidance “reduced the room for creative resolution” (p.116). Saundry (2019) calls for formal procedure to be a “last resort” (p.11). These quotes will be revisited below to explore the fact that the literature also recognises the value of such written policy and procedure.

## 4.2. A tendency towards formality

Associated with the barriers to informal action above, the literature finds that both FLMs and HRPs, may have a tendency to use formalised approaches that follow written procedure in preference to informal approaches. This is despite, and in opposition to, both manager- (Harris et al, 2002; Saundry et al, 2015; 2016; Jones and Saundry, 2016) and HRP-espoused (Saundry et al, 2015; 2016; 2021) preferences for informal resolution.

For FLMs this preference may be related to tensions within the role and concerns about repercussions should informal approaches go wrong. For example, efficiency demands may win out over attempts to encourage informal resolution and lead to more formalised approaches being taken (Saundry and Wibberley, 2014). Similarly, tensions between the

need to be flexible and to use informal approaches may be balanced unfavourably against requirements for consistency (Saundry et al, 2015). Harris et al (2002) highlight similar tensions, particularly in the public sector. They also find that apart from very experienced FLMs, there is a preference for formalised processes guided by procedure because these are seen as saving time and reducing individual accountability (ibid). Cooke (2006) gives an example of tension between an organisational culture stated as being blame-free and written policy that demanded that drug-errors automatically trigger disciplinary investigation. Examples of concerns about potential repercussions that may cause FLMs to choose formal processes rather than informal ones, are fears of criticism internally either from above (Harris et al, 2002; Jones and Saundry, 2012; Saundry et al, 2015; Jones and Saundry, 2016; Saundry et al, 2023) or below (Jones and Saundry, 2016), concerns about negatively affecting work relationships (Saundry et al, 2015), or fears of legal challenge (Harris et al, 2002; Jones and Saundry, 2012; Saundry et al, 2015). This may be particularly the case for inexperienced managers (Harris et al, 2002; Jones and Saundry, 2012). The increased visibility to senior management of formal handling of situations by FLMs compared to informal approaches can be a reason for FLMs to choose formal approaches (Saundry et al, 2015) when that visibility is desirable, or to choose sometimes unsanctioned, informal ones (Cooke, 2006) when it is not. High workload may encourage formal action in situations where this transfers responsibility away from the FLM (Saundry et al, 2015; 2023), although where it does not, FLMs may again choose unsanctioned informal approaches such as avoidance (Jones and Saundry, 2016). Formal procedure may be used to justify “arbitrary” or self-serving decisions (Saundry et al, 2015, p.435).

HRPs’ own concerns about consistency, FLMs abilities, and legal challenge, may make them also more likely to encourage FLMs to follow formal procedure (Jones and Saundry, 2012; Saundry et al, 2015; Jones and Saundry, 2016). HRP experience is relevant in a similar way to that of FLMs, with inexperience being associated with being risk averse (Jones and Saundry, 2012). Saundry et al (2015) suggest that inexperienced HRPs may act as a “brake” (p.437) on informal processes. The priorities of FLMs and the HRPs may also be different (Saundry et al, 2015). Jones and Saundry (2012) found that HRPs saw themselves as guarding the interests of the organisation as a whole (as opposed to those of managers or employees), whereas FLMs were torn between the interests of employees and the organisation. As well as advising FLMs, HRPs may also feel the need to police (Jones and Saundry, 2012) or closely guide them (Saundry et al, 2021). In this respect HRPs may become highly influential “guardians” (Saundry et al, 2015, p.437) of disciplinary processes,



and procedural compliance may take priority over conflict resolution (Jones and Saundry, 2012). As well as a preference for formalised processes, devolution of HR tasks to FLMs and associated changes to HR roles may also make HRP involvement less likely at early stages (Harris et al, 2002; Saundry et al, 2017; 2019; 2021). For example, Saundry et al (2021) identify lack of interaction and communication between different strategic and advisory roles in the HR function as deterring early resolution by making approaches of procedural compliance more likely. Similar to FLMs, there may also be a lack of incentive for HRPs to invest time and effort in informal approaches because informal early intervention is less visible and HRP performance is not measured against it (Saundry et al, 2019).

### **4.3. What FLMs really want: guidance rather than formality**

So, what is it that FLMs really want? The literature suggests that the tendency towards formal action, seen in light of stated preferences for informal resolution and the barriers to the use of informal action, is more a need for guidance, than for formality per se, and for written guidance in the absence of other support. It seems from the literature that written guidance means formal procedure. Perhaps if access to written guidance means following formal procedure, that is what FLMs will do. Barriers to the use of informal approaches and the other factors that may influence FLMs to choose formal approaches make written guidance in the form of policy and procedure particularly important. Formal written procedure may act as a “protective shield” for FLMs by providing step-by-step guidance (Saundry et al, 2015) or “refuge” of “certainty and predictability” (Saundry, et al, 2023, p.30), and guard against internal or external criticism by providing justification for, or suggesting neutrality in, decision making (Harris et al, 2002; Cooke, 2006; Jones and Saundry, 2016; Sandry et al, 2023). Saundry et al (2015) find that procedures are also becoming “more potent” (p.436) to organisational efficiency and cost cutting. HRPs also see guidance for FLMs positively, as a way to both guard against poor decision making (Saundry et al (2008) and reduce FLM requests for HRP assistance (Harris, 2007). Harris et al (2002) and Harris (2007) find devolution associated with an increase in written policy and procedure. Saundry (2019) sees written policy and procedure as a “proxy for guidance” (p.12), in his case as part of a call for improved FLM skills as way to remove the need for this and to make early resolution more likely. These points all raise the question though, of whether written policy and procedure might also be part of the solution to overcoming barriers to the use of informal action and associated preferences for formal processes, and to preventing disciplinary disproportionality.

#### 4.4. Ways to remove barriers to informal action or encourage early resolution

The literature also explores ways in which organisations have, or might, overcome barriers to the use of informal action. Calls are made for more strategic approaches to conflict (Saundry and Wibberley, 2014; Saundry et al, 2014; 2016; 2017; Saundry, 2019). Perhaps the ultimate aim in this regard is the development of integrated conflict management systems (ICMS). The aim of an ICMS is to shape organisational culture and relationships with the aim of addressing issues such as discontent and emerging relationship problems before they escalate (Lynch, 2001). That is to address the causes of conflict as well as more traditional approaches of reacting to conflict when it arises (Lynch, 2001). Different criteria for identifying evidence of ICMS are used. The definition that covers systems most integrated into the organisation, includes creating a culture of conflict-competence in addition to more rights-based approaches such as traditional disciplinary and grievance processes and interest-based approaches such as mediation (Lynch, 2001; Lipsky et al, 2003). There is little evidence for ICMSs in the UK and Ireland in the extant literature (Saundry, 2012; Saundry and Wibberley, 2014; Saundry et al, 2014; Roche et al, 2019; Teague et al, 2020). There are notable examples where an ICMS using the most demanding criteria is identified with embedding of cultural competence and an emphasis on early resolution in organisational culture (Latreille and Saundry, 2015; Roche et al, 2019). Also, where this has been achieved or partly achieved despite the integrated nature of the measures being in doubt (Saundry, 2012; Saundry et al, 2023). There are also measures in place that might be considered to represent elements of a CMS rather than systems that are fully integrated into organisational culture and processes, such as where a choice is given between right-based and interest-based approaches (Hann et al, 2019; Hann and Nash, 2020), and where “weak” attempts to prevent conflict are most prevalent, such as use of noticeboards, suggestion schemes, and newsletters (Hann and Nash, 2020, p.34). In these cases, it is unclear whether a culture of conflict competence or of early resolution has been achieved. Another focus in the literature is on alternative dispute resolution (ADR) either as part of an ICMS or not. ADR may refer to alternatives to litigation or other legal processes such as tribunals, and thus represent resolution that is not necessarily early or informal (Lipsky and Seeber, 2000; Lipsky et al, 2003; Gibbons, 2007). Alternatively, the term ADR may be used to refer to alternatives to traditional processes of internal formal action (Hann and Nash, 2020). The involvement of an independent third-party may be assumed (Gibbons, 2007) or not (Hann et al, 2019; Hann and Nash, 2020). Some studies

make use of, or acknowledge, multiple of these definitions (Hann et al, 2019; Roche et al, 2019). ADR may also be termed public (Hann et al, 2019) or external (Lipsky et al, 2003), that is assuming the involvement of roles or organisations external to the organisation, or private (Hann et al, 2019) or internal (Lipsky et al, 2003), that is operating internally to the organisation. Hann et al (2019) see professional mediation as a separate category of ADR when used without other ADR measures. Another common term in the literature is early resolution, which is not necessarily discussed in relation to ADR or ICMSs.

#### 4.4.1. Examples

To give a sense of good practice, first two examples identified as potentially integrated systems. From Latreille and Saundry (2015), a system that combines commitment to early resolution, an internal mediation scheme, training, policy change, and compulsory team facilitation on identification of “conflict hotspots” (p.20). Raised absence, disciplinary and grievance cases are seen as indications of potential discontent, poor management, or relationship breakdown. From Saundry (2012) a system including a mediation and advice service and partnership-working between organisation and union aiming for a culture of early, informal, and collaborative approaches to conflict. Union representatives are allocated time for involvement in informal action. Increased use of the mediation and advice service is reported and improved FLM-union relationships and trust as a side-effect of mediation training.

Turning to measures that may not be integrated, examples are internal and external mediation schemes (Saundry et al, 2011a; Roche et al, 2019; Saundry et al, 2023); significant policy change around early resolution (Saundry et al, 2023); open door policy (Roche et al, 2019 Teague et al, 2020 [same study]) and identification of conflict indicators (Roche et al, 2019). Measures that involve strengthening existing provision may be summarised, in line with the barriers identified, that confident, well trained FLMs with high trust relationships with HRPs and employees, are more able to address early resolution (Jones and Saundry, 2012). Regarding the HRP role in conflict management, there are calls for changes to HR function structure and priorities (Saundry et al, 2019; 2021).

#### 4.4.2. Written policy and procedure

Written policy and procedure, or written guidance is also related to good practice. The quotes cited above will be revisited to explore the associated strengths of written policy and procedure. Saundry and Wibberley (2014) as well as identifying problems with written policy and procedure, identify their necessity:

*“While there was widespread recognition, within the sample, that written procedures did little to help to resolve disciplinary and grievance disputes, they were still relied on by managers to steer them through difficult issues and to ensure compliance with legal and organisational norms. For HR practitioners, procedures were a crucial tool in regulating managerial behaviour and ensuring consistency. Finally, although employee representatives conceded that outcomes were often unsatisfactory, robust procedures remained important in deterring unfair treatment.” (p.4).*

Similarly, Jones and Saundry (2016) found written guidance was “designed to provide a degree of consistency” whilst identifying that it “reduced the room for creative resolution” (p.116). Saundry (2019), in what seems to represent a change of position from rejecting the use of written policy and procedure in relation to early resolution towards finding a role for written procedure in encouraging and enabling informal resolution, states:

*“Written procedures are important for a number of reasons. First, they ensure a degree of fairness and equity, which builds trust in the way that the organisation approaches conflict. Second, they incentivise managers to invest time in managing conflict effectively and resolving issues at the earliest possible stage. However, rather than see procedures per se as a barrier to the early resolution of conflict – the focus should be on the nature of those procedures and the way they are implemented.” (p.11).*

Whilst, in the same paper Saundry calls for formal procedure as a “last resort” (p.11) and Saundry and Wibberley (2014) place written policy and procedure in opposition to early resolution: “there needs to be a shift in emphasis away from written procedures designed to ensure compliance and towards finding ways of reconstructing workplace relationships” (p.3), it seems that there are nonetheless significant advantages of written policy and procedure that could be utilised in relation to informal resolution in terms of encouraging consistency and providing guidance.

The literature may assume or find, despite acknowledgement elsewhere that written policy and procedure often includes informal stages or reference to informal action (Saundry et al, 2008; 2011a; Jones and Saundry, 2012; Saundry, 2012; Saundry and Wibberley, 2014; Saundry et al, 2022), that written guidance is synonymous with formal policy and procedure (Rahim et al, 2011). Rahim et al (2011), perhaps in relation to making

this assumption, call for embedding the Acas Code into organisational culture as a way make early resolution more likely before procedure is enacted. Another approach might be to embed early resolution more fully into written policy and procedure. An example of an approach that does this is given by Saundry et al (2023), albeit in relation to employee-instigated conflict. If written policy and procedure is created in such a way that it includes informal action, perhaps the role of written guidance can be reconciled with the aim of early resolution.

## 4.5. More barriers

### 4.5.1. Barriers to ADR

The literature that identifies good practice, also shows that, even using a broad measure of initiatives aiming for early resolution, there are reasons not to assume that early or ADR approaches will be utilised. It seems that good practice conditions are few and far between and cannot be assumed. For example, there is infrequent evidence for ICMSs in the UK and Ireland in the extant literature (Saundry, 2012; Saundry and Wibberley, 2014; Saundry et al, 2014; Roche et al, 2019; Teague et al, 2020). Also, studies have found, variously, ADR use to be infrequent (Teague et al, 2020); fairly common but often with a narrow range used in individual organisations (Hann et al, 2019); and “weak” (Hann and Nash, 2020, p.34) attempts to prevent conflict most prevalent, such as use of noticeboards, suggestion schemes, and newsletters (Hann and Nash, 2020). Concerns about the cost and effectiveness of schemes such as mediation may prevent organisations from investing in them (Teague et al, 2020). There are concerns that internal (private) approaches may not truly resolve conflict or align interests, but rather may impose solutions (Hann et al, 2019, p.798).

Even when initiatives are in place there may be weaknesses and unintended consequences. For example, training may be optional or not reach lower levels of management (Latreille and Saundry, 2015; Saundry et al, 2023) or an open-door policy or mediation scheme administered by someone other than the FLM, may be used by FLMs as a way to avoid handling issues (Roche et al, 2019; Teague et al, 2020 [in the same study]; Saundry et al, 2023). Mediation may not be used to facilitate early resolution, but instead at a later stage. This is evidenced by use of mediation and its inclusion in written policy and procedure not reducing the numbers of formal grievance and employment tribunal applications (Wood et al, 2014; 2017). Mediation may also be limited in scope when it is only available if the issue is cleared for its use by a senior employee (Roche et al, 2019) or if

policy or practice excludes some types of conflict (Saundry et al, 2008; Saundry et al, 2011a). Some systems fail; for example, Roche et al (2019) identify schemes that might have been expected to improve union-manager relationships, that have been unsuccessful in that sense. There may be an organisational expectation that FLMs will monitor employee state and resolve conflict early, but this does not mean that the organisational support that is needed for this to occur is in place (Teague and Roche, 2012). Even successful systems are vulnerable because they may be unevenly successful across the organisation (Saundry et al, 2023), or not be sustainable in the face of staff or broader organisational change (Saundry, 2012; Saundry et al, 2016).

Organisational attitudes and resulting approaches to conflict also represent barriers to informal resolution. Where conflict is seen in a narrow way as transactional (Saundry and Wibberley, 2014; Saundry et al, 2014;2016; 2017; 2019; 2021; Saundry 2019) and its inevitability is denied (Saundry, 2019) this results in approaches that are reactive, rather than strategic (Saundry et al, 2016; 2017; 2019).

Saundry's (2019) model of strategic conflict management presents a view of what conflict management could ideally be. He proposes a model of strategic conflict management that focuses on managerial capability and procedural fairness and creates a culture of early resolution and openness to addressing conflict and high trust relationships. A situation is envisaged where FLMs are conflict competent, recruited, trained, and appraised for conflict management skills, and coached and advised by HRPs. Importantly for the focus of my study, the model calls for informal resolution to be an option, and to be attempted, even once formal processes have started; for a combination of rights- and interest-based processes; for negotiation, discussion, mediation, and facilitation to be utilised; and suitable involvement in these of HRPs, trained mediators, and employee representatives. He states that with this focus "the scope for informal resolution expands and procedural application is reserved for a smaller range of serious issues" (p.12). Saundry (ibid) acknowledges that the model might be seen as "unrealistic and over-ambitious" (p.8). What is clear from Saundry's (2019) own analysis of conditions needed, is that significant changes are needed in FLM skills and how conflict is seen within organisations, and in how fairness is protected. This is a set of conditions that is a long-term project that even if achieved, can never be assumed to always operate as intended.

#### 4.5.2. Particular barriers to ADR-use regarding disciplinary matters

Examples of good practice in the literature also reveal that barriers to informal action apply particularly in relation to employer-instigated conflict, such as action related to disciplinary matters, capability, or poor performance. This is important for my study given its focus on disciplinary disproportionality and the causal mechanism identified as related to differential use of informal action. Literature focusing on case studies in organisations implementing initiatives related to strategic approaches or early resolution, may define or refer to conflict in a way that includes both conflict that is employee-instigated such as grievances or intra-employee disputes, and employer-instigated, such as disciplinary and capability processes, but examples given of organisational initiatives may relate exclusively to the former, particularly in relation to the use of mediation (e.g., Saundry et al, 2011a; Hann et al, 2019; Saundry et al, 2023)<sup>3</sup>. Although occasionally mediation is explicitly identified as used in relation to employer-instigated conflict (for example, absenteeism and performance management, Roche et al, 2019). This perhaps indicates that organisations find designing initiatives aimed at strategic approaches or early resolution more achievable for employee-instigated conflict or are more often committed to early or alternative resolution in relation to it, than employer-instigated conflict. There is also conflict management literature that only addresses employee-instigated conflict (e.g., Lipsky and Seeber, 2000; Lipsky et al, 2003; Teague and Roche, 2012; Roche and Teague, 2012; Teague et al, 2020) possibly suggesting the same thing. There is also conflict management literature that does address both employee- and employer-instigated conflict (e.g., Saundry et al, 2008; 2014; 2016; 2019; Latreille and Saundry, 2015; Hann and Nash, 2020; Saundry and Urwin, 2021).

In relation to mediation, it might be deemed unsuitable or simply not used for potential disciplinary issues (Saundry et al, 2008; Saundry et al, 2011a). Mediation might only sometimes be used at an informal stage, and not for cases alleging bullying (Roche, et al, 2019). It may be seen to undermine management authority (Saundry et al, 2011a; Latreille and Saundry, 2015), to have potential to be used to avoid appropriate action (Saundry, 2012; Saundry et al, 2023), or to allow unfair discrimination or bullying for example, to go unpunished (Archibong and Darr, 2010; Latreille and Saundry, 2015). Hann and Nash (2020) find that choice between rights-based and interest-based approaches is given to employees much more often when conflict is employee-instigated than employer-instigated. The

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<sup>3</sup> It should be noted that there is cross-over between the employee and employer-instigated conflict, particularly in relation to bullying and harassment.

different ways that, for example, grievance and disciplinary related conflict are instigated and the power differential between managers and employees make the types of conflict fundamentally different to each other (Hook et al, 1996) a fact that is not always addressed in the literature.

#### **4.6. Organisational systems and prevention of unfair discrimination**

The sections above have answered some questions about why FLMs might choose a formal approach in preference to an informal one, and about barriers to using informal approaches. The studies cited point to structural and contextual factors that make use of formal procedural approaches more likely and thus informal and more flexible approaches less likely. What this literature does not address is the reasons for differential use or avoidance of informal action by FLMs with employees from different ethnic groups. It seems likely that ICMSs and ADR measures have as much scope as more traditional informal action for differential use unless the risk of this is addressed by organisations. Returning to the disciplinary disproportionality literature, reasons for differential treatment are identified as lack of cultural competence, fears of accusations of racism, lack of confidence in working with people from Black, Asian and minority ethnic groups, racism, stereotypes, or bias, unconscious or otherwise. The result of any or all of these causes is unfair discrimination when employees from Black, Asian and minority ethnic groups are formally disciplined when employees from unracialized groups would either not be disciplined or informal action would be taken. When such differential treatment occurs, it is within organisational systems that have allowed it. The literature demonstrates this with examples of public sector organisations being aware of disciplinary disproportionality but a number of years later disproportionality still being seen, despite in some organisations significant efforts in this area. This raises further questions about whether and how this could be avoided or at least minimised.

#### **4.7. FLMs as inconsistent**

To return to the role of FLMs, this time not in relation to barriers to the use of informal action, another reason not to rely on ideal conditions is that FLMs may use criteria for deciding between informal and formal action that are inconsistent or idiosyncratic. Cooke (2006) found that managers chose a formal approach when they felt that the employee “should have known better” (p.13) or did not show suitable “remorse” (p.13). This is



significant because there may be differences in employee knowledge of expected ways to behave in a disciplinary situation, or cultural differences in response (Archibong and Darr, 2010; Sehmi, 2015) that may make the implications of such expectations disproportionately affect employees from Black, Asian and minority ethnic groups. Rollinson et al (1996) found that managers were inconsistent in their handling of disciplinary situations or used unexpected criteria in relation to a range of factors. Managers also made premature judgements about the seriousness of an alleged offence (Rollinson et al, 1996). Accompanying factors such as the effect of the transgression on the manager personally, or on the organisation, as well as its visibility, effected the perception of seriousness in comparison to the same offence in other circumstances (Rollinson et al, 1996). The team also found staff with longer service were more likely to be disciplined in a more exploratory way, and women were more likely to be disciplined in a more prescriptive way (Rollinson et al, 1996). Cooke (2006) reports differences in FLM approach to formal disciplinary processes, with some managers seeing this as the approach to take in all disciplinary cases and others as something to avoid wherever possible. These inconsistencies are identified without reference to ethnicity. The disciplinary disproportionality literature, that suggests differences in FLM decision making with employees from different ethnic groups, highlights another reason not to assume ideal conflict management conditions.

#### **4.8. FLMs more broadly as agents of HRM**

The conflict management literature presented in this chapter sits within broader academic literature that considers the role of FLMs as agents of HRM. Published reviews of this literature establish some clear themes. First, that line-managers in general, and FLMs specifically, are important in relation to the delivery of HRM (Intindola et al, 2017; Kehoe and Hann, 2020; Kurdi-Nakra et al, 2022), including in the public sector (Knies et al, 2022). Kim and Kehoe (2022) state that “line-managers are frequently the sources of employees’ most direct experiences with an organisation’s HR practices” (p.116) and Townsend et al (2022a) that “The FLM is, after all, the filter by which employees understand and experience organisational policy” (p.86). In this section I shall use the term line-manager or FLM depending on which was used in the research cited.

Second, the issues discussed earlier in this chapter around the FLM role regarding conflict management and barriers to informality, are paralleled in relation to HRM more broadly. The literature indicates that line-manager HRM implementation is similarly affected by:

- Lack of training and competence (capability / skills / abilities / knowledge) (Intindola et al, 2017; Evans, 2022; Knies et al, 2022; Kurdi-Nakra et al, 2022; Sikora, 2022);
- Conflicting priorities and time available for HRM (role conflict / capacity) (Intindola et al, 2017; Evans, 2022; Harney and Lee; 2022; Knies et al, 2022; Kurdi-Nakra et al, 2022; Sikora, 2022; Townsend et al, 2022c);
- Working relationships and the range of roles line-managers interact with hierarchically upwards and downwards (Evans, 2022; Sikora, 2022);
- Accountability for HRM (Sikora, 2022);
- Willingness and motivation (Evans, 2022; Kurdi-Nakra et al, 2022; Sikora, 2022);
- Individual personality (Evans, 2022);
- Support from senior management and HRPs (Intindola et al, 2017; Kurdi-Nakra et al, 2022); and
- HR policies and/or programmes (Intindola et al, 2017; Kurdi-Nakra et al, 2022).

Difficult conversations are particularly identified as challenging to FLMs, as they also are in the conflict management literature, but here they are additionally viewed as being in conflict with key parts of the FLM role that involve being supportive (Townsend et al, 2022c). In addition, FLMs may face conflicts of loyalty if they are managing a team that they were previously a non-managerial member of (Knies et al, 2022). The broader literature also adds that motivation or skills may be affected by the fact that professional identity may be stronger than identity as a manager (Knies et al, 2022; Sikora, 2022). Understanding of organisational culture or climate is also identified as important (Sikora, 2022). In light of these issues, Townsend et al (2022a) see the “prognosis” regarding HRM implementation by FLMs as “bleak” (p.85).

Third, despite debate within the literature about whether line-managers have agency in relation to HRM, and how much agency they have, reviews of the literature identify line-managers as agentic (Kehoe and Han, 2020; Kurdi-Nakra et al, 2022). Agency, or the potential for it, is complex, context dependent, and may be seen as functional or dysfunctional. Townsend et al (2022a) identify choices, or differences of perception or circumstance, faced by FLMs as resulting in “stylistic preferences” (p.79) in relation to agency and policy enactment. This determines whether FLMs act with agency or not and in line with policy or not (ibid). FLMs may see themselves as either “master” or “victim” (p.79) of HR policy (ibid). Townsend et al (2022b) call for line-manager involvement in the creation of HR policy to improve ability to implement it effectively. Evans (2022) also presents factors that may affect agency, where pressure or conflicting priorities may cause undesirable action. Kehoe and Han (2020) contribute three line-manager HR practice delivery behaviours in relation to HR process and content: HR practice implementation, HR practice translation, and HR practice adaptation or introduction, showing the variety of line-manager approaches to HRM. Knies et al (2022) state that although the public sector has become closer to the private sector in nature there is often still less FLM discretion than in the private sector. Knies et al (2022) also find that reducing FLM discretion may reduce motivation. Agency is presented from the perspective that it allows line-managers to improve the fairness of HRM by tailoring it to individual needs or, alternatively, that agency allows bias to be enacted or individual needs or legal duties to be ignored (Kehoe and Han, 2020; Sikora, 2022). The focus in my study is on the latter, because the focus of this research is on mechanisms that create disciplinary disproportionality and involve differential management action with Black, Asian and minority ethnic employees.

#### 4.9. Implications for this study

As with the disciplinary disproportionality literature, the conflict management literature identifies multiple barriers to the use of informal action. The wider HRM and literature on line-managers echoes these barriers in relation to HRM implementation more broadly. I suggest that because these represent significant organisational challenges to overcome and good practice cannot be assumed, that fail safes are needed against the avoidance of informal action and FLM inconsistency more generally. The literature has shown FLM and HRP tendencies towards following formal written policy and procedure in preference to taking informal action, that FLMs want and need guidance, and that written policy and procedure is highly influential to FLMs in general. This leads to my proposal that written policy and procedure may be part of the solution and to choose it as a data source.

## Chapter 5. Theoretical and conceptual frameworks

This chapter introduces the theoretical framework for my study and summarises the conceptual framework.

### 5.1. Theoretical framework

The theoretical framework for this study is based around three key assumptions and three areas of literature that inform the study results. The first assumption is that human resource management (HRM) is delivered to employees in the form of signals or messages. The second is that written policy and procedure documents are an appropriate data source to explore these HRM-signals. The third is that institutional racism provides a theoretical structure within which to conceptualise organisational responsibilities regarding risks associated with prejudice or bias. These assumptions will be explored below, followed by the literature that informs the study results: pathways; mapping and modelling of processes; and interaction approaches. Finally, a conceptual framework section summarising the points raised by the literature presented in Chapter 2 - Chapter 4 and this section, and their influence on the study.

#### 5.1.1. HRM-signalling

There is a strand of literature and theory, in which HRM is seen as being delivered by signals to employees (Bowen and Ostroff, 2004; Haggerty and Wright, 2010; Ostroff and Bowen, 2016). Signals may be explicit or implicit (Williams et al, 2021), intentional or unintentional messages, communications, or other indicators of what is organisationally “valued, expected and rewarded”, with the aim of encouraging desired behaviour (Ostroff and Bowen, 2016, p.196). There is inconsistency in how these signals are referred to. Bowen and Ostroff (2004; Ostroff and Bowen, 2016) use the terms signal, message, HR message, and HRM message. The authors cited in this section also use one or more of these terms, and/or the term HR signal. I shall adopt the terms HRM-signal(ing), or just signal(ing). The acronym HRM, rather than HR, is used in recognition that the signals represent a management process. The term signal is used, rather than message, seeing messages as a type of signal (this is elaborated below).

Bowen and Ostroff (2004), building on the work of Mischel (1973, 1977 cited by Bowen and Ostroff, 2004), define a strong situation as one where employees share an understanding of what is “valued, expected and rewarded” (Ostroff and Bowen, 2016, p.196) and are motivated to deliver this. Creating a strong situation around strategic goals

is advocated (Bowen and Ostroff, 2004; Ostroff and Bowen, 2016). Haggerty and Wright (2010) go as far as to say that

*“the emerging role (if not the historical but rarely achieved role) of HRM, is the creation of those strong situations which allow for the development of a shared climate in which the intended signals from leaders are correctly interpreted by the target audience(s) and drive the appropriate individual (discretionary) behaviors which aggregate to generate competitive advantage” (p. 101).*

Bowen and Ostroff (2004) propose a model of HRM-signal characteristics needed to create and maintain a strong HRM system or situation: “distinctive” to draw attention to them and mark them as significant; “consistent” to encourage uniform perceptions of what is desired by the organisation; and “consensus”, again to ensure uniform perceptions of required behaviour. Conversely, a weak HRM situation may result in inconsistent or unintended interpretations of signals by employees resulting in inconsistent or unintended behaviour (Bowen and Ostroff, 2004). In this situation, in the absence of clear and consistent organisational guidance, individual attitudes and values (Bowen and Ostroff, 2004) or other organisational priorities (Williams et al, 2017) will drive behaviour more than organisational expectations. This may also be the case in an unintended strong situation, that is one around an unintended strategic goal (Bowen and Ostroff, 2004).

Bowen and Ostroff (2004; Ostroff and Bowen, 2016) make an important distinction between HR practices, or content, and HR processes. This is in terms of practices sending signals and processes representing the mechanisms by which signalling is made unambiguous and consistent or not, to create a strong or weak situation. HR process theory has developed from their work as a strand of literature (see Sanders et al, 2021 for a review). I make a distinction between HR process and HRM-signalling literature for the purposes of this study because HR process literature is not necessarily concerned with signals themselves, but the creation of the strong situation.

Although the literature around HRM-signalling has developed largely from Bowen and Ostroff’s (2004) work on HRM system strength, earlier authors (Guzzo and Noonan, 1994; Rousseau, 1995), in relation to the psychological contract, that is the perceived rules of an employment relationship (Rousseau, 1995), have also considered HRM in terms of communications, signals, or messages. The term signal encompasses intentional messages such as directives in policy documents or statements from managers; intentional signals,

such as including accreditation logos on letterheads; and unintentional signals, such as about workforce demographics sent by a published photograph of a team. It is assumed that signals are continually sent both intentionally and unintentionally (Guzzo and Noonan, 1994).

Work influenced by Bowen and Ostroff (2004) has focused more often on system strength than on the signals themselves. Signalling theory is a separate stream of literature that focuses on signalling to tell the receiver something about a person, product, or organisation, rather than to shape understanding of required behaviour (see Connelly et al, 2011 for a review of management research using signalling theory). Signalling theory originates from Spence's (1973) work in economics that views educational attainment as signalling the capabilities of job applicants. Spence (ibid) presents such job market signalling in terms of information asymmetry – the prospective employer does not know the prospective employee's capabilities and the prospective employee can signal these with suitable educational success. Management research has used signalling theory in relation to the signalling of quality, characterised by Connelly et al (2011) as ability to meet needs or demands, in relation to colleagues, competitors, consumers, the job market, shareholders, stakeholders, and (potential) investors (ibid). Signalling theory focuses on four elements of the signalling environment (ibid). 1) the signaller, an insider who has information about themselves, their organisation, or product, that might influence; 2) the receiver, an outsider who lacks this information, in their decision making (ibid). This might, for example, be to recruit, accept a role, invest or purchase (ibid). 3) the signal sent by the signaller, that indicates this information (ibid). 4) Feedback, or countersignalling, from the receiver to the signaller (ibid). Signals may be intentional or unintentional, positive or negative (ibid).

Connelly et al (2011) synthesise signalling theory constructs. These are, in relation to the signaller: honesty and reliability, where honesty relates to whether the signalling is truthful and reliability relates to the combination of honesty and fit (see below) (ibid). In relation to the signal, these constructs are: cost, observability (or strength), fit, frequency, and consistency (ibid). The observability or strength of signals and their cost is key, in that they will only be effective if they are received and will be seen as stronger if they have a high cost (ibid). Fit refers to how well the signal matches the quality that it is intended to signal. Frequency and consistency refer to how often signalling is carried out and consistency between signals from the same signaller. In relation to the receiver, the constructs are: attention and interpretation (ibid), and finally, in relation to feedback and the signalling environment respectively: countersignals and distortion (or noise) (ibid).

Countersignals are feedback from the receiver to the signaller that may influence future signalling, and distortion is the potential effect of signals from other sources (ibid).

Examples where signalling theory has been used in relation to HRM concern again the signalling of broad attributes, for example, existence of a flexible leave policy perceived by employees to signal organisational support (White et al, 2020), or an egg-freezing policy perceived to signal an expectation or climate of prioritisation of work over personal-life (Flynn and Leslie, 2022). Suazo et al (2009; 2011) use signalling theory to identify how HRM practices send signals that create psychological and, sometimes legal, contracts. This is relevant to my study because some of the signals identified are textual, for example, statements on an organisational website about jobs becoming permanent after a probation period, leading to expectations of high job security, and statements about annual pay increases in an employee handbook leading to expectations of high or guaranteed pay rises. These signals are identified as often not intended to create contracts but identified as nonetheless creating psychological, and sometimes legal, contracts (ibid). Despite being created by HR practices, the signals are not HRM-signals as such because HRM-signals aim to influence specific behaviour (Ostroff and Bowen, 2016). These signals instead give information about what to expect from working for the employer.

There is conceptual overlap between HRM-signalling and systems theory, and Guest et al (2021) recently called for use of systems theory to reconsider HRM system strength theory and integrate it with HRM attribution theory that relates to how employees perceive HRM-signalling. I frame my study in terms of HRM-signalling rather than systems theory. This is because of my focus on signals aiming to influence specific behaviour, what is organisationally “valued, expected and rewarded” (Ostroff and Bowen, 2016, p.196), and on signal content. In contrast, a systems theory framing might focus more on the signalling of attributes of a person, product, or organisation, or the relationships between signal senders, signals themselves, and signal receivers (Connelly et al, 2011).

Returning to HRM-signalling, the role of managers in HRM-signalling has been explored. The role of CEOs has been viewed as key in transmitting HRM-signals, fostering consensus at senior management and team-level, and legitimising HR (Stanton et al, 2010). Stanton et al (2010) also show the importance of consistent signals across managerial levels. The importance of senior organisational leaders in delivery of signals about key values has been highlighted (Stanton et al, 2010; Kellner et al, 2016; Williams et al, 2017; 2021). For Kellner et al (2016), executive management are more likely to deliver “key messages” than front-

line managers (FLMs) or human resource practitioners (HRPs). However, the focus of their study was on who, not what, delivers signals, meaning that the role of written policy and procedure as a source of signalling to FLMs may not have been considered (ibid). Chacko and Conway (2019) do identify FLM as a key source of signals to employees. They, however, do not identify written policy and procedure as a source (ibid). This may be a result of the study's focus on HR events with positive or negative valency. It seems likely that the influence of many HRM-signals, such as those received through reading policy documents would not have been reportable within their study because this would both not constitute an HR event within the parameters of the study and may have neutral valency for the individual (ibid).

The literature generally focuses on signals that are sent to 'employees' by 'managers' but neglects to view managers also as employees who receive HRM-signals aimed at guiding their behaviour. In one study that does consider line-managers as both receivers and transmitters of signals, it has been demonstrated that line-managers may modify or filter messages and, in doing so, create a locally strong HRM situation within a team and protect team-members from a wider organisationally weak HRM situation and the resultant mixed messages from the organisation (Townsend et al, 2012). Here it is the line-manager that employees are making efforts for, not the organisation (ibid). Line managers as a mediating factor may strengthen or weaken organisational signals, by an act of endorsing or resisting (filtering) them.

Of relevance to my study, Williams et al (2017; 2021) explore signals aimed at FLMs, including signals sent by written policy. These are the only studies that I have found that use policy or procedure document content to identify HRM-signals. Williams et al (2017) identify FLMs being subject to consistent signals from other sources that are at odds with signals sent by written policy and procedure. The same study also shows the content of signals sent to FLMs by senior managers regarding policy implementation influenced more by organisational context than written policy content. This has important implications for my research because of the potential for FLMs to receive mixed messages and to be influenced by priorities that ignore fairness and consistency if written policy and procedure is not prioritised. Williams et al (2017) also report that when written policy is ambiguous, FLMs may use their own informal, potentially unfair, criteria rather than implementing those from the policy. This highlights the importance of unambiguous written policy and procedure. Williams et al (2017; 2021) also specifically explore signals sent to FLMs by written policy and procedure. They identify both high levels of discretion awarded by



policy, and conflicting explicit and implicit signalling that both encourages and places limits on FLM action, in this case specifically around use of flexible work arrangements (ibid).

Kellner et al's (2016) "HRM philosophy to performance model" categorises what is being transmitted by HRM-signals as being related to: the HRM system, for example policies and practices; HRM philosophy, that is higher level assumptions about what the purpose and aims of the HRM system are; organisational strategy; and organisational climate, where each of these elements influences each other in bidirectional feedback loops. Signals that relate to these different elements may be congruent, sending a consistent overall message, or incongruent, sending mixed messages (Bowen and Ostroff, 2004; Kellner et al, 2016). Kellner et al (2016) see the signals (they use the term "messages") as affecting employee behaviour both by giving direct guidance on action in a particular situation or by more broadly influencing attitudes or values that in turn allow employees to decide what action may be most organisationally desirable.

Other authors contributing to HRM literature that does not explicitly take a signalling approach, do nonetheless discuss HRM in terms that are similar in approach, or compatible with, the signalling view of HRM. Townley (1993a) taking a Foucauldian approach, sees HRM as both discourse and a discipline. This approach is explicit about power, control, and discipline being at the heart of HRM. Townley (1993b) states the importance of language in establishing "mechanisms of rule" (Townley, 1993b, p.225). Watson (1995) and Hamilton (2001) also view employment relations as fundamentally rhetorical, with both using the term rhetorical in the sense of using language to persuade or influence, rather than as in opposition to the real. Townley (1993a) and Hamilton (2001) point to HRM as regulating elements of work that the employment contract does not; this being because the nature of the employment contract leaves many aspects of the contract and the employment relationship unstated. Hamilton (2001) writes that it can be argued "that the creation of organization is accomplished through discourse" (p. 444) and that "problems encountered in the practices of employment relations are created largely through language" (p. 444). Hamilton (2001) sees policy and procedure documents as containing "instrumental discourse" (Gill and Whedbee, 1997, cited by Hamilton, 2001, p. 436), discourse designed to influence attitudes, behaviours and values. Both authors (Watson, 1995; Hamilton, 2001) acknowledge that academic rhetoric is part of the rhetoric of HRM and indeed shapes HRM. HRM-signalling might be seen in these terms as a form of internal organisational rhetoric, aimed at employees by the employing organisation. Purcell and Hutchinson (2007) present a symbiotic relationship between HRM processes and FLM action. This interrelationship is

inherently recognised by Bowen and Ostroff's (2004) concept of the strong HRM system, because the contents of HRM policy documents and the actions or words of FLMs would both be viewed as signals contributing to the strength of the HRM system and the organisational climate.

Considering HRM in terms of signalling, presents an opportunity to consider possible mechanisms for the HRM system to either allow or contribute to unequal experience or outcomes for employees, such as disciplinary disproportionality. Because this is the case, it is useful to consider the implications of weak and strong HRM systems or situations for fairness or dignity at work. A weak situation that gives unclear or contradictory guidance, has potential for unfair outcomes for staff members subject to HR procedures such as disciplinary or performance management if this causes FLMs to behave inconsistently or according to their own priorities. An unintended strong situation, or one that is intended but over-emphasised, has implications for general employee experience. For example, a strong situation focused on a strategic aim such as maximising productivity might send a message that employee welfare is less important than that aim. An example not related to a strong system, is tensions between organisational aims related to efficiency and diversity, leading to actions aimed at efficiency being at the expense of those aimed at diversity (Carter, 2000). Bowen and Ostroff (2004) advocate creating a strong situation for particular strategic focuses. Where a narrow strategic focus is prioritised at the expense of other potential priorities such as fairness, inclusion, dignity, or respect, I suggest that it is potentially as problematic in relation to fair outcomes for employees and positive employee experience as a weak or unintended strong situation. Mainstream HRM research and practice has been criticised firstly for a focus on maximising profit and production over other priorities related to stakeholders such as employees, and secondly that when employee experience, well-being or fairness of outcome has been considered, this has often been for instrumental organisational reasons rather than in the interests of employees (Islam, 2012; van de Voorde et al, 2012; Beer et al, 2015; Guest, 2017; Dundon and Rafferty, 2018; Tweedie et al, 2019). The strong situation created to prioritise strategic goals as advocated by Bowen and Ostroff (2004; Ostroff and Bowen, 2016) is highly instrumental in its aim to have employees behave in desired ways in reaction to HRM, which may not leave room for prioritisation of employee experience. Although Bowen and Ostroff's model (2004) states that fairness is necessary for a strong situation within the consensus element of the model, this is for instrumental reasons related to seeking acceptance of signals. I suggest that an intended strong situation could be as likely to

neglect employee outcomes as a weak or unintended strong situation, if the HRM system makes other priorities the focus.

Despite the potential for pursuit of a strong situation neglecting other organisational priorities such as those related to employee experience, the model could incorporate the need to prioritise multiple aims and their relative priority. This potential weakness of the strong situation does not in any way detract from the usefulness of the concept of HRM-signals that are key to this study. Seeing HRM in terms of signalling has prompted the approach of this study to explore elements of disciplinary and performance or capability policy and procedure documents as representing signals to FLMs as implementors of these policies and procedures.

### 5.1.2. Documents as a source of data

The use of documents as a source of data is both problematised and defended in extant literature. There are rightful criticisms, both within and outside critical realism, of using documents as a sole data source in relation to treating these as an accurate representation of what occurs or has occurred in practice (e.g., Atkinson and Coffey, 2004; Mutch, 2014). Newton and Findlay (1996) referring to Townley's (1993b) study, suggest that because HRM, in that case performance appraisal, rarely operates as specified in policy, there is a need for caution in using that policy in isolation as a data source. Townley (1993b) justifies her exclusive use of documents, albeit not exclusively policy documents. She states "Texts ... are important. They provide guides for action and present information which prompts the need for decisions and solutions" (Townley, 1993b, p.227). Watson (1995) agrees, stating that "those in search of HRM must be prepared to study words as well as to study practices. They are the two sides of the same coin" (p.15). He sees HRM as a "discursive resource" (ibid, p.14). Hamilton (2001) makes a case that is relevant to written policy and procedure, for rhetorical analysis to explore how an organisation attempts to influence attitudes, behaviours, and values. He cites Putnam: "language may enable or constrict participants as they seek alternative courses of action" (Putnam, 1999, p.4, cited by Hamilton, 2001, p.442). Atkinson and Coffey (2004) see documents as a primary data source in their own right providing "documentary realities" (p.56), rather than secondary or supporting evidence. I adopt this viewpoint for my study. Their position is elaborated in the next paragraph.

In terms of HRM-signalling, written policy and procedure holds a unique position, in that it is a source of HRM-signals that is unchanged and unfiltered by the interpretation or

priorities of managers implementing it. For example, compared to Townsend et al's (2012) study finding that FLMs may modify or filter signals from above, rather than simply relaying them down to their team. Atkinson and Coffey (2004) note that "some texts become 'official' and can become 'proof' of events and identities" (p.69). This is particularly the case for written policy and procedure that represent a record of official organisational intention regarding how, in this case, disciplinary, performance and capability issues should be handled. They may in turn be used by tribunal judges as "proof" of the procedure that should have been followed or process that should have occurred, and thus as a measure against which organisational actions in practice are compared for compliance. The unique status of such documents is particularly of interest and value in relation to informal action because of the potential association of written policy and procedure with formality identified in the conflict management literature (Chapter 4), and the unique status of informality as used regarding intended informal processes described in written policy and procedure, identified in the chapter about informality (Chapter 3) above.

McCamish (2012), in a study highly relevant to this one, demonstrates how elements of written policy and procedure that are ambiguous and thus require discretion to interpret, can be directly associated with disciplinary disproportionality. In the case of McCamish's work (ibid) this is the over-representation of Black pupils in records of US high school disciplinary processes. McCamish (ibid) found that teachers used categorisation of unacceptable behaviour that is ill defined more often with Black pupils than well-defined categorisations and identified biased opinions about Black students' behaviour. What makes this particularly relevant to my study is that it demonstrates a mechanism by which a specific element of written policy and procedure can allow bias to be enacted in differential action and thus contribute to disciplinary disproportionality.

### 5.1.3. Institutional racism

Institutional racism is introduced here as a means to explore organisational responsibilities regarding unfair or inconsistent experience or outcomes for Black, Asian and minority ethnic employees. The concept of institutional racism is particularly valuable because it allows racism (or racialism) to be considered beyond the individual level and more widely than simply in terms of intention. This means that racism must be seen in broader terms than the actions and outcomes related to anomalous individuals with prejudiced or biased belief systems that act in opposition to organisational or social norms (Feagin, 1977). The term "institutional racism" was first used in the US Civil Rights era by

Carmichael and Hamilton (Carmichael and Hamilton, 1967; later edition Ture<sup>4</sup> and Hamilton, 1992). They term institutional racism as “acts by the total white community against the black community” (ibid, p.20). They elaborate:

*“[Institutional racism] is less overt, far more subtle, less identifiable in terms of specific individuals committing the acts. But it is no less destructive of human life. [Institutional racism] originates in the operation of established and respected forces in the society, and thus receives far less public condemnation [than individual racism]” (ibid, p.20). “Institutional racism relies on the active and pervasive operation of anti-black attitudes and practices. A sense of superior group position prevails: whites are “better” than blacks; therefore blacks should be subordinated to whites. This is a racist attitude and it permeates the society, on both the individual and institutional level, covertly and overtly. “Respectable” individuals can absolve themselves from individual blame ... But they continue to support political officials and institutions that would and do perpetuate institutionally racist policies. Thus acts of overt, individual racism may not typify the society, but institutional racism does—with the support of covert, individual attitudes of racism.” (ibid, p.21).*

This original presentation of the term is made as part of a classification of racism as either individual or institutional. Institutional racism is identified as the result of attitudes of white superiority and a “colonial” relationship between white and Black society characterised by a dominant “white power structure”, the protection of white interests, and exploitation of Black labour (ibid). This version of institutional racism operates at societal level.

Despite earlier academic use, the term institutional racism came to public attention in the UK in 1999 because of its use in the Macpherson Report that identified the Metropolitan Police Service as institutionally racist (Macpherson, 1999). The definition of institutional racism used by Macpherson, and widely used and critiqued academically since the report, is:

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<sup>4</sup> After Stokely Carmichael changed his name to Kwame Ture.

*“The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.” (6.34 p.49). Adding, “It persists because of the failure of the organisation openly and adequately to recognise and address its existence and causes by policy, example and leadership. Without recognition and action to eliminate such racism it can prevail as part of the ethos or culture of the organisation. It is a corrosive disease.” (6.34 p.49).*

A key part of both definitions is that they allow for racism to be enacted without the need for individual racist intent. Both also define institutional racism in terms of two vital factors. First, the existence of prejudice or bias. This is seen by Carmichael and Hamilton (1967) as pervasive “anti-black attitudes and practices”, “superior group position”, “covert, individual attitudes of racism”, and “colonialism” (p.21) and by Macpherson (1999) as “unwitting prejudice” and “racist stereotyping” (p.49). It is unclear whether Macpherson (ibid) sees this as pervasive or otherwise, although the report does recognise the existence of prejudice, in both overt and “unwitting” forms. Other authors explore this factor in terms of unconscious or implicit bias, racialisation, and/or white(li)ness (e.g., Phillips, 2011; Walter et al, 2019; Patel, 2022). These approaches often represent not just decisions about how to define institutional racism, but fundamental differences in how authors view prejudice, bias, and racism. The existence of prejudice or bias is presented variously in ways that are more or less diplomatic towards, palatable to, or critical of, the dominant white group. Comparing Carmichael and Hamilton and Macpherson’s definitions of institutional racism is a prime example of this. Compared to Carmichael and Hamilton, Macpherson does not include the influence of overt prejudice in his definition, although he does recognise it in his report, and he does not state that racism, prejudice, or bias are prevalent or ingrained in society. It might be tempting to see these different interpretations of institutional racism as products of their respective times and places, but more recent literature on institutional racism, including from the UK, takes stances similar to Carmichael and Hamilton’s (1967) in assuming ingrained assumptions about the dominance of white people or white norms (e.g., Patel, 2022). The second factor is the failure of organisations to prevent the impact of prejudice or bias within the institution. This might be failure to

acknowledge the risk of prejudice or bias operating within, or allowed to operate by, organisational policy, procedure, or culture, or failure to address this risk effectively. Bourne (2001) makes the point that prejudice only leads to differential outcomes if it is allowed to be acted on.

The concept of institutional racism is considered by some authors to be analytically problematic, even if politically or rhetorically useful, because of problems locating the racism at institutional (organisational or structural) level, and relatedly, the conflation of, or failure to distinguish between, individual and institutional racism (Mason, 1982; Bourne, 2001; Wight, 2003). It is also considered problematic because it is accused of focusing on outcome rather than intent or cause (Wight, 2003). Institutional racism is sometimes used synonymously with structural racism, or a distinction may be made between them, with structural racism located at a higher level than institutional racism. More broadly, definitions or models of institutional racism characterise it in terms of different factors. Mason (1982) identifies these as relating to two dimensions: 1) whether institutional racism is located in the instrumental actions of others or in structural elements, and 2) whether the presence of racist belief is present or absent. Mason acknowledges that definitions or models may span the categories created by these dimensions (ibid). Phillips (2011) proposes a model of institutional racialism, using the term racialism to avoid potential connotations of deliberate intention that may be associated with the term racism. The model (ibid) locates racialism at three levels: micro, meso, and macro, which might be seen as individual, organisational, and societal levels, allowing for the relationships between the levels to be considered.

*“The application of the multilevel framework is presented ... as an attempt to make explicit the cumulative layering of racialised disadvantage, whilst also avoiding the conflation of individual-level and institutionalised racialisation. In so doing, it specifies exactly how individual actions are framed by structural and material conditions, which are themselves built upon complex and shifting ideas about human groupings that are rooted in assumptions about racial hierarchies.” (ibid, p.180).*

In specific connection to the subject of my thesis, considering the role of written policy and procedure, policy and procedure is often cited as a possible site of institutional racism,

including by Carmichael and Hamilton (1967), Macpherson (1999), and others (e.g., Bourne, 2001; Wight, 2003; Phillips, 2011; Patel, 2022).

*“Institutional racism is that which, covertly or overtly, resides in the policies, procedures, operations and culture of public or private institutions.”*

*(Wight, 2003, p.716)*

Interestingly, Macpherson explicitly states that Metropolitan Police Service policy was not racist, but that its implementation and the words and action of individuals could be (6.24. p.45). He does however also state that “It is incumbent upon every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities” (46.27. p.369). Also, the role of discretion regarding policy implementation is identified (in the quoting of a submission) as a source of “racist outcomes” (6.29 p.47), which can be seen as potentially related to informality as discussed above in 3.2. In contrast, both Afzal (2022) and Casey (2023) do more explicitly implicate policy in their public sector reviews that find the London Fire Service and Metropolitan Police Service, respectively, institutionally racist:

*“Although the discipline and grievance policies highlight the processes for each, there is no consideration as to the root cause of these issues [of overrepresentation] and, therefore, **it is unlikely that the existing discipline and grievance policies will equalise BAME staff’s experience with their White counterparts.**” [emphasis added] (Afzal, 2022, p.39)*

*“The organisation as a whole, especially through its leadership, its management tiers, its **policies**, systems and practices, allows, or causes, discrimination and abuse to occur and recur” [emphasis added] (Casey, 2023, p. 238)*

In response to the institutional racism literature, I have categorised three roles that written policy and procedure can play in relation to institutional racism: 1) as a cause of; 2) to allow; and 3) to deter, racist outcomes. Looking at these in turn, 1), as a cause, this can be of direct unfair discrimination if policy explicitly requires different courses of action for different ethnic groups, or indirect unfair discrimination if the policy requires different courses of action by some other criteria that nonetheless affect some groups differentially (Feagin, 1977). Examples of organisational policy causing direct unfair discrimination, from



the literature, are generally from the past, such as a company policy not to employ people from Black ethnic groups in skilled roles even if they have been suitably trained (Carmichael and Hamilton, 1967). An example of policy indirectly discriminating includes recruitment or promotion policy that requires certain credentials in the form of qualifications or experience, that despite appearing not to be racialised can exclude disproportionate numbers of people from Black, Asian and minority ethnic groups (Feagin, 1977). With regard to 2), an example of policy allowing racist outcomes, is when ambiguity or high levels of discretion allows implementors to act out prejudice or bias, or act inconsistently (McCamish, 2012<sup>5</sup>; Williams et al, 2017<sup>6</sup>). Finally, in the case of 3), deterring racist outcomes using policy, can be by auditing policy for the potential for (e.g., by impact assessment) (Phillips, 2011) or evidence of (e.g., by data / outcome monitoring) (Macpherson, 1999) direct or indirect unfair discrimination. Policy may also address or prevent the risk of unfair discrimination by introducing fail safes against inconsistent or biased actions. Phillips introduces the idea of “intervention points for policy makers and service providers” (2011, p.187), that is, points in policy or procedure for making opportunities to identify or guard against differential treatment or racialised outcomes in both policy and practice. Neither of these approaches will occur if the risk of the effects of prejudice or bias, and potential for unfair discrimination are not recognised.

Despite the difficulties and complexities associated with the definition and analysis of institutional racism, it can be distilled to some basic principles that remain valid in the face of the different definitions discussed above. These principles are not intended to be complete but are valuable and sufficient for the purposes of my study. The institutional racism literature and the concepts that it relies on lead to two important but simple assumptions that I make in this study, and propose are necessary, although not necessarily sufficient, assumptions for organisational leaders in relation to institutional racism. First, there is a risk of prejudice or bias affecting: the perceptions and actions of organisational actors, policy and procedure, and organisational climate. Second, there is a risk that organisational policy could directly or indirectly cause or otherwise allow racist outcomes.

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<sup>5</sup> McCamish (2012) does not use the term institutional racism. Instead, she uses Hill-Collins (2009) Four Domains-of-Power framework of color-blind racism (ibid). The model conceptualises racism as a system of power. The domains are structural, disciplinary, cultural and interpersonal (ibid). The model is presented as an alternative to institutional racism that addresses the agent-structure problems referred to above (ibid). The unfair discrimination and causes that McCamish (2012) identifies could as easily be termed institutional racism.

<sup>6</sup> Williams et al (2017) are not addressing racism or unfair discrimination, but their analysis nonetheless usefully shows the implications of ambiguous policy allowing unfair implementation.

The fact that there is disagreement about how prevalent overt or implicit prejudice or bias is, or how likely the risk of differential treatment of BAME employees, makes no difference to these assumptions. The risk exists and organisations have a responsibility to acknowledge this and to make attempts to mitigate against its potential effects. These basic assumptions about institutional racism that sidestep the nature of prejudice or bias, are not intended to imply that the wider causes of institutional racism and addressing them are not seen as important, rather that they are not the focus of my study. In fact, my approach in this study is partly a response to the complex, challenging, and contested nature of the task of addressing prejudice and bias.

I have also categorised three forms of evidence of institutional racism from the literature:

- 1) when racism is ingrained in written policy or procedure. That is where policy or procedure can be shown to have potential for, or to have caused, directly or indirectly, differential outcomes by ethnic group.
- 2) when there are insufficient fail safes against racist outcomes in written policy and procedure. That is when policy or procedure can be shown not to guard sufficiently against the effects of prejudice or bias by giving too much discretion or autonomy.
- 3) when racist views or actions are modelled or not prevented or challenged within the organisation. The latter may clearly also represent individual racism but is seen also as representing institutional racism because of the potential for actions in the name of, or as a representative of, the organisation, or of normalisation of biased views within the organisation. In terms of Phillips's (2011) model, this is interaction between the micro and meso levels of institutional racism. Before institutional racism can be guarded against, those in power and, in turn, written policy and procedure, must acknowledge the risk of differential treatment and outcomes for Black, Asian and minority ethnic employees.

From the types of evidence above, insufficient fail safes against racist outcomes in written policy and procedure, including in terms of discretion, are particularly relevant to this study. The institutional racism literature makes clear that a fundamental part of institutional racism is organisational failure to acknowledge or guard against the effects of prejudice or bias. One way that this can be done is in relation to written policy and procedure. This represents a known risk however racism, prejudice, and bias are conceptualised, and thus there is no justification or excuse for not taking measures against this risk.

In summary, institutional racism is key to my theoretical framework because, despite disagreement about how best to define it and about the boundary between personal and institutional racism, the concept provides a valuable means to consider organisational responsibilities regarding the risks of prejudice or bias impacting employee experiences or outcomes. Written policy is identified as both a potential site of institutional racism and a means to prevent it. I assume that organisations have a responsibility to acknowledge the risks of, and to do what they can to prevent, prejudice or bias from being enshrined in written policy and procedure or enacted in relation to it. This influences the form that this study takes in relation to written policy and procedure, and my analysis in terms of considering matters such as discretion and safeguards against unfair or inconsistent action.

#### 5.1.4. Pathways

Turning from theoretical assumptions to literature that informs the study results, in Chapter 9, I develop the idea of an approach where organisational procedures are considered to create pathways. The idea for doing so came from an already cited audit study carried out by Milkman et al (2015). The audit study examines an informal, pre-recruitment pathway into an organisation and demonstrates a mechanism for a pre-formal stage of an organisational process causing disproportionality in the formal stage. The researchers sent informal requests for mentoring to potential PhD supervisors in advance of formal recruitment processes for research studentships. The requests were identical except for use of names that signalled gender and ethnicity. The potential supervisors demonstrated significant bias in favour of white males. The differential treatment of Black, Asian, minority ethnic and women candidates took the form of avoidance (not replying). This study has been cited above in 2.2.2 in relation to the causal mechanisms related to avoidance of informal action that lead to disciplinary disproportionality, and 3.2 in relation to minority status as significant to negative effects of informal structures and processes.

Milkman et al (2015) use the concept of an informal pathway into an organisation where the informal nature of the process is seen to make a biased response more likely. It seems useful to similarly think of informal management interventions (or their absence) as part of a pathway leading towards or away from formal disciplinary or performance management procedures. Milkman et al (2015) cite as their influence, Chugh and Brief's (2008) gateway-pathway model. This models "gateways to opportunity and diversity", which relate to factors such as formal recruitment processes, and "pathways to success and effectiveness", which relate to factors such as being fairly treated once recruited (Chugh and Brief, 2008,

p.318). Chugh and Brief (2008) use the concept of a pathway in a general sense in relation to progression within an organisation, as created by the whole range of factors that might influence it.

An area of both research and practice where the term pathway is commonly used is healthcare. A range of synonymous terms are used to refer to what are commonly termed clinical or care pathways (de Luc et al, 2001) and definitions for these pathways lack consistency (de Bleser et al, 2006). For example, reviews by de Luc et al (2001) and de Bleser et al (2006) identified 17 synonyms and 84 different definitions respectively. Broadly, clinical or care pathways refer to a journey through a system and/or sequences of clinical or other actions, or interactions with a service. In both academia and practice, the term pathway may be used in a general sense similar to Chugh and Brief's (2008) usage, or in highly specific ways. The literature includes health pathways research in relation to definitions, uses or aims of pathways, their success or value, and pathway creation or modelling methods (de Luc et al, 2001; de Bleser et al, 2006; Kinsman et al, 2010; Rotter et al, 2011; Panella et al, 2012; Aspland et al, 2021). Kinsman et al (2010) propose a definition of care pathways based on meeting the criteria of "(1) the intervention was a structured multidisciplinary plan of care" and three further criteria out of four "(2) the intervention was used to translate guidelines or evidence into local structures; (3) the intervention detailed the steps in a course of treatment or care in a plan, pathway, algorithm, guideline, protocol or other 'inventory of actions'; (4) the intervention had timeframes or criteria-based progression; and (5) the intervention aimed to standardise care for a specific clinical problem, procedure or episode of healthcare in a specific population" (p.1).

Pathways in relation to healthcare are identified as being used to prescribe, document, and/or improve processes, and as such may be used in relation to what should occur, what has occurred and/or exploring the implications of different, possibly simulated hypothetical or actual approaches (de Bleser et al, 2006; Champion et al, 2019; Aspland et al, 2021). Such pathways may be "obtained" (p.5) by data driven methods and/or those involving process experts, and can be conceptualised with different levels of focus, such as the individual patient, their disease, the clinical department, or hospital (Aspland et al, 2021).

Like Milkman et al (2015) and Chugh and Brief (2008), I will use the term pathway to consider factors related to fair and equitable experience and outcome for employees, but differently the use of the term that I adopt is used more specifically in relation to pathways created by written policy and procedure. In some ways this is similar to healthcare

pathways that prescribe intended processes, but with an additional focus on the role of HRM-signalling which was introduced above as part of the theoretical framework. This will be elaborated in Chapter 9.

#### 5.1.5. Mapping and modelling of processes

Approaches to the mapping and modelling of processes and systems are also relevant to my work below on what I term *action pathways*. As stated above, healthcare pathways literature includes the modelling of pathways for the purposes of process improvement or simulation. For a review see Aspland et al (2021), who distinguish between investigations that involve mapping, modelling, and improvement, with the implication that mapping involves identifying a pathway and modelling and improvement generally additionally involve simulation. Champion et al (2019) also distinguish between mapping and modelling seeing mapping as an initial stage to identify the pathway and to allow subsequent modelling and further analysis.

Areas of literature, not necessarily related to healthcare, also provide approaches to the mapping and modelling of processes and systems. I focus here on diagrammatic and textual methods as opposed to mathematical ones or those used only in software engineering. This is because these are most relevant to my interest in the analysis of written policy and procedure and its HRM-signalling, both of which are fundamentally textual. An approach termed industrial dynamics, systems dynamics, systems thinking, or feedback theory, informs a form of systems modelling that is conceptualised in terms of stocks and flows of resources, that may be physical or otherwise, and influences on these modelled as forming feedback loops (Forrester, 1958, 1968; Coyle, 1998; Meadows, 2008). These models may be represented diagrammatically and/or mathematically, i.e., they may be qualitative or “soft” (Coyle, 1998, p.351) and/or quantitative, and used to simulate the potential effects of changes to influences, such as alternative policy decisions (Ludwin 1988; Coyle, 1998; Meadows, 2008). The balancing or reinforcing nature of feedback loops, and recognition of the impact of time delays are fundamental to the models, allowing anticipation or explanation of effects and sensitivities that might otherwise not be immediately obvious, such as conditions leading to dynamic equilibrium or system oscillations (Forrester, 1958, 1968; Coyle, 1998; Meadows, 2008). Diagrammatic representation is by stock-and-flow or causal feedback loop diagrams (Coyle, 1998; Meadows, 2008). Such modelling is often used in relation to public policy (see Nguyen et al, 2023 for a review). Examples are that systems thinking has been used to explore and

qualitatively model shared understandings of broad influences on subjects of public policy, such as public health and wellbeing, environmental/ecological health, and transport decarbonisation (Hogan et al, 2015; Allender et al, 2019; Stansfield et al, 2021; Beaudoin et al, 2022; Penn et al, 2022). It has also been used to qualitatively model the broad impacts of past policy decisions on child protection systems (Lane et al, 2016). Quantitatively, systems modelling has been used, for example, to simulate pressures in a health-economy using modelling of “whole systems” rather than single organisations, in order to inform public health and social care public policy decisions (Wolstenholme et al, 2004). Similarly, simulation of natural resource management issues and environmentally sustainable development scenarios (Bosch et al, 2007; Olabisi et al, 2010).

Systems modelling may be used to inform HR policy, but this tends to, again, be simulation in relation to broad policy options. For example, the likely implications of alternative approaches to deciding levels of pay and workload, taking into account factors such as resulting employee (dis)satisfaction and service quality (Bach et al, 2006) or of different levels of monthly new cases and programme duration on caseload, to avoid overloading a service (Ludwin 1988). Systems dynamics or thinking could be used to explore broad factors influencing disciplinary disproportionality. For example, modelling relationships between premature formality and increasing disciplinary disproportionality, and potential influences on whether informal action or formal action is chosen, such as FLM confidence, skill, time, bias, and support. This approach does not, however, lend itself to the very low, sentence-by-sentence, level of abstraction needed to explore written policy and procedure in terms of its HRM-signalling, and the need to retain textual detail. What needs to be identified by modelling to analyse HRM signalling by written policy and procedure is the text of the signals and their attributes, related to factors such as what decision or action in the pathway the signal applies to and level of FLM discretion. Also factors such as whether signalling is consistent and whether it allows or deters differential action by FLMs.

The term systems map has been used to refer to ways to visualise a system in studies both using and not using systems thinking. Jessiman et al (2021), using systems thinking, mapped determinants of child health inequalities in order to discover the system from the perspectives of a range of stakeholders, and to visualise it. This was an aim in its own right (ibid), compared to Champion et al (2019), as cited above, who used mapping as a stage before modelling and further analysis. Often mapping is not clearly defined and mapping and modelling are not clearly distinguished from one another. van den Akker et al (2023),

in their review of research using participatory systems mapping, included papers using the term modelling as well as mapping. They found that almost none of the studies reviewed used the same mapping or modelling process (ibid). Sleight et al (2020), not using systems thinking, created an interactive system map to visualise an ethical framework to explore the potential to make health policy more effectively accessible. This is of interest to this study because of its aim to represent written policy, and in particular policy using values to prompt particular actions. This model though is an interactive visualisation tool to help users access and follow policy, rather than a tool for analysing or designing policy, which I undertake.

Mapping and modelling are also presented in terms of policy or process, rather than systems. The term policy modelling is used in relation to mathematical modelling of socio-economic public policy (Ruiz Estrada, 2018). Similarly to systems modelling above, this is modelling of broad processes to explore the effects of different policy decisions. Very differently, the term policy mapping is used in relation to comparison of equivalent policies or identification of related policies (for example, Roleska et al, 2018; Belaid et al, 2020; Stewart et al, 2023). In this case, the term mapping does not necessarily imply creation of a map in a diagrammatic sense. The mapping is a process of exploring and recording the existence of, and similarities and differences between, policies. This may be reported using narrative rather than diagrammatically. The terms procedure mapping and procedure modelling are not in common usage.

Business process modelling, a term used synonymously with process modelling or as a subset of it, is associated with process (or systems) engineering or re-engineering and/or software engineering (Aguilar-Saven, 2004; Jun et al, 2009). Once again this is in terms of discovering or representing a process, or creating or improving it, potentially including simulation (Aguilar-Saven, 2004). Process modelling methods or languages may be diagrammatic or mathematical. Many diagrammatic methods are based on a node-link structure (Jun et al, 2009). Nodes (shapes such as circles, rectangles and/or diamonds) represent stakeholders, information/data, activity (for example, actions and decisions), or states (Jun et al, 2009). Nodes are joined by lines that represent hierarchy, sequence, or flow of information or data, depending on the attribute(s) of the process that the method aims to model (Jun et al, 2009). Examples of commonly used node-link models are communication diagrams (sequences of interactions between roles or departments); data flow diagrams (sequences of data or information between roles or teams); flowcharts (sequences of activities); information diagrams (hierarchies of information or documents

that are used in a process); process content diagrams (hierarchies of activities); stakeholder diagrams (hierarchies of roles or involvement); state transition diagrams (actions needed to change “states” that represent stages of process); and swim lane activity diagrams (sequences of activities as in a flowchart but with activities arranged into lanes representing who is responsible) (Jun et al, 2009). These basic forms are those identified by Jun et al (2009), who identify that many modelling methods used in process and other modelling are synonymous with, or developments of, these basic forms. A diagrammatic method that does not use node-line approaches are Gantt charts (sequences of tasks represented by bars sized to a date/time axis) (Aguilar-Seven, 2004).

Literature may also term process modelling using only diagrammatic methods, such those identified by Jun et al (2009), process mapping. Jun et al (2009) treat the terms synonymously. Antonacci et al (2021) also seem to assume synonymity when they refer to “modelling languages” used for process mapping. Alternatively, a similar distinction may be made to that made in some cases between systems modelling and mapping. For example, Aikenhead et al (2015) make a distinction between process maps and qualitative causal loop diagrams that they refer to as models, perhaps because these could be used for simulation, or because of conventions of terminology used within different areas of modelling and mapping. The roots of process mapping lie in software design with subsequent modelling of organisational processes, initially because of their relationship to computerised processes (Curtis et al, 1992). Anjard (1996) terms process mapping a “quality tool for management ... professionals” (p.1). Process mapping is most associated with flowchart diagrams and a development of these, swim lane diagrams (Jun et al, 2009) with processes generally represented by such node-link structures, with nodes representing steps (rectangles) and decision points (diamonds), joined by lines representing the flow of the process. Some maps use additional shapes influenced by flow charts to represent when records are made or a wait for something to happen (see Savory and Olson, 2001).

The node-link approaches to modelling or mapping are relevant to my work because some of the graphical objects used feed into my *action pathways approach*. For example, the concepts of steps and decision points used graphically in node-link diagrams are used conceptually in my *action pathways approach*. The *approach* does not use a graphical representation like process mapping because the low level of abstraction needed to faithfully represent HRM-signalling and retain the textual detail of written policy and procedure would result in overly complex and unreadable diagrams. It does however use the concepts of steps and decision points. From the perspective of wanting to analyse



written policy and procedure, diagrammatic mapping and modelling approaches and methods lack ways to represent both the textual detail and thus HRM-signalling detail, and the social elements (Biazzo, 2002) of processes and systems. Even flowcharts, which represent a fairly low level of abstraction in presenting processes step-by-step and decision-by-decision, abstract at too high a level. Maps and models might represent what needs to be done, by whom, and what information or data is involved, but there is little or no scope for including detail about how or why these things should be done, that is common in HRM-signalling, and the necessary HRM-signal detail, that is signal content and attributes, outlined above.

#### 5.1.6. Interaction-approaches

In Chapter 9, I use the concept of management interaction-approaches to propose *organisational interaction-approaches*. I use Wright and Taylor's (1994) classification of manager-employee interaction, a development of Maier's (1958) work on appraisal interview types. It sequences interaction from autocratic approaches to those that give greater employee involvement and control: "Tell", "Tell and Sell", "Tell and Listen", "Ask and Tell", "Problem Solving", and "Ask and Listen" (Wright and Taylor, 1994, pp.197-225).

Maier's (1958) original types of appraisal interview, "Tell and Sell", "Tell and Listen" and "Problem solving" place the interviewer (FLM) in the role of "judge" in the former two, and "helper" in the latter (p.39). "Tell and Sell", as presented by Maier, involves telling the employee what the appraisal of their performance is and convincing them to accept and act on this (ibid). The "Sell" element may take the form of threat of punishment or promise of reward (ibid). Maier identifies this approach as sometimes positive when an employee is inexperienced (ibid). It carries risks of resentment if the appraisal is seen as unfair or as imposed, and may discourage use of the employee's own judgement, both of which might lessen employee motivation to act on the appraisal (ibid). This approach does not invite the employee point of view and is seen as risking suppressing this leading to unexpressed discontent (ibid). "Tell and Listen" includes the same delivery of appraisal but also includes an opportunity for the employee to respond to it (ibid). This is seen as reducing the risk of resentment or at least as allowing for its expression, with positive implications for feeling heard and motivation (ibid). However, this approach may not address adequately the nature of change needed (ibid). Maier's third approach, "Problem Solving", does not deliver an appraisal but rather asks the employee for their own assessment of their performance and suggestions for improvement, which are discussed supportively without

judgement or the imposing of solutions from the interviewer (ibid). This is seen as positive in terms of the employee feeling heard, contributing their expertise, and being encouraged to use their judgement (ibid). Wright and Taylor's (1994) version of this looks for mutually acceptable solutions and is seen as making good use of employee knowledge (1994). It may not be appropriate where the employee is too inexperienced to contribute, or, when the necessary solution is restricted and so the manager cannot truly consider the employee's suggestions (ibid).

Wright and Taylor (1994), extend Maier's classification and apply it to manager-employee interaction more widely. They add a "Tell" approach at the more autocratic end of the scale, an "Ask and Tell" approach in the middle, and an "Ask and Listen" approach at the end of the scale that allows more employee input and control (ibid). "Tell" where the employee is simply told what to do or not do, is seen as advantageous in terms of time or as a last resort (ibid). Like, "Tell and Sell" it is seen as risking resentment and potentially lowering motivation (ibid). "Tell" and "Tell and Sell" approaches do not provide an opportunity for the manager to seek the employee point of view or to learn from the employee (ibid). "Ask and Tell", introduces an opportunity to seek the employee's point of view before telling them the decision (ibid). This allows the manager to learn from the employee and to decide their position in light of this, but still involves the manager imposing the solution (ibid). "Ask and Listen", similarly to "Problem Solving", does not deliver an appraisal but rather asks for the employee's own appraisal, with the manager attending to the reply (ibid). This has advantages of "Problem Solving" in that the employee is heard and the manager can learn from their point of view, except that the issue may not actually be resolved by this approach on its own (ibid). It does however allow the FLM to understand and learn from the employee's position before acting or expressing an opinion (ibid).

Both Maier (1958) and Wright and Taylor (1994) acknowledge that managers will move between these approaches rather than using them in the artificially separate forms presented by their models. Interestingly, Wright and Taylor (1994, p.201) see "Tell and Sell" as the most appropriate approach for disciplinary situations. I will comment on this in Chapter 9 in relation to my analysis of policy documents.

### 5.1.7. Summary of theoretical framework

To summarise, the theoretical framework is created by three assumptions and three areas of literature that inform the study results. The first assumption is that human resource management (HRM) is delivered to employees in the form of intentional and unintentional signals, including by written policy and procedure. The second is that written policy and procedure documents are an appropriate data source that allows analysis of 'official' organisational intentions in relation to processes. The third is that institutional racism provides a structure within which to conceptualise the existence of, and organisational responsibilities regarding, risks associated with prejudice or bias. For example, the risk of written policy and procedure becoming a site of institutional racism and responsibility to use written policy and procedure to deter it.

The areas of literature that inform the study results are pathways and mapping and modelling of processes that inform my *action pathways approach*, and management interaction-approaches that I use to propose *organisational interaction-approaches* in Chapter 9.

## 5.2. Conceptual framework

The literature discussed in Chapter 2 - Chapter 4 and 5.1 above, create the conceptual framework for this study. Disciplinary disproportionality and a causal mechanism for it, related to the use or avoidance of informal action, have been introduced. These phenomena provide the motivation for the study and its focus on informal procedure. Most of the literature and data in the UK regarding disciplinary disproportionality relates to the public sector, which prompted the choice of domain for the study.

The disparate literature that relates to informality, shows that organisational informality is more widely associated with differential experience for Black, Asian and minority ethnic employees than just in relation to the use of informal action. Also, that intended informal processes described by written policy and procedure should be seen as unusual as a form of informality and thus worthy of exploration in their own right. The conflict management literature shows that there are barriers to the use of informal action more widely than in relation to Black, Asian and minority ethnic employees. Barriers to the use of informal action and to fairness and consistency in front-line manager (FLM) actions, are multiple and significant to resolve, and good practice cannot be assumed. This prompts my assumption that fail safes are needed against inconsistent and unfair action by FLMs. The conflict management literature also importantly indicates that FLMs want and need guidance, and

that written policy and procedure are important and influential to FLMs in terms of being an available form of guidance. This prompts the study to explore whether written policy and procedure might allow or deter differential use of informal action.

The conceptual framework is also influenced by parallels in the literatures that create it. As identified above in Chapter 4, there are parallels between the disciplinary disproportionality and conflict management literatures. The causal mechanism identified of differential use and avoidance of informal action by FLMs leading to disciplinary disproportionality, is seen in a more generalised form of avoidance of informal action and premature use of formal procedure in the conflict management literature. The fact that these literatures also identify FLMs as lacking the skills, confidence, willingness, support, and guidance to manage both diversity and conflict, suggests that conflict management and the management of people from Black, Asian and minority ethnic groups are, separately, areas that managers may find difficult, be avoidant in relation to, and lack the necessary skills, support, and guidance to manage well. This means that conflict management in relation to employees from Black, Asian and minority ethnic groups may represent a coming together of areas of managerial weakness.

This suggestion is supported more generally in relation to the management of equality, diversity, and inclusion. Almost identical issues to those identified in relation to conflict management, in Chapter 4 above, regarding competence (understanding), accountability, conflicting priorities, lack of training, and support, are identified by Greene and Kirton (2009, cited by Kirton and Greene, 2016, pp.205-206) in relation FLMs' management of equality and diversity. In another parallel, discretion around equality and diversity may be unwelcome to FLMs, because of a perception that this is a specialist and legally complex area (Foster and Harris, 2005). This is similar to FLM perceptions of HRM tasks devolved to them, including conflict management (Harris, 2002).

The equality, diversity and inclusion literature debates approaches to fairness based around sameness (or equality), that is treating everyone the same way regardless of their situation or needs, and difference (or diversity), that is treating people according to their individual situation or needs (Thomas and Ely, 1996; Kirton and Greene, 2022). Earnshaw et al (2000), in an echo of these debates, highlight the conflict between acting consistently in handling disciplinary situations, and acting inconsistency because of considering the individual employee's situation, as forms of fairness. Earnshaw et al (2000) differentiate between inconsistency through poor management and inconsistency because of

consciously taking circumstances into account, i.e., acting reasonably, and between procedural and substantive fairness. In another related parallel, this time with the conflict management literature that identifies that FLMs prefer to follow formal written procedure in preference to informal action, the concepts driving a difference approach may be especially confusing for FLMs who may be more confident with a simpler and more formulaic sameness approach (Foster and Harris, 2005). Sayer (2007) cuts across the view that sameness and difference approaches are dichotomous. In considering dignity in relation to disability, he makes a statement that applies equally to ethnicity (ibid). He states that dignity is damaged by drawing attention to a disability (difference) when it is not relevant, and by not addressing a disability (difference) when it is relevant, and that vice versa, dignity is respected by addressing a difference when it is relevant and not involving it when it is not relevant (ibid). This strikes a balance between sameness and difference approaches and recognises that both are necessary.

A theoretical framework has been identified that assumes that human resource management (HRM) is delivered by signals, including in written policy and procedure, that documents are a valid data source for this study, and that organisations have a responsibility to acknowledge the risks of prejudice and bias and consider this in the design of written policy and procedure as part of their measures to prevent institutional racism. The research questions for this study were designed in response to the conceptual framework, as was the design of the research aiming to answer these questions that is described below in the methodology chapter (Chapter 6). The research questions are:

1. What HRM-signals about informal action are sent by written policy and procedure?
2. What procedural approaches to informal action do these signals represent?
3. How does written policy and procedure potentially allow or deter the differential use of informal action and other factors leading to disciplinary disproportionality?

The main research design was an extensive documentary analysis of public sector written disciplinary, performance and capability policy and procedure from a large representative sample of English local authorities. The objectives were to explore the signals that the documents deliver regarding informal action, the approaches taken to informal action and the transition to formal action, and potential mechanisms related to these documents that might allow or deter differential use of informal action and disciplinary disproportionality.

## Chapter 6. Methodology

The methodology chapter will describe and justify my research approach, research design, ethical approach, and methods.

### 6.1. Research approach

This section will describe and justify my chosen research approach and associated ontological and epistemological assumptions. To identify a research approach, four categories of assumption from Burrell and Morgan's (1979) analytical scheme for social paradigms were used: ontology, epistemology, human nature, and methodology. This was seen as a process of identifying a research approach as a researcher rather than a research approach for this particular study and thus takes into account some matters that do not apply to this study because of its documentary nature.

#### 6.1.1. Possible assumptions regarding ontology, epistemology, human nature, and methodology

First, considering ontology, the social ontological debate views social, and other entities, as either existing independently of human awareness, or as cognitive or social constructs. This debate is presented variously as a choice, sometimes conflict, between objectivism and constructionism (e.g., Bryman, 2016); realism and nominalism (e.g., Burrell and Morgan, 1979); or empirical realism and idealism (e.g., Fleetwood, 2014).

My research interests include issues related to ethnicity and power, both of which I view as social constructs. This seems to assume a constructionist position. However, my interest in issues such as unfair discrimination, also makes essential the recognition that outcomes may exist even if participants are not aware of them or have erroneous beliefs about their causes. For example, 'real', objective, effects on Black, Asian and minority ethnic groups, in relation to employment outcomes such as disciplinary disproportionality (Archibong and Darr, 2010). The complete rejection of constructionism was undesirable though, because of the importance of being able to accommodate entities which are socially constructed, such as ethnicity, and the need to accommodate the fact that social constructs have 'real' effects or objective outcomes, such as when someone is treated differently because of their ethnicity. An ontology was needed that recognises both socially constructed and objective entities.

Second, considering epistemology, the debate about what knowledge is possible and acceptable, hinges on ontological position and whether the social sciences should use the same methods as the natural sciences. Again, the debate is presented in various related terms, for example, positivism versus anti-positivism (e.g., Burrell and Morgan, 1979), or positivism versus interpretivism (e.g., Bryman, 2016). The epistemological implications will be considered by comparing positivism to interpretivism. This is because to present the debate and associated choices in relation to positivism only, could suggest positivism is the norm against which all other approaches must be measured. There is disagreement about whether positivism implies empiricism (e.g., cf. Bryman, 2016; cf. Burrell and Morgan, 1979), however here I shall assume that empiricism is implied in line with Bryman (2016).

Positivism was rejected as an approach based on its core elements as defined by Bryman (2016, p.24): empiricism; identification of laws; science as value-free; and approach to normative statements. Firstly empiricism, the epistemological belief that, to be acceptable, knowledge must be gained through the senses or experience. I rejected empiricism because my broad research interests relate to fairness in the workplace, and to explore an issue without asking why or by what mechanism it occurs would be to either impose or ignore meaning. Secondly, identification of laws. I am interested in research that occurs in open systems rather than in the closed system of a laboratory experiment, where mechanisms of cause and effect aim to be artificially isolated. It will not therefore be possible to achieve the level of closure needed for prediction and the identification of laws of causality in my research. It is debateable whether this is ever possible in a complex social system (Collier, 1994) such as an organisation. Although the aim of my research was not to identify laws of causality, it was possible to explore potential causal mechanisms that might contribute to differential use and avoidance of informal action. Thirdly, the view of science as value-free, that is as progressing without influence from the values of scientists. The choice of a research topic such as this is likely to be motivated by researcher values. Rather than denying this, it is seen as essential to be aware and open about values to allow their possible impact to be considered. Fourthly, approach to normative statements, that is statements about how the world should be. Whereas a positivist approach might see such statements as empirically unprovable and thus outside the scientific domain, my research approach values normative statements as indications of viewpoints, values or shaping the opinion of the listener or reader.

Rejecting positivism does not imply the rejection of a scientific attitude, however. An attitude that is “systematic, sceptical and ethical” has been aimed for (Robson and

McCartan, 2016, p.15). Certain key assumptions were made: the assumption that social sciences need fundamentally different methods to natural sciences; the aim to explore and understand, rather than observe event regularities; and a belief that it is important to avoid an illusion of objectivity sometimes claimed for positivism. All of this leads to a preference for an interpretivist approach to knowledge. However, my interest in differential treatment and inequality within organisations and wider society, and desire to contribute to literature considering ways to understand and reduce these phenomena, make it vital to avoid a judgemental relativistic attitude, where all attitudes and beliefs are seen as equally valid and true. There must be scope for evaluation and criticism of attitudes or structures.

Third, turning to human nature, Burrell and Morgan (1979) present this debate or assumption as between voluntarism or determinism, that is free-willed human agency versus structural determinism. They point out that intermediate positions are possible, and it is such a position that will be adopted here. It seems vital to recognise both human agency and structural influences. In relation to this research, it is assumed that written policy and procedure is a structural element that expresses organisational intention and influences or partly determines the actions of front-line managers (FLMs). It is also assumed, however, that FLMs have the agency to decide whether to follow procedure. To take an extreme voluntarist or determinist position on this would deny this possibility and the intersection between structural and individual influences.

Fourth, considering methodology, the methodological debate is framed, for example, by Burrell and Morgan (1979) as idiographic versus nomothetic, or by Bryman (2016), as qualitative versus quantitative. The assumptions made above about ontology, epistemology, and human nature led to a broadly idiographic, qualitative methodology where the focus was on exploring in depth the signals sent by the documents and how they might allow or deter differential use or avoidance of informal action, and on a reflexive attitude to researcher values and preconceptions (Bryman, 2016).

To summarise, the following positions were taken in relation to the four strands of the objective-subjective dimension of Burrell and Morgan's (1979) analytical model. A broadly objectivist ontological position, in assuming a reality external to human knowledge or naming of it, but with a recognition of the importance of socially constructed entities. A subjectivist epistemological position, assuming that knowledge, and especially understanding, are best uncovered by exploring the social world from the perspective of actors within it, with recognition that this knowledge may be imperfect. An intermediate



position between objectivism and subjectivism that both human agents and structures shape organisations and society. These three strands lead in turn to an ideographic, qualitative methodology.

Although Burrell and Morgan (1979) state that the four strands may usefully be analysed separately, their model contracts the strands into a subjective-objective dimension which makes it difficult for the model to accommodate a set of positions which mix objectivist and subjectivist assumptions. They establish a position of the mutual exclusivity of subjective and objective assumptions: the two main intellectual traditions sitting at the poles of the dimension, (sociological) positivism at the objective pole, (German) idealism at the subjective pole; and the four paradigms identified by Burrell and Morgan (1979) (once their second dimension of assumptions about the nature of society is incorporated into the model). This position means that the traditions and paradigms within the model could not be easily adopted. Instead, I turned to another research approach, critical realism, which offered a way to reconcile the seemingly incompatible assumptions made above.

### 6.1.2. Critical Realism

Critical realism takes its name from two major areas of Roy Bhaskar's work (Collier, 1994), *The Ontology of Transcendental Realism* (Bhaskar, 1975), and *Critical Naturalism* (Bhaskar, 1979), a philosophy of the human sciences. The ontology underpinning critical realism assumes an objective reality, known as the "intransitive dimension", and multiple interpretations of it, the "transitive dimension". Bhaskar's concept of "depth-realism" is distinguished from the "shallow-realism" of actualism and empiricism by recognising a "real domain" which includes underlying causal mechanisms, as well as the events of the actual domain and experiences of the empirical domain. Entities seen as real within critical realism need not be material. Fleetwood (2004) distinguishes between different modes of reality, namely material, ideal, artefactual, and social.

A key feature of how a critical realist ontology sees the world is that causal mechanisms are seen as stratified in an ordered hierarchy. This has important implications. Firstly, it allows for "vertical explanation", a more basic mechanism explaining a less basic one, as well as "horizontal explanation", explanation of events by mechanisms and causes. Secondly, because more basic mechanisms may partly explain but not replace less basic ones, and because the transitive domain (knowledge, such as discourse and beliefs) is seen as provisional, theories that either directly compete within a scientific domain, and theories from different sciences, may coexist (Collier, 1994).

The powers of an entity, that is the effect it can have in certain conditions, exist whether or not those powers are exercised (and realised). The open nature of systems in human science is recognised, and causation is seen in terms of tendencies. Both (human) agents and structures are recognised as having an impact on causality. This is explained by the Transformational Model of Social Activity (TMSA) (Bhaskar, 1979) in which society, and the relationships of which it is comprised, pre-exists and shapes people, and people either reproduce or transform society.

### 6.1.3. Advantages and disadvantages of critical realism

The critical realist concepts and terminology introduced above, made it possible to consider the strengths and weaknesses of critical realism and what makes it an appropriate approach for the researcher and research topic.

#### Advantages

There are several advantages to a critical realist approach in general which seem particularly relevant to my research. Firstly, critical realism allows for critical evaluation of different discourses, and a search for truth, albeit with the recognition of fallibility of knowledge. It can also however accommodate recognition of, and respect for, the value of personal meaning and the individual viewpoint by recognising different modes of reality. This provides concepts and terminology for consideration of alternative reasons for beliefs than those stated, such as by Likupe et al (2014) (in a study not identified as critical realist in approach), who identifies implicit bias as a cause of managers withholding development opportunities, rather than managers' stated reason that Black African nurses are not interested in self-development. Secondly by assuming the open nature of social systems, and the influences of structure and human agency, the complexity of influences can be recognised, without either decontextualizing, falsely simplifying, or denying levels of influence.

Critical realism's identification of causality as tendential and complex, the identification of transfactual power, power that is exercised but not actualised, and focus on both identifying and understanding mechanisms, allows recognition that people may act similarly for different reasons, and that the fact that an influence tends to a particular effect does not mean that effect will be observed every time the cause is present. This allows consideration of how influences interact to moderate and mediate particular tendencies. This ontology and approach, avoids the illusion of certainty often seen in laboratory-based experimentation related to whether measures are in fact measuring what they purport to,

whether causal effects occur for the reasons assumed, as well as potential uncertainty regarding the implications of statistically significant effects in terms of real-world significance.

#### Disadvantages

The nature of criticisms of critical realism from outside the approach are understandably dependent on the alternative approach they are levelled from. Empirical realists might argue that a critical realist approach makes it impossible to make statements about cause and effect when researching an open system. Also, that researcher objectivity is less likely, and influence on participants more likely, using qualitative methods. A critical realist response would claim the greater value of understanding, as opposed to simply observing, phenomena, and the value of including rather than artificially excluding multiple and complex mechanisms. It would also point to criticisms of the claim that natural science is context and value-free. Idealists might on the other hand argue that critical realists fundamentally misunderstand the world and how we can understand it. To an extent this is a matter of faith. However, critical realism provides a convincing ontology by allowing the non-material to nevertheless be real and recognising knowledge as fallible and relative.

A disadvantage which should be taken seriously, and which is harder to refute is the implications of participants misrepresenting their understanding of their motives or causes for example due to either a lack of self- or social-awareness, due to implicit bias for example. Whilst such representation would of course represent a 'true' perception on their part, which is relevant and valuable in its own right, they might not represent the truth of why someone thought or acted as they did. There is also the risk of conscious false representations for reasons related to social acceptability. This did not apply to this study because of its documentary nature but would have needed to be considered had the study involved the accounts of participants. Whilst these risks have serious implications, they are not confined to critical realism, and the critical realist approach allows them to be accommodated in a way that approaches which collapse ontology and epistemology do not.

#### 6.1.4. Summary

Critical realism arguably resolves the incompatibility of subjective and objective assumptions discussed above. To conclude, critical realism was chosen as a suitable research approach because the complexity, stratified, and open nature of the social world are recognised. Entities that represent both objective and socially constructed reality, and the related impacts of both human agency and structural influences are accommodated. A

range of approaches and methods that are ontologically compatible are allowed. Subjective accounts may be recognised as valuable without assuming judgemental relativism.

## 6.2. Research Design

The research design included two pieces of documentary research. A minor piece of preliminary work was designed to explore how informal action features in employment tribunal decisions, that is how judges making employment tribunal decisions take into account the use or avoidance of informal action, and content of related written policy and procedure. In light of literature identifying that fear of litigation can be a stronger motivator than employee wellbeing or fairness for organisations in relation to written disciplinary policy and procedure (Jones and Saundry, 2012; Hann and Nash, 2020), it was important to know the significance of informal processes to employment tribunal decisions. This included the ways that judges consider the use or avoidance of informal action, and written policy and procedure regarding informal processes. Although a much smaller piece of work than the local authority document analysis it is nonetheless important because it was designed to inform that work. The aim of the analysis was to provide context to the main focus of the research. Whereas the main documentary analysis, introduced below, was motivated by the documents being seen as fundamental to the study, the documentary nature of this part of the research was motivated by advantages related to employment tribunal decision documents being publicly and easily available online in a text-readable PDF format. This gave access to judges' decision-making processes relatively quickly and easily for what was designed to be a small part of the study. In addition to judges' decision-making, the decision-documents provide a version of events from the point of view of both sides involved. There was an added advantage that the approach was "non-reactive", in that it uses data that is not influenced by the research process (Bryman and Bell 2015 p.554).

The major element of the research, designed to directly answer the research questions, analysed a large sample of written policy and procedure documents from English local authorities (LAs) (local government or councils). I do not regard written policy and procedure as evidence of what occurs in practice within organisations. Instead, I regard the documents as, put one way, a statement to intended audiences, such as FLMs, other employees, and potentially external readers, of what the official organisational position is about what should happen (Newton and Findlay, 1996; Atkinson and Coffey, 2004; Bell et al,

p.510), and put another, in terms of the HRM-signals delivered by the documents, intentionally or unintentionally. I see the signals as entities that are “ideally real” (Fleetwood, 2014, p.204) or “ideationally real” (O’Mahoney and Vincent, 2014, p.7) though not materially real. Written policy and procedure will be only one source of HRM-signals that FLMs are subject to and only one influence on them amongst many, be they individual, organisational, or societal. The documents are, however, seen as important and influential to FLMs implementing them, for the reasons identified in Chapter 4. The assumption is not that what occurs in practice is determined by these documents, but that the documents are an important part of the context within which the causal mechanism of differential use of informal action leading to disciplinary disproportionality operates. The documents and the signals that they deliver are stratified entities with causal power to potentially influence FLMs. The power of the document as the higher-level entity was assumed to be likely to be actualised because of the assumption that written policy and procedure is influential, although it is not assumed that the power of each signal, as lower-level entities, would always be actualised or act in the same way. The documents and signals are assumed to create potential mechanisms that depending on other entities in action outside of the documents may allow or deter differential use of informal action and associated disciplinary disproportionality. This documentary design had the advantage of allowing a large number of organisational procedural approaches to informal action regarding disciplinary, performance and capability matters to be examined in detail. An additional advantage was, again, that this is an approach that is “non-reactive” (Bryman and Bell, 2015, p.554).

## 6.3. Methods- Policy and procedure

### 6.3.1. Sampling of organisations

It was decided to examine the disciplinary and performance or capability policies of local government authority organisations in England. The public sector was chosen because this is where previous work on disciplinary disproportionality has been focused (Tamkin, 2000; Morris et al, 2004; Archibong and Darr, 2010; Smith et al, 2012; Sehmi, 2015; Archibong et al, 2019). Local authorities were chosen to follow on from Tamkin’s (2000) work. A list of local authorities (ONS, 2018a) was downloaded from the Office for National Statistics website. A sampling strategy was designed, with purposive sampling used to ensure that organisations from a representative range of geographic and demographic locations were sampled. To select the sample of organisations, a spreadsheet was created with a row for each Local Authority District (LA) and the following columns:

- From the Guide to Presenting Statistics for Administrative Geographies (ONS, 2018a) Hierarchy of Geographies:
  - Local Authority District or Unitary Authority (LA)
  - Region (See Appendix A for a list of regions)
- From the 2011 Census table KS201EW Ethnic Group (ONS, 2011), for each LA,
  - Percentage of people who identified their ethnic group as white (*%white*)
- From Rural-Urban classification of LAs (RUCLA) in England 2011 (ONS, 2018b) (See Appendix A for details)
  - Broad Rural Urban Classification 2011 (Broad RUC11)

*%white* is a coarse measure divided in terms of ethnicity as white or not white, which is clearly a very crude division. However, it allowed a simple categorisation that was used to sort LAs by population ethnicity. *%white* was categorised as *Low*, *Medium*, or *High*, in relation to other LAs in England. These categories were defined using quartiles of *%white* for all English LAs. LAs were assigned to the *Low* group if the *%white* was less than the lower quartile (29%-87.3%) and to the *High* group if the percentage was equal to or above the upper quartile (97.4%-98.9%); that is the quarters of LAs with the lowest and highest percentages of *%white* respectively. The *Medium* group contained LAs where the percentage was within the interquartile range (87.4%-97.3%); that is the middle 50% of percentages. It should be noted that for most LAs *%white* is high even in the *Low* group, with a range of 29%-87.3%, and with only 49 of the total 326 English LAs (pre-sampling) with a population of less than 80% *%white*. *Low* here is in comparison to other areas not an absolute measure.

LAs were ordered by Region, Broad RUC11, and *%white*. For each region, Broad RUC11, and *Low*, *Medium*, and *High* *%white* groups, up to three LAs were sampled. For the *Low* group, the three LAs with the lowest *%white* were sampled. For the *High* group, the three with the highest *%white* were sampled. For the *Medium* group the three LAs with *%white* closest to the median were sampled. Where percentages were equal distances from the median the first alphabetically was chosen. Where less than three LAs were within the group that number was sampled. This process created a sample comprised of 128 LAs from a total of 326 LAs (district and unitary authorities) in England. This represents 39% of English district and unitary authorities.

The sample is representative of English regions, broad rural urban classification, and population ethnicity. The strength of this sample is this representation and its size, both of which maximise potential for exploring the approaches taken to informal action by the LAs

in written policy and procedure. The sample also has weaknesses, although there are reasons for the choices made. County councils are not included in the sample to avoid layers of local government being represented. LAs in Wales and Scotland are not included because LA level RUC 2011 classifications were available for England only (ONS, 2016). The population ethnicity data is from the 2011 Census and so is not recent. The decision to use this was made because this was the most recent formal statistical data at LA level at the time of sampling in January 2019. More recent population estimates were not accurate at LA level (ONS, 2017a; ONS, 2017b; ONS, 2019).

### 6.3.2. Data collection

The public-facing website of each sampled LA was visited to search for publicly downloadable copies of disciplinary, performance management, capability, and conduct policies or procedures. Documents were searched for by first using the search function of each web site to search for “disciplinary policy” and “disciplinary procedure” (disciplinary, because this was the policy it was expected most organisations would name consistently and thus be easier to find), and if necessary, reading the organisation’s “publication scheme”. A publication-scheme (Freedom of Information Act, 2000; ICO, 2019a) is a statutory requirement under the freedom of information act 2000 (Freedom of Information Act, 2000; ICO, 2019b), and lists information made available routinely. If policy documents were found, they were downloaded and recorded. Where documents were not found, details of how to make a freedom of information request for that LA were found and recorded. This was either an email address or a web-form. Freedom of information requests were made for all sampled LAs. Each sampled LA was given a code representing the characteristics it was sampled on, as was each document obtained. The documents were then named using the code with an additional element to identify the policy or procedure type. For details of the coding scheme please see Appendix A. The advantage of using filenames that represented the characteristics that the LA was sampled on was that this information was easily available visibly and computationally.

One LA refused the freedom of information request on the grounds that the organisation provides policies and procedures as a commercial service to other local authorities<sup>7</sup>. Two LAs did not provide documents for reasons not given<sup>8</sup>. Local authorities sent different combinations of policy and/or procedure document types. Some LAs just

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<sup>7</sup> LAD\_R-9\_BRUC11-3\_H-2

<sup>8</sup> LAD\_R-1\_BRUC11-3\_M-1; LAD\_R-8\_BRUC11-3\_M-3

sent disciplinary policy, some sent separate policies for discipline, performance, capability, and conduct. Where for example guidance and policy or procedure documents were sent for the same area, for example discipline, they were merged into a single document. Any additional documents sent that were not of immediate interest, for example grievance policies, were not coded, or analysed. Conduct policies or rules were not analysed. It had been thought these might provide examples of misconduct that was suitable for addressing using informal action or minor, for example, but this was not the case.

125 LAs provided documents in response to the freedom of information request, representing a 98% response rate. 83% (104/125) provided both disciplinary and performance or capability documents. Two sent only documents titled in terms of performance or capability. One of the two stated that the disciplinary document had not been sent because a new disciplinary policy was awaiting approval<sup>9</sup>. The existing document and draft were requested but not sent. The other LA sent a document that covered misconduct as well as performance or capability issues and so this was coded as a *Both* document for the purposes of analysis<sup>10</sup>. Where a single document contained separate disciplinary and performance or capability policies or procedures this was treated here as separate documents. These documents were duplicated and classified as separate performance or capability and disciplinary documents. The irrelevant sections of the documents (i.e., disciplinary sections in a document classified as performance or capability and performance or capability sections in a document classified as disciplinary) were coded to exclude them from analysis.

13% (16/125) of LAs sent only disciplinary documents<sup>11</sup>. Of those, one document appears to cover poor performance / capability issues as well as misconduct<sup>12</sup>, although it is difficult to be certain because of the different possible usages of the term performance, and so was classified as a *Both* document (and thus does not appear as a disciplinary document in the table below). Two documents are not clear in relation to whether the document covers performance or capability issues or not, so were just classified as disciplinary<sup>13</sup>. 13

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<sup>9</sup> LAD\_R-8\_BRUC11-2\_M-2

<sup>10</sup> LAD\_R-9\_BRUC11-3\_M-1

<sup>11</sup> LAD\_R-3\_BRUC11-3\_L-1; LAD\_R-4\_BRUC11-1\_M-2; LAD\_R-4\_BRUC11-1\_M-3; LAD\_R-4\_BRUC11-2\_H-1; LAD\_R-4\_BRUC11-3\_H-2; LAD\_R-4\_BRUC11-3\_M-3; LAD\_R-6\_BRUC11-2\_H-2; LAD\_R-7\_BRUC11-3\_L-3; LAD\_R-8\_BRUC11-1\_H-1; LAD\_R-8\_BRUC11-1\_M-3; LAD\_R-8\_BRUC11-2\_L-1; LAD\_R-8\_BRUC11-2\_M-1; LAD\_R-8\_BRUC11-2\_M-3; LAD\_R-9\_BRUC11-2\_M-1; LAD\_R-9\_BRUC11-3\_L-1; LAD\_R-9\_BRUC11-3\_M-2

<sup>12</sup> LAD\_R-4\_BRUC11-1\_M-3

<sup>13</sup> LAD\_R-3\_BRUC11-3\_L-1; LAD\_R-8\_BRUC11-2\_L-1



of the 16 documents referred in the text to separate performance or capability documents, despite not being provided in response to the Freedom of information request<sup>14</sup>. Three LAs sent disciplinary, capability and performance documents. All three sent “third” documents relating exclusively to informal action or day-to-day performance management applying to both issues of conduct and capability<sup>15</sup>. These informal documents were merged with both of the other two files. Using my naming conventions, the number of LAs sending different combinations of documents is shown in the table below:

*Table 6-1 Combinations of documents sent in response to freedom of information request.*

<b>Combination of documents</b>	<b>Percentage (%) of LAs</b>
Disciplinary and performance or capability	83% (104/125)
Just disciplinary	12% (15/125)
Three documents sent	2% (3/125)
Just <i>Both</i> documents (that address disciplinary and performance or capability issues in the same policy or procedure)	2% (2/125)
Just performance or capability	1% (1/125)

The resulting dataset contains 232 documents: 122 disciplinary documents, 108 performance or capability documents and 2 *Both* documents covering both discipline and performance or capability. Two performance documents are classified as INFDOCs<sup>16</sup>.

*Table 6-2 Documents types as a percentage of dataset.*

<b>Types of documents</b>	<b>Percentage (%) of documents</b>
Disciplinary	53% (122/232)
Perf/Capa	47% (108/232)
<i>Both</i>	1% (2/232)

<sup>14</sup> LAD\_R-4\_BRUC11-1\_M-2; LAD\_R-4\_BRUC11-2\_H-1; LAD\_R-4\_BRUC11-3\_H-2; LAD\_R-4\_BRUC11-3\_M-3; LAD\_R-6\_BRUC11-2\_H-2; LAD\_R-7\_BRUC11-3\_L-3; LAD\_R-8\_BRUC11-1\_H-1; LAD\_R-8\_BRUC11-1\_M-3; LAD\_R-8\_BRUC11-2\_M-1; LAD\_R-8\_BRUC11-2\_M-3; LAD\_R-9\_BRUC11-2\_M-1; LAD\_R-9\_BRUC11-3\_L-1; LAD\_R-9\_BRUC11-3\_M-2

<sup>15</sup> LAD\_R-3\_BRUC11-1\_H-3; LAD\_R-5\_BRUC11-1\_H-2; LAD\_R-9\_BRUC11-1\_M-1

<sup>16</sup> LAD\_R-1\_BRUC11-1\_H-2\_PERF\_INFDOC\_; LAD\_R-1\_BRUC11-3\_L-1\_PERF\_INFDOC\_

### 6.3.3. Terminology and conventions

This section will briefly summarise terminology and other conventions used in this thesis.

#### Terminology:

- A 'document' is LA written policy, procedure and/or guidance related to one of three document types<sup>17</sup> (see next point) sent in response to my freedom of information request or downloaded from the LA website.
- The documents are categorised for the purposes of analysis as three document types: disciplinary; performance or capability; and *Both* (where both conduct and performance or capability issues are addressed).
- Each document name combines the LA coded name plus an indication of document type: DISCI for disciplinary documents, PERF for performance, CAPA for capability, and BOTH for *Both*<sup>18</sup>. INFDOC is added to the document name where a document only refers to informal action and has not been merged with an equivalent document type that addresses formal action. Please see Appendix A for full details of file-naming.
- No attempt is made to distinguish between policy, procedure, and guidance, because the LAs do not use these terms consistently in the documents.
- The term action is used synonymously with some kind of activity, not with the term sanction.
- Action and processes are what occur in practice. Intended action and processes are what organisations intend to happen and describe in procedure. Procedure is also what organisations intend to happen and is written. It is used more or less synonymously with intended processes. Where procedure refers to action and processes, the fact that these are intended is assumed. Stage is sometimes used to refer to part of written procedure.

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<sup>17</sup> Where more than one of the above was provided by a LA in relation to the same type of document, for example disciplinary procedure and guidance documents, the files were concatenated and are treated here as a single document.

<sup>18</sup> Although the analysis is carried out on performance and capability documents as a single document type because these terms are often used by the LAs synonymously, the names retain their status as titled by the LAs as performance or capability.

#### Conventions:

- Where LAs and documents are quoted in the text their coded name is cited as a footnote.
- When numbers of documents are discussed or tabulated, these are presented in frequency order with most frequent terms discussed or listed first, unless stated otherwise. Where frequencies are the same, items are ordered alphabetically.
- Table headings are 'Disci' for disciplinary documents, 'Perf/Capa' for performance or capability documents and *Both* for *Both* documents.
- Percentages are rounded to the nearest whole number. Because of this, percentages will not always sum to 100.
- If a percentage is greater than or equal to 0.5% it is rounded to 1%, if it is less than 0.5% it is represented as '<1%' i.e., 'less than 1%'.
- Where the denominator is less than 15, a percentage is not given.
- Percentages will also not sum to 100 when documents use more than one of the categories being discussed.
- Where quotations from the documents are given, these are examples of text that illustrates the observation being discussed. They are not a complete catalogue, unless otherwise stated. Example quotes are chosen to illustrate the range of forms that the matter being presented takes in the documents. Such examples of text are presented in boxes with a shaded background to identify them.
- Terms related to my codes or terms that I am contributing are *italicised*.

#### 6.3.4. Coding and further analysis

##### Choice of analysis technique

I considered whether my analysis method should be rhetorical, discourse, content, or thematic analysis. The decision took into account the facts that the methods overlap and are defined in different ways by different authors (Tight, 2019) and that my analysis seemed likely to have elements of all four. Two factors particularly influenced my decision. First, that I wanted to analyse a large dataset to explore approaches being taken across a sector and how elements of those approaches might allow or deter disciplinary disproportionality. In relation to this, I needed an approach that would allow breadth and depth of analysis within the bounded timescale of the project. Second, I needed an approach that would allow me to consider the documents in HRM-signalling terms. Rhetorical analysis was considered because the documents have a fundamentally rhetorical role of aiming to

influence how disciplinary, performance or capability issues are handled by FLMs, and the analysis would thus involve identifying rhetoric. For example, in relation to how disciplinary or performance issues were expected to be handled. Rhetorical analysis was ruled out because I wanted to explore the documents in different terms to only their rhetorical aims, such as the approaches that the documents signalled and how they might deter or allow differential use of informal action. Similarly, discourse analysis was considered and rejected because, although the analysis was likely to consider elements of discourse, for example, about organisational values or whether informal action was desirable, I did not expect to code in relation to discourse in linguistic or other technical discursal detail, given the size of the sample and range of themes that I hoped to code for. Some versions of qualitative content analysis would have been compatible with my research approach and may have met my needs, but because content analysis has its roots in positivist and quantitative methods (Neuendorf, 2017; Tight, 2019), I was interested to consider a method that has developed from the qualitative tradition. Thematic analysis is such a method and was chosen because it is a relatively unprescribed method (Braun and Clarke, 2006) that is flexible enough to be able to accommodate HRM-signalling, the different factors that the signals were likely to address and forms that they might take, as well as my need for breadth and depth. It is also compatible with my critical realist research philosophy and approach (Braun and Clarke, 2006) in that it is not prescriptive of a particular ontological or epistemological position and can accommodate critical realism's different modes of reality (Fleetwood, 2004), and levels of, and tendential nature of, causal explanation (Bhaskar, 1979; Collier, 1994).

I used the five choices that Braun and Clarke (2006, pp.81-86) recommend researchers make explicit regarding thematic analysis, to consider the nature of the planned analysis.

1. "What counts as a theme?" – A theme, for the purposes of this research, is a group of codes and subcodes that describe some characteristic of HRM-signals in relation to what is organisationally "valued, expected and rewarded" (Ostroff and Bowen, 2016, p.196). In other words, the themes are elements of how the LAs describe in the documents what is important and what should and should not happen. Related themes are grouped resulting in themes and subthemes. The codes and subcodes label sections of text that illustrate the different approaches that the LAs take in relation to these themes and subthemes. Frequency of occurrence does not affect whether a theme is seen to exist but may affect how it is interpreted.

2. “A rich description of the data set, or a detailed account of one particular aspect” – the analysis was designed to allow a rich thematic description of the HRM-signals sent by the documents that related to informal action and the transition to formal action.
3. “Inductive versus theoretical [or deductive] thematic analysis” - Development of the themes was largely inductive based on document content seen as HRM-signals, but an initial phase of building the code hierarchy was carried out based on the literature.
4. “Semantic [explicit] or latent [interpretative] themes?” – Latent themes were identified both in that interpretation of the text was needed to identify HRM-signals and coding and the analysis theorised the implications of the procedural approaches taken by the LAs.
5. “Epistemology: essentialist/realist versus constructionist thematic analysis” – this choice is addressed in detail by the Research Approach section above.

I also considered whether to use numbers in the reporting of the analysis, which was fundamentally qualitative. This is an area that Braun and Clarke (2006) call for more discussion about. I decided that the use of counts and percentages would give both myself and the reader insight into the data and my propositions. The use of numbers should not be taken to imply that the research is in some way quantitative or mixed methods (Maxwell, 2010), or to imply objectivity. The major task of the project was development of qualitative themes, albeit ones that could then be counted (Sandelowski et al, 2009), and their analysis. The use of simple numerical descriptions allowed me to explore and describe patterns in the data and my themes and interpretations (Sandelowski, 2001). Use of numbers also allows the reader insight into “verbal counting” (p.236) such as ‘the majority’ or ‘most’ when it is used (Sandelowski, 2001). In an attempt to avoid “representational overcounting” (Sandelowski, 2001, p.237), that is, where use of numbers might detract from readability, I provide tables of counts and percentages in Appendix D. “Misleading counting” (Sandelowski, 2001, p.238) was avoided by giving counts as well as percentages, especially when a total was 25 documents or less. “Analytical overcounting” (Sandelowski, 2001, p.237) when things are counted that need not be, was less of a concern because the sample was large and I believe it helpfully illustrative of the dataset to identify frequency and proportion, especially when comparing document types. “Acontextual counting” (Sandelowski, 2001, p.239) involving use of numbers to count something that cannot be

counted or insufficient context to assess meaning, was also less of a concern because whilst I aimed to use counts and percentages to illustrate the dataset, and show the prevalence of elements of different approaches, the numbers were not used either to categorise approaches or to justify inferences about them, other than to identify when proportions for different document types were very different.

#### Thematic analysis

Broadly, I used Braun and Clarke's (2006) phases of thematic analysis: "1. Familiarising yourself with the data; 2. Generating initial codes; 3. Searching for themes; 4. Reviewing the themes; 5. Defining and refining the themes; and 6. Producing the report" (p.87), with some adaptation. The adaptations took the form of strategies with two aims: attempting to identify the code hierarchy as early as possible, even if only tentatively; and making best use of the features of qualitative analysis software. NVivo qualitative analysis software, version 11 for Windows, and later version 12, was used to qualitatively code the document texts. These adaptations were for two reasons. The first was that, because of the large size of the sample, going back through the documents to code to any new codes developed was a significant workload. This meant that developing the code hierarchy as early as possible reduced the number of iterations needed to do this. The second reason was that the advantages of using qualitative analysis software meant that merging some of the phases was more efficient. Specifically, to establish the code hierarchy as early as possible I made three adaptations. First, I introduced a preliminary phase, where some initial codes identified from the literature were tentatively put in place (but not yet coded to). This is in line with Braun and Clarke (2006) allowing for the influence of the literature on coding at a stage appropriate to the study. Second, I carried out two iterations of Braun and Clarke's (2006) phases 1-3; the first iteration on a subset of the documents and the second on the remainder. This decision was made with the expectation that the hierarchy would change during ongoing coding development across the rest of the sample, but also that there would be less change than if the whole sample had been examined during this phase. The subsample was a convenience sample of approximately the first third of documents to be provided by the LAs. A more representative subsample would have potentially made this phase more efficient, but this approach allowed coding to begin while awaiting further freedom of information request responses. Third, I initially used keyword searching to identify relevant sections of text, rather than a full reading of each document as recommended by Braun and Clarke (2006).

In both iterations, familiarisation with the data took the form, firstly, of searching for keywords (e.g., “informal”, “formal”, “day-to-day”) to identify parts of the documents related to informal action and the transition to formal action, and then reading just these sections. During this phase, I also coded to new and existing codes, collapsing Braun and Clarke’s (2006) phase 1 and 2. This approach was taken because, when using software for qualitative coding, codes may easily be split or merged, and coded text easily re-coded. This means that tentative identification of codes replaces the notetaking or remembering that would be necessary if familiarisation and initial identification of codes are carried out separately. The code hierarchy was then further developed during a second more complete phase of coding to new and existing codes, on the subsample, this time where documents were read fully rather than searching for key terms and reading quite specifically and quickly. Braun and Clarke (2006) do not identify a separate coding phase, but state that coding occurs throughout the process. For me though, coding and related code hierarchy development, represent phases of their own. What Braun and Clarke (2006) term phase 3, a search for themes, was carried out in both iterations to further shape and develop the code hierarchy. This took the form of reworking the hierarchy to group codes thematically.

The first iteration of coding and theme work for this subsample of the data was in relation to signals about procedural factors such as:

- The presence or absence of provision for informal action.
- How informal action is characterised for example in relationship to day-to-day management.
- Organisational assumptions about informal action, such as when informal action should be taken or not taken.
- The immediate and future implications of informal action.
- Any measures or safeguards to encourage fairness or avoid unfair practices.
- Scope for manager discretion.
- The relationship of policies to Advisory, Conciliation and Arbitration Service (Acas) guidance.

After this, the second iteration of Braun and Clarke’s phases 1-3 was carried out on the remaining documents. This had been intended to be carried out only on the remainder of the sample, followed by a return to the subsample to code to any newly added codes as necessary. However, my ideas about the data developed further and so another full phase

of creating and coding to new codes was undertaken, in addition to coding to the codes created in the first iteration. Here coding was developed to identify signals related to:

- Concepts of pathways towards or away from formal action, focus and tone, and language-use around priorities or aims, informal action and the transition to formal action.
- Codes related to the involvement of senior managers and human resource practitioners (HRPs) in informal action or decisions to use formal action.
- Whether examples are given of types of misconduct that might render informal action suitable or unsuitable.
- A detailed examination of the status of investigation and who is involved.

This was followed by a repeat of the phase 3 “search for themes” to accommodate new codes. During this phase, themes and codes were moved within the hierarchy, split, or merged as necessary. A final phase of coding involved rereading the sections of all documents that related to informal action, investigation and the transition to formal action, and coding as necessary to the code hierarchy, that I now saw as frozen, as in no longer subject to change or development. I introduced a separate checking phase to identify omissions or contradictions in the coding. This was carried out by querying to identify documents that were not coded to a particular code sub-hierarchy, or sections of documents coded to contradictory codes that should not occur together either for the same piece of text or within the same document. The phases above were considered to be a process of document-level analysis.

In the final stages of analysis, code- and theme-level analysis was carried out. It should be noted that when creating a code hierarchy by hand, NVivo does not distinguish between themes and codes; everything is a code. For my analysis, however, and during coding I treated higher level codes in the coding-hierarchy as themes and subthemes, and lower ones as codes and subcodes. The level at which themes became codes was not fixed; it depended on the nature of the theme. Each sub-tree of the code hierarchy was examined. This was equivalent to Braun and Clarke’s (2006) phase 4, “reviewing the themes”. Some coding-on was carried out during phase 4 to further subdivide codes where necessary, for example to refine the different approaches identified in the documents. Phase 5, “defining and refining themes”, analysed in detail the different approaches taken by LAs, and the implications and reasons for the themes identified. The whole process resulted in a very detailed level of coding, so it was possible to structure the phase 5 analysis and resultant



first draft of the findings chapter (Phase 6 “produce the report”) based on the code hierarchy with few changes.

The value of my adaptations for this study is that a preliminary phase is introduced that allows code hierarchy to begin to be created from relevant literature; use is made of features of qualitative analysis software that allow document familiarisation and tentative code-hierarchy creation to be carried out alongside each other; querying and keyword searching are used to identify initial areas of interest; and a subset of the data is used for initial coding. These adaptations were made to reduce the workload during the phases when the code hierarchy is changing often, reducing the amount of re-coding needed. The adaptation also makes document-level checking an explicit part of the process. This is an important phase to ensure the integrity of the coding before code- and theme-level analysis.

## 6.4. Methods – Employment Tribunal Decisions

The minor piece of preliminary work designed to explore how informal action and procedure features in employment tribunal decisions (ETDs) was carried out before the LA policy and procedure analysis but is presented in this order because it is less significant to the research overall. I adopt the convention used within the decision-documents to use the terms claimant, for the employee, and respondent, for the employing person or organisation. These terms and the abbreviations for them, “C” and “R”, that are commonly used in the documents, will be seen in quoted text from the documents.

### 6.4.1. Sample

I explored ETDs with a jurisdiction code of “unfair dismissal” for the April and July quarters of 2018. The period before this was not explored because between the introduction of employment tribunal fees in 2013 and fees being deemed unlawful on 26<sup>th</sup> July 2017 ([2017]UKSC 51), fees suppressed the number of cases brought (HoC, 2016), and may have affected the types of cases being brought. The April quarter was the first quarter after fees were removed where receipts of cases were back up to pre-fee levels (MoJ, 2018). The mean age of a single-claim case, i.e., a case brought by a single employee, at disposal at this time was 28 weeks (MoJ, 2018). Although this means that not all cases in the two quarters examined will have been received after the abolition of fees, the decision to explore the sample was made rather than delay the research until all cases were post-fees both to maintain the timescale of the research and because numbers were recovering.

### 6.4.2. Data collection

Employment Tribunal Decisions are publicly available for download from the Courts and Tribunal Service on the Gov.UK website (<https://www.gov.uk/employment-tribunal-decisions>). A piece of software was developed<sup>19</sup> to “screen-scrape”, that is to identify and download information from the website. ETDs with an “unfair dismissal” jurisdiction code for the April and July 2018 quarters were downloaded and a spreadsheet populated with a title, decision date and jurisdiction codes. Where there was more than one decision document per case, the documents were merged into a single PDF file. This data-collection process was not completely automated because of inconsistencies in how the webpages were coded.

Another bespoke piece of software<sup>20</sup> explored ETD titles and categorised the ETDs by renaming the PDF files. The categorisation was made based on whether the ETD title contained terms suggesting as private, or one of several public sector organisation types, or none of these. Where the organisation type could not be identified from the title, the filename reflected this as unknown. Please see Appendix B for further details about the terms used to identify the organisation sectors and the file naming. The filename coding allowed respondent types and cases to be easily identified during analysis, both visibly and computationally. For the April and July quarters, on the download dates of 09/11/2018 and 10/12/2018 respectively, this process resulted in a total of 2361 cases for which there were decision-documents available online. This breaks down as 951 decisions in the April quarter and 1410 decisions in the July quarter. Overall, there were 1505 decisions relating to private companies, 102 to local authorities, 94 to NHS organisations, 12 to police services, and 648 where organisation type was unknown. These unknown documents could be private or public sector, but it would have been too time consuming and give little benefit to have categorised this large number of documents by hand.

### 6.4.3. Analysis

As in the policy and procedure document analysis, thematic analysis was carried out in Nvivo, with the same iterative approach taken to developing the theme and coding-hierarchy and of codes motivated both by the literature and document content. The high number of decision-documents meant that “triggers” (Barnard and Ludlow, 2016), or search-terms, were exclusively used to identify employment tribunal cases of interest. The

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<sup>19</sup> Coded by Nick Exon

<sup>20</sup> Coded by Nick Exon.

availability of digital versions of decision-documents and qualitative analysis software allowed the triggers to be combinations of words in the form of queries (I term these *trigger-queries*). These queries could be simple or complex. For example, a simple query searching all tribunal cases for the words “informal OR informally” (informal\*), compared to a more complex query identifying cases with reference to the policies of interest, i.e., disciplinary, performance, and capability, by creating what NVivo calls a compound query. This identified cases with the word “disciplinary”, “capability”, or “performance” preceding within 5 words one of a series of synonyms for policy, procedure, or rules (see Table C-1, query 1, for details of this query).

Cases identified by the trigger-queries were then further explored, and manually coded if of relevance. This method may not have identified all cases with relevant text because the natural-text nature of the decision-documents meant that many different forms of words were used, making querying unreliable. The queries could not be used for automatic coding based on keywords because the terms of interest were also used in ways not relevant to the research topic. These limits are not seen as a weakness of the trigger-querying method, rather as a compromise between completeness and time overhead. This method was designed not to be time consuming despite the large sample size, and queries were written so as to maximise search results for this method. For example, Table C-1, query 5 searched for cases where the term formal or formally occurred but not the term informal or informally. The context of use of formal terms was then explored manually for usage related to informality expressed in terms of formality (e.g., “a less formal approach”).

Of the 2361 tribunal cases with an unfair-dismissal jurisdiction, decided during the April and September quarters of 2018, just 97 included words with the root informal. The query used to identify references to policies of interest (Table C-1, query 1), identified 144 cases. Within these cases, a query for terms related to informal action (Table C-1, query 2) found 25 cases. The same query applied to all cases (Table C-1, query 3) found 51 cases (i.e., not just those with reference to disciplinary, performance or capability policy). Not all the cases identified by the query did in fact refer to informal action, largely because of the use of the word “counselling” to refer to both an informal management action, and therapeutic counselling. These two usages could not be distinguished by the query and were distinguished instead by reading the text. Given the small numbers of tribunal cases where informal action or procedure was referenced, rather than considering only public sector organisations, or policy or procedure related to disciplinary, performance or capability issues, all references to informal action or procedure (identified by query 3) were

considered to be of potential interest. This approach was productive in that it identified some examples that applied to other policies but could equally apply to the policies that are my focus. The presence or absence of informal action or procedure was identified in relation to absence, capability, conduct, dignity, disciplinary, grievance, and performance policies and/or procedures. Approximately 209 cases identified by the trigger-queries, which is 9% of the dataset, were examined for relevant text related to informal action or procedure. 47 ETD documents were identified as relevant, manually coded, and themes developed. The number of cases identified as relevant is very small, only 2% of the cases in the dataset, and the examples cited below may be single examples. Despite this, the situations and reasons for judgement identified are illustrative of the ways that judges may consider the use or avoidance of informal action and written policy and procedure in relation to it. The examples often do not specifically refer to the ethnicity of the claimant, so my analysis was unable to explore any impacts specific to Black, Asian and minority ethnic claimants. Queries were also used to explore the coverage related to particular themes. Table C-2 details the main queries.

## 6.5. Ethical approach

Whilst the project did not take the form it did for this reason, there are ethical advantages to the project design. The research topic is highly sensitive. This is the case both at an organisational and individual level in terms of fears of litigation or reputational damage associated with any suggestion of differential treatment or outcomes for employees because of their ethnicity, a protected characteristic under UK equality law (Equality Act, 2010). The documentary nature of the data collected and the fact that there were no human participants meant that, although the research topic is highly sensitive, there are almost no concerns related to potential harm at individual or organisational level. Ethical considerations would have been significant had the research involved human participants.

For the policy and procedure document analysis, there was a small potential for reputational damage and individual feelings of being criticised, if authors of documents perceived that they were being negatively critiqued or that LAs were being named and shamed. As well as harm related to a perception of organisational or personal criticism, I did not want to affect my own or other researchers' chances of access to the LAs in my sample in the future. For these reasons organisations are not named here. Although organisations are sometimes identified in research reports related to differential

employment outcomes for employees from Black, Asian and minority ethnic groups, I felt that doing so in this case would not add anything to the research results and would not justify the, albeit low, risk of harm. There is a small risk of sections of text being identifiable to readers who are familiar with a LA's written policy and procedure or that, where documents are publicly available, that the documents that extracts come from could be found. To reduce the risk of this, as well as anonymising LA names in quotes from the documents, I also did the same for distinctive policy or proforma names.

In contrast, employment tribunal decision documents contain details of individuals, including in some cases special category data. I obtained specialist advice about this. General Data Protection Regulation (GDPR) ((EU) 2016/679) does not apply to the documents because of the legal basis "reasons of public interest" used to justify its publication by the Ministry of Justice. Despite GDPR not applying, it is important to me not to cause or perpetuate any distress or reputational harm to any person or organisation named within the tribunal decisions. My writing does not name individuals or organisations, and they are anonymised when quoting from decision documents, by replacing them with initials in square brackets. Where square brackets do not surround initials, this is as written in the ETD document.

Another ethical consideration was my personal positionality and how it might influence the study. My ethnicity, age, personal and political belief systems, work and volunteering experiences are all relevant. These factors have influenced the choice of research area and the form that it has taken. I am a white woman in my 50s. My ethnicity means that I have been in receipt of privilege associated with conceptions and perceptions of whiteness (McIntosh, 1989). I have felt favourably regarded, heard, and seen in the workplace. I have not experienced discrimination, despite potential for it in relation to my gender. I have also not experienced being subject to disciplinary or performance processes. I have experience of the workplace: of enacting and being subject to written policy and procedure; of different styles of management. I worked in a role related to accessibility for disabled students at a UK university for six years. This experience taught me that there are a variety of attitudes to equality, diversity, and inclusion held by people with power to affect experiences and outcomes. Some work hard to do the right thing, and some achieve their aim, but others inadvertently do not, despite their intentions. Some will express that these efforts are not worth their time for what they see as a minority of people, even in the face of a legal context that should make this attitude untenable. Studying for a postgraduate diploma in diversity management, introduced me to ideas and literature about disciplinary

disproportionality, privilege, prejudice, bias, racism, and the socially constructed nature of race and ethnicity. Volunteering for an advice agency has shown me that employees subject to workplace disciplinary processes, even informal ones, can find them stressful, confusing, and overwhelming. They can perceive them as an attack on their self-belief and on their emotional and financial wellbeing. My left-leaning political beliefs and a more personal belief-system that prioritises individuals and their experiences, mean that this study focuses on employee experience and outcome, rather than organisational performance or legal compliance. This might suggest the risk of an assumption, to put it simplistically, that employees are good, and that managers and organisations are bad. My focus on individuals partially mitigates against this because it allows me to recognise that many people in positions of power within organisations are acting well or attempting to do so. I also recognise, though, that some will nonetheless fail to, for individual or organisational reasons, and that not everyone's intentions are good in relation to every employee that their action will affect. While exploring data I have taken care to consider whether my reactions to it might represent a biased response caused by my positionality. I believe that my self-awareness and reflexive approach to my work have helped to guard against bias related to my positionality, but I also believe that full self-awareness may not be possible. A way that I could have mitigated further would have been to ask another researcher to check my coding for bias. This would have been a massive task to ask as a favour, but I will plan to build it into future funded research.

The next chapter presents the findings and discussion for the employment tribunal decision analysis. This is followed by findings and discussion chapters for the local authority written policy and procedure analysis.

# Chapter 7. Employment tribunal decision document analysis

## 7.1. Findings of ETD document analysis

The analysis of employment tribunal decision (ETD) documents that refer to informal action or procedure identifies several significant themes. These are that informal processes described in written policy and procedure may be used by tribunal judges as evidence of organisational intentions that should have been complied with. Informal action taken or not taken, may be used as evidence of, not just action itself and whether this was reasonable and followed organisational procedure, but also attitudes towards the employee, such as goodwill, concern, or support, when informal action is taken, or lack of these when it is unreasonably not taken.

There are ETDs where judges took informal action into account alongside formal action, and it seems that the two were considered as one when considering whether action had occurred, concerns had been raised, warnings, or training had been given. For example:

*“There was no formal or informal disciplinary action taken against the Claimant”<sup>21</sup>.*

*“no disciplinary action whether formal or informal resulted”<sup>22</sup>.*

*“... there were some concerns over performance, none had been raised with her, whether formally or informally”<sup>23</sup>.*

*“at no time was the Claimant individually taken to one side and advised either formally or informally that the Respondent considered that it was his performance and/or part-time hours that were causing quality issues ...”<sup>24</sup>.*

*“... no express warnings – even informally - were given to her”<sup>25</sup>.*

*“no evidence before me of any training (formal or informal) given to employees ...”<sup>26</sup>.*

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<sup>21</sup> PSpOs\_\_3201183\_2017

<sup>22</sup> Priva\_\_3201387\_2017

<sup>23</sup> Priva\_\_3329426\_2017

<sup>24</sup> Priva\_\_3400711\_2016-2\_merged

<sup>25</sup> Priva\_\_2302493\_2017

<sup>26</sup> PSpOs\_\_1301963\_2017

This also applies to actions by claimants:

*“Further, the Claimant had not previously raised any concerns, either formally or informally, about alleged lone working or lack of support from registered nurses”<sup>27</sup>.*

Also, guidance from EHRC used by judges to define “provision, criterion or practice” (PCP), for the purposes of establishing whether a claimant has been indirectly discriminated against under the Equality Act 2010 because of a PCP, gives equal weight to “any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions”(EHRC, 2011, p.60)<sup>28</sup>.

Lack of informal action was seen as evidence that a respondent did not have concerns about a claimant, for example about their conduct or performance.

*“We have rejected as a fact that there were performance concerns in May 2016. We have found nothing was raised informally with the claimant”<sup>29</sup>.*

*“In short, we find that if he ever did genuinely have concerns of any nature he failed to raise them with her. This also leads us to conclude that whatever concerns there may have been were not particularly serious”<sup>30</sup>.*

Weight was given to the respondent’s own policy or procedure and whether this had been followed:

*“I am satisfied that the Respondent has correctly followed its own internal procedures and also that it followed a fair procedure ... There is no basis for finding that the dismissal was procedurally unfair or in breach of the ACAS Code”<sup>31</sup>.*

*“The respondent failed to follow its own procedures ... No proper minutes were kept of any previous discussion, the claimant was not aware of the matters now levelled against her and was denied the opportunity to change her behaviour in the absence of a formal performance management plan”<sup>32</sup>.*

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<sup>27</sup> PSNHS\_\_3325684\_2017

<sup>28</sup> Priva\_\_3201128\_2017; PSNHS\_\_3300195\_2017; PSPos\_\_2500188\_2018; PSPos\_\_2601166\_2015; PSPos\_\_3323891\_2017.

<sup>29</sup> PSPos\_\_2600316\_2017

<sup>30</sup> PSPos\_\_2600316\_2017

<sup>31</sup> Priva\_\_2600402\_2017

<sup>32</sup> PSPos\_\_2500188\_2018



In the absence of a policy giving examples of conduct that might be dealt with informally, a judge might disagree with the handling of an issue:

*"I am not satisfied, had the respondent conducted a fair procedure, that the claimant would or might have been dismissed in any event. If considered fairly, the claimant had explanations which discounted any serious misconduct or put the criticisms of his behaviour in a context where the circumstances were mitigated substantially. Such issues as a failure to wear the uniform and producing notes of a service user late were shortcomings which usually would be dealt with informally. Even if amounting to acts of misconduct they could not, on any reasonable assessment, warrant dismissal in the absence of a disciplinary history of warnings"<sup>33</sup>.*

Written policy or procedure was not above criticism though, contradiction and ambiguity were highlighted:

*"Returning to the Absence policy, whereas under the short term and intermittent absence section there are gradations of meetings ... as the absence progresses, the long-term absence section does not clearly distinguish between informal and formal meetings. We can therefore understand why the Claimant was expecting an informal return to work meeting as that had been her experience on a previous period of absence, albeit that was probably dealt with under the short term absence provisions"<sup>34</sup>.*

*"The first respondent's disciplinary and dismissal procedure provides that minor issues can often be resolved informally but also sets out under 'Procedure' the steps to be taken 'in all cases of disciplinary action'. The first is 'Investigation' which is stated to be to establish a fair and balanced view of the facts relating to any disciplinary allegations against the employee before deciding whether to proceed with a disciplinary hearing."<sup>35</sup>.*

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<sup>33</sup> PSPos\_\_1801853\_2017

<sup>34</sup> PSNHS\_\_2301382\_2016-2\_merged

<sup>35</sup> PSPos\_\_2301278\_2017-2\_merged

There are examples within the cases where judges both criticised and approved of the use and avoidance of informal action. Informal action was seen as evidence of reasonableness, a supportive approach, willingness to seek a resolution, or lack of ill-will towards the claimant on the part of a respondent.

*“Was there evidence to suggest that the business has support [sic] him whilst on IPP – I was comfortable that there was sufficient evidence to demonstrate he had been supported, for example, Mr [C] had been provided with an informal period under the old process between April to September to improve”<sup>36</sup>.*

*“The suggestions made by the Respondent towards exploring informal resolution, whether by round table meeting or mediation, objectively conveyed a willingness to seek to agree mutually satisfactory terms which the parties could agree upon”<sup>37</sup>.*

*“it was entirely proportionate to put on record that his behaviour was unacceptable. The first respondent had tried to deal with it informally but the claimant had refused to engage and acknowledge any wrongdoing”<sup>38</sup>.*

*“That, of itself, may have been enough for the Respondent to ... proceed down a disciplinary route. They did not do so, at least not formally, instead dealing with the matter as a relatively minor one by way of counselling” ... “KT complained and, again, ... it would have been open to the Respondent (under their procedures and as generally recognised when dealing with allegations of harassment) to have gone down a formal disciplinary route at that stage, but they did not” ... “The fact that this [another act of misconduct] was not pursued and all the reasons I have previously given do not support the Claimant’s conspiracy theory.”<sup>39</sup>.*

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<sup>36</sup> Priva\_\_3325027\_2017

<sup>37</sup> Priva\_\_3325698\_2017

<sup>38</sup> PSPos\_\_2301278\_2017-2\_merged

<sup>39</sup> Priva\_\_1303503\_2017-2\_merged

Use of informal action was seen in a positive light when it was proportionate:

*“R effectively suspended C in any event. What was most important was to ensure that there was no risk to C’s health or patient safety. R had a legitimate aim to maintain its employees’ welfare and to maintain an efficient and safe service to patients. Taking an informal approach in the way that it did was a proportionate means of achieving a legitimate aim. R took the soft option and was justified in doing it, albeit C was upset”<sup>40</sup>.*

Also, as a justification for later taking formal action:

*“The Respondent, having received two separate patient complaints within a few days that the Claimant had promoted [alternative health] products and had allegedly told both patients that she could earn more selling this product than being a midwife, was wholly reasonable in commencing an investigation especially given the counselling that had been given to the Claimant in February 2015”<sup>41</sup>.*

Examples of criticism of informal action taken are restricted to cases where these were seen as being misused by a respondent for their own purposes. For example, use of a less formal dignity policy by a respondent to avoid a formal grievance, informal handling of a complaint to avoid external safeguarding scrutiny, and a meeting branded as an informal performance management meeting that was used in a tokenistic way to tell the claimant that the formal safeguarding procedure was being invoked.

*“The evidence heard by the Tribunal and its consideration of the documentation leads it to conclude that the grievance procedure was more formal than the Dignity at Work procedure, would involve disclosure of witness statements and allow the opportunity to a grieving complainant to question witnesses within a hearing” ... “The purpose of R’s action in substituting Dignity at Work was to take control of a situation and to concentrate on part only of C’s complaints. It sought to control how C’s complaints could progress, limiting the scope and providing a procedure more likely to result in a favourable outcome for R”<sup>42</sup>.*

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<sup>40</sup> PSNHS\_\_2400182\_2017-2\_merged

<sup>41</sup> PSNHS\_\_2601914\_2017

<sup>42</sup> PSNHS\_\_2400182\_2017-2\_merged

*“Mr [B] knew that what Mr [S] had done was serious enough to warrant a referral to [the] LADO [Local Authority Designated Officer] but sought to prevent that by incompletely recording his subsequent discussion with Mr [S]. Effectively, Mr [B] was looking to sweep a safeguarding concern under the carpet” ... “this issue was dealt with informally and in a way that prevented proper regulatory scrutiny. There was no reasonable cause for this ...”<sup>43</sup>.*

*“We find this meeting was not a two way exchange to informally discuss performance, but simply for the purpose of Mr [C] informing the claimant that he had already decided to implement the formal PIP. In other words, whatever concerns he may have had, he never sought to raise them with the claimant or otherwise manage them in any way short of the formal PIP process”<sup>44</sup>.*

Respondents were criticised for not taking informal action, in terms of this being inappropriate for the issue being addressed and avoiding dealing with an issue informally and then moving straight to formal action.

*“The concern about EP’s problems at home was entirely legitimate and that might ultimately be a reason not to pursue matters by way of a formal disciplinary measure, but it did not excuse the failure of Mr [B] to address the matter at all. There was no evidence that Mr [B] spoke to EP as an informal measure ...”<sup>45</sup>.*

*“If considered fairly, the claimant had explanations which discounted any serious misconduct or put the criticisms of his behaviour in a context where the circumstances were mitigated substantially. Such issues as a failure to wear the uniform and producing notes of a service user- late were shortcomings which usually would be dealt with informally. Even if amounting to acts of misconduct they could not, on any reasonable assessment, warrant dismissal in the absence of a disciplinary history of warnings”<sup>46</sup>.*

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<sup>43</sup> Priva\_\_2403257\_2017-3\_merged

<sup>44</sup> PSPos\_\_2600316\_2017

<sup>45</sup> Priva\_\_2403257\_2017-3\_merged

<sup>46</sup> PSPos\_\_1801853\_2017

*“... setting annual objectives does not necessarily indicate performance concerns. ... we were unable to identify anywhere in the recent chronology or documentation where Mr [C] had actually articulated to the claimant any concerns he may have had about her performance. He did not use “smart” targets in any discussions or meetings with the claimant. In cross examination, he accepted that there may have been times when he wanted to raise a work issue, had it in his mind, but engaged with the claimant in such a manner that she would have left their meeting without any idea that he thought her performance was lacking”<sup>47</sup>.*

*“We note that despite Mr [S] himself witnessing the claimant shouting at residents in a meeting he did not seek to tackle this behaviour, either by putting in place training for the claimant, a performance management plan, issuing her with an informal verbal or written warning or even words of advice about the inappropriateness of rising to the heated situation and using words like “liars” and “lies” and shouting at residents. ... we find it is a startling omission that no action at all arose after this situation” ... “Having failed to warn or coach the claimant after the April and June incidents, it was not reasonable in these circumstances, to consider the November £5 incident to amount to gross misconduct.”<sup>48</sup>.*

There is also an example of criticism where a respondent invoked a formal absence procedure as a result of absence because of an informal suspension, thus rendering an informal situation formal. The judge commented on this as “another way marker along the route to the exit”<sup>49</sup>.

*“Unfavourable treatment: In circumstances where C was reluctantly absent at the behest of R [had been informally suspended], then to invoke stage 3 of the attendance management policy was unfavourable treatment because it made an informal situation formal with the implication that it could lead to stage 4 and termination of employment. Another way-marker along the route to the exit was being passed and that was unfavourable”<sup>50</sup>.*

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<sup>47</sup> PSpOs\_\_2600316\_2017

<sup>48</sup> PSpOs\_\_3325112\_2017

<sup>49</sup> PSNHS\_\_2400182\_2017-2\_merged

<sup>50</sup> PSNHS\_\_2400182\_2017-2\_merged

Managers are also criticised for not following HR advice in relation to informal action:

*“Mr [A] [from HR] advises ... that he should manage the underperformance, to meet with her before looking to relocate her and to speak with her informally about all these matters. Mr [C] stated what he did was following HR advice. We cannot see that he followed this advice” ... “Mr [C] obtained further advice from Mr [A] ... Mr [A] advises that he hold an informal meeting, document his concerns from which he should be able to decide if a formal performance improvement plan (“PIP”) is required. Again, we cannot see that events unfolded as HR had advised”<sup>51</sup>.*

There is also an example where informal action was bypassed in opposition to the respondent’s policy, but the judge felt that this has not disadvantaged the claimant, and this was seen as reasonable.

*“In fact, a formal grievance investigation was commenced in January 2017. This was contrary to the Grievance Procedure of the Practice, which provided for an informal approach to be attempted first. ... As far as I could see from the evidence, the use of a formal procedure put the Claimant at no disadvantage”<sup>52</sup>.*

The decision by a respondent not to use informal action, but to move directly to a formal process, was seen as justified by the serious nature of the misconduct involved.

*“... their complaints [bullying and harassment] are objectively serious ones. Thus it is no surprise that it was decided by the management that these could not be dealt with under the informal bullying and harassment procedure (I am well aware when those engage including such as mediation) but needed to go down the route of an investigation ...”<sup>53</sup>.*

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<sup>51</sup> PSpOs\_\_2600316\_2017

<sup>52</sup> PSpOs\_\_3201183\_2017

<sup>53</sup> Priva\_\_2601066\_2017

*“The Claimant’s submissions ... The issue ought to have been dealt with informally rather than under the disciplinary procedure” ... “The allegation [of deliberate damage to a vehicle] could not reasonably be described as a minor matter and it was therefore not unreasonable for the matter to be dealt with under the disciplinary procedure rather than informally”<sup>54</sup>.*

There is a hint that the inherent nature of informal meetings and action may make them ambiguous and subject to disagreement about their existence or purpose, with scope for claims that informal processes have not been carried out.

*“There was, however, a meeting between him and Mr [G] which the claimant characterises as an informal return to work meeting. ... We are not satisfied this meeting was, as the claimant maintains, the return to work meeting ... we find this informal meeting said to have taken place in the staff changing room is more likely to have been no more than a natural and supportive discussion about the claimant’s sickness absence”<sup>55</sup>.*

*“The Respondent ... in part points to alleged failures by the Claimant to raise pay grievance about matters prior to the meeting at which she was suspended” ... “I accepted the Claimant’s evidence that she had brought in effect an informal grievance in her meeting with the external consultant and the Respondent, which took place before the CQC inspection”<sup>56</sup>.*

*“the Claimant was given no advance warning of the issues to be discussed in the meetings on 23 May, 22 June and 11 July 2017. The first of these meetings appeared supportive and sympathetic, not the informal performance review portrayed by the Respondent’s witnesses ...”<sup>57</sup>.*

One example describes a respondent bargaining with the claimant, offering an informal resolution to a disciplinary matter in exchange for a formal grievance being dropped. In this case, a situation that had become extremely protracted apparently largely because of the claimant’s actions, the judge saw this as the offering of an “olive branch”<sup>58</sup> for mutually

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<sup>54</sup> Priva\_\_4107018\_2017

<sup>55</sup> PSLoA\_\_2601313\_2017

<sup>56</sup> PSPos\_\_3200427\_2017

<sup>57</sup> Priva\_\_3328363\_2017

<sup>58</sup> PSNHS\_\_2402518\_2015

beneficial reasons. It seems possible that this is also a strategy that could be misused to avoid properly dealing with employee grievances.

The findings highlight a number of ways that employment tribunal judges consider informal action taken or not taken, or informal processes described in written policy or procedure, in their decision making. The employment tribunal decision documents explored have shown that employment tribunal judges are concerned with the reasonable use of informal action, although these arise in a small proportion of cases, and that tribunal judges may view both the use and avoidance of informal action as either reasonable or self-interested acts by employers, depending on the circumstances of the case. As well as being judged for reasonableness, use or avoidance of informal action was used as a source of evidence of action or inaction, concern or satisfaction, ill- or good-will, and willingness or reluctance on the part of respondents. Both employer actions and written policy and procedure in relation to informal action were subject to scrutiny. The following of written policy and procedure was generally seen positively, unless policy was seen as ambiguous. Informal processes and action were sometimes seen as ambiguous either in policy or in practice, with employees and managers disagreeing about whether informal action had in fact occurred, its status as informal or formal, and its purpose.

## 7.2. Discussion of ETD document analysis

Given that fear of litigation can be a stronger motivator than employee wellbeing or fairness for organisations in relation to written disciplinary policy and procedure (Jones and Saundry, 2012; Hann and Nash, 2020), there are significant implications to the ETD analysis findings for organisations in terms of how written policy and procedure is designed. Not having taken informal action may be seen by tribunal judges as evidence of the respondent not having had concerns about the claimant, and in turn as reducing the justification for taking formal action. This suggests that there are good reasons for organisations both to require informal action to be taken whenever possible, and to require the written recording of informal action so that it can be used as evidence in tribunal cases.

Whether the organisation had followed their own written procedure was part of the judges' decision-making processes, as was whether written procedure was fair, clear, and unambiguous. There are strong arguments for ensuring that written procedure is all of these things, and in light of the point above, for making informal processes part of written procedure to ensure that front-line managers (FLMs) are fully guided in organisations expectations regarding this. This argument is also strengthened by the fact that judges



were critical of inappropriate use or avoidance of informal action, and positive about informal action used appropriately and when used correctly as a justification for later formal action. Criticism within an ETD of a FLM not having followed human resource practitioner (HRP) advice, suggests that making organisational expectations clear in written procedure, about when advice should be sought and the need to follow that advice, is to be recommended. The fact that judges seemed to view appropriate informal action generally as signs of positive employer intent is also a strong motive for encouraging informal action to be taken whenever possible and for suitably guiding FLMs regarding this. Some of the ETD documents describe disagreement about the status of action as informal or formal and whether an informal stage had in fact occurred in situations where employees and managers had different perceptions about the status of conversations or meetings. This again reinforces the need for well-defined procedure and guidance for FLMs and employees, and also suggests that there may be risks of referring to informal action as day-to-day management, or not being clear about the relationship between day-to-day management and informal stages of procedure.

Informal action is in some ways given equal weight to formal action in ETDs, in terms of whether a respondent is seen to have acted. Tribunal judges may scrutinise the use or non-use of informal action and base decisions on what they find. This suggests that informal processes should be taken seriously by organisations when expressing their intentions and expectation in written policy and procedure, and in their attitude to FLM avoidance of taking informal action.

## Chapter 8. Findings of Local authority written policy and procedure analysis

The aim of this chapter is to explore what local authorities (LAs) signal about their approaches to informal processes and the transition to formal processes through written policy and procedure. This is done with a view to later considering whether the procedural approaches taken may allow or deter the mechanism involving differential bypassing of informal action and highlighted in the literature as causing disciplinary disproportionality. This chapter ends with a findings summary (8.5) that, as an alternative to reading in the order presented, could be read before these, more detailed, sections. The themes developed during my analysis of the document content are explored and presented using the code hierarchy that I developed and that the themes result from. My analysis has produced counts and percentages related to individual codes and subcodes that are used to illustrate the findings. I also provide Appendix D which includes tables of these in full to allow readers to understand in more detail my analysis of the data and approach to categorising it and identifying themes. All tables referred to in this chapter are located in Appendix D.

The findings below show that provision for informal action is almost universal within the dataset, but that LAs describe a variety of approaches to it. The following sections will consider: the positioning of informal action and investigation within the documents; organisational expectations and assumptions about when informal or formal action should be taken or not taken; the implications of informal action at the time it happens and later; and the involvement of other members of staff in addition to the front-line manager (FLM) in decision making.

### 8.1. Positioning of informal action and investigations

This section explores whether and how informal action is represented in the documents in terms of how it is positioned, and the terms used in relation to it and to formal action. This is of interest at a basic level in terms of whether provision for informal action is made, and at a more interpretive level in terms of what can be discovered about the relationship between the informal and formal processes described.

### 8.1.1. Provision for informal action

Presence or absence of provision for informal action

Provision for informal action of some sort, in the handling of disciplinary, performance and capability issues, is clearly made in 98% (228/232) of the documents. In only 2% (4/232) is it not clear whether LAs make provision for informal action. None of the documents provide evidence that provision is not made. Table D-1 shows that there are no notable differences between the document types in whether clear provision for informal action is made or not.

Despite provision for informal action being almost universal, use of the word informal in the documents is not, giving a first indication of potential differences of approach. 5% (12/232) of the documents, six each disciplinary and performance or capability, do not use any terms with the root informal (“informal”, “informally” or “informality”) in relation to a procedural stage or action.

Four documents that do not use the term informal, are not clear about whether there is provision for informal action. Of these, three include actions often but not always seen in the dataset as informal, these are *mediation* and a *discussion with the line-manager*, but it is not clear from the documents whether these are seen as informal or formal within these LAs. The fourth document may take a more formal approach than many of the other documents in the dataset. This is suggested by the fact that an action that is often required to be carried out informally in other documents, that of issuing a management instruction, is stated to be a formal act<sup>59</sup>.

The remaining documents that do not use terms with the root informal, four disciplinary and four performance or capability, nonetheless make clear provision for informal action. Reference to this provision takes two forms. One form, seen in three disciplinary documents and two performance or capability documents, is *reference to day-to-day management*. The justification for viewing day-to-day management as a form of informal action is discussed below. The other, seen in three performance or capability documents, is that informal action is implied by *later use of contrasting terms with the root formal* (“formal”, “formally”, “formality”).

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<sup>59</sup> LAD\_R-4\_BRUC11-3\_H-3\_DISCI\_

Only one of the documents that does not use the term informal also does not use the term formal. Indeed, this is the only document in the dataset not to use this term in relation to a procedural stage or action. This is a capability document, that makes provision for informal action stated in terms of day-to-day management. Of the 96% (220/228) of the documents that use the term informal, unsurprisingly, all include clear provision for informal action of some kind.

The documents that do not make clear provision for informal action were not analysed further. The remaining documents are referred to as “the documents” from this point.

How informal action is positioned in the documents and the terms used to refer to it compared to formal action

How informal action is positioned in the documents, and the terms used in relation to it and to formal action, are seen here as signals about the relationship between informal action and formal action. Such signals give an impression of whether informal and formal action are part of the same process or separate processes. I have identified three approaches taken in the documents:

1. To use the same term to refer to and state requirements for informal and formal action and for both to sit within the same policy or procedure (39% 89/228);
2. To use different terms within the same document (36% 82/228); and
3. To position informal action outside the document<sup>60</sup> by not giving guidance about its use beyond very brief mention (22% 50/228).

A fourth scenario is to be inconsistent in how informal and formal action is presented (3% 7/228). This is not seen as an approach.

It can be seen from Table D-2, summarising the approaches by document type, that performance or capability documents are slightly more likely to use the same term to refer to informal and formal action than disciplinary documents with the opposite situation regarding using different terms within the document. The most notable difference between document types is that disciplinary documents are more than twice as likely as performance or capability documents to position informal action outside the document.

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<sup>60</sup> This term is used as an echo of the documents stating that informal action occurs “outside the procedure”. The term outside the procedure cannot be used because it would not be accurate given the different ways that the documents describe procedure. To state that a document does not give guidance about informal action would also not be accurate because some of these documents do refer to informal action, generally very briefly, for example to advocate it or state that it is an option.

*Same term used in relation to informal and formal action*

Where the same term is used to refer to informal and formal action, the most commonly used terms are “stage” (36% 32/89), “action” (27% 24/89), and “procedure” (26% 23/89). Occasionally, other terms are used, which are listed in Table D-3. Table D-3 also shows that when the same terms are used to refer to informal and formal action, performance or capability documents are three times more likely to characterise informal and formal action as “stages”, and disciplinary documents three times more likely to characterise them as “action”. Where the term “procedure” is used for both, this is done by similar numbers of disciplinary and performance or capability documents.

*Different term used in relation to informal and formal action*

Almost as many documents as those that use the same term for informal and formal action, term informal and formal action differently. In 45% (37/82) of these documents, this takes the form of either a heading referring to informal action that does not use the term “procedure” and a term referring to formal action that does. In 34% (28/82), a term referring to informal action is used followed by subsequent sections that appear to assume that the rest of the document refers to formal action without stating this explicitly. Occasionally other combinations of terms are used (21% 17/82). Table D-4 breaks down these approaches by document type.

Where a heading referring to informal action that does not include the term “procedure” and a term referring to formal action that does is used, the informal term most commonly used, by 32% (12/37) the documents, is “informal (disciplinary) action”. In one such document, the term used is “informal and preventative action”. Other terms used for informal action in conjunction with a “formal procedure”, all used in five or less documents, are detailed in Table D-5. They include “informal stage”, “(informal) counselling”, and “informal discussion”. The terms used where subheadings appear to assume reference to formal action after reference to informal action (all used six times or less) are detailed in Table D-6. Most commonly used are “informal stage” and “informal discussion / conversation”. Where other combinations of different terms are used to refer to informal and formal action, each occurs in only one or two documents. An example is the combination of “informal action” and “formal ... stages”. The terms are detailed in Table D-7.

*Informal positioned outside document*

Where documents position informal action outside the document, some LAs explicitly state this and others imply it. This approach raises questions about the implications of informal action not being addressed in the documents alongside formal action.

Example quotes from documents that are explicit about informal action being outside the document:

*“Informal guidance issued by managers about minor misconduct issues does not come within the remit of this policy”<sup>61</sup>*

*“Management can choose to deal with minor instances of misconduct informally, by way of counselling, guidance or instruction or by informally cautioning the employee. This would not form part of the formal disciplinary procedure. If a problem continues or management judges it to be sufficiently serious, this procedure will apply.”<sup>62</sup>*

And from documents that imply this:

*“STAGES IN THE PROCEDURE 5.*

*INITIAL STAGE 5.1*

*If resolution of capability problems has not been achieved as a result of any informal approach, or the causes for concern are such that it is considered they need to be addressed under procedural arrangements, the initial stage of the capability procedure will normally be the first stage invoked.”<sup>63</sup>*

*“STAGE ONE – Capability/Performance Management Meeting*

*If an employee’s performance has failed to improve following normal day to day monitoring, management support and guidance, the employee should be invited to a capability/performance management meeting”<sup>64</sup>*

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<sup>61</sup> LAD\_R-1\_BRUC11-3\_H-1\_DISCI\_

<sup>62</sup> LAD\_R-3\_BRUC11-1\_H-2\_DISCI\_

<sup>63</sup> LAD\_R-1\_BRUC11-3\_H-1\_CAPA\_

<sup>64</sup> LAD\_R-2\_BRUC11-2\_M-2\_CAPA\_

*“DISCIPLINARY PROCEDURE*

*This procedure will be used by Managers as a means of confirming to an employee that particular behaviour or conduct is not acceptable and cannot be dealt with informally.”<sup>65</sup>*

*“Managers must: ...*

*Deal with allegations of minor acts of misconduct informally by appropriate counselling and instruction*

*Invoke the disciplinary process promptly where necessary.”<sup>66</sup>*

Three documents<sup>67</sup>, from two LAs, place informal action outside the document but provide separate guidance about informal action. The documents referring to formal and informal action were merged for the purposes of my analysis, but informal action was nonetheless considered to be outside the document because the document that addresses formal action does not address informal action.

*Inconsistent terminology*

The small number of the documents that use terminology inconsistently when referring to informal and formal action in doing so make the relationship between informal and formal action unclear. An example is referring in one part of the document to informal and formal stages and in another to an informal stage and formal procedure. The combinations of terms, referred to in one or more sections of text by only one document each, are listed in Table D-8.

*Summary*

There is a lack of consistency to the ways that informal and formal action are positioned and termed within the documents. A variety of different terms are used in relation to action. The same terms may be used to refer to informal and formal action, different terms may be used, and informal action may be positioned outside the document. Some documents are inconsistent in their use of terms. Disciplinary documents are more than twice as likely to position informal action outside the document as performance or capability documents. These approaches raise questions about both the relationships

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<sup>65</sup> LAD\_R-3\_BRUC11-3\_L-3\_DISCI\_

<sup>66</sup> LAD\_R-8\_BRUC11-2\_M-1\_DISCI\_

<sup>67</sup> LAD\_R-3\_BRUC11-1\_H-3\_CAPA\_; LAD\_R-5\_BRUC11-1\_H-2\_CAPA; LAD\_R-5\_BRUC11-1\_H-2\_DISCI\_

between informal and formal action and differences between action related to misconduct and performance or capability.

Relationship between informal action and day-to-day management

Another distinction between the ways LAs position informal action procedurally is in relation to day-to-day management of poor conduct, performance and capability compared to informal action not considered to be “day-to-day”. Five categories were identified:

1. The relationship between informal action and day-to-day management is unstated or unclear in the documents (43% 97/228).
2. Informal action is either explicitly stated or implied to be equivalent to day-to-day management (42% 96/228).
3. Informal action is in addition to day-to-day management (14% 32/228).
4. Informal action is instead of day-to-day management (1% 2/228).
5. There is a choice between informal action and day-to-day management (<1% 1/228).

These approaches are of interest in terms of whether these differences increase or decrease opportunities to resolve issues informally. They are broken down by document type in Table D-9.

*Unclear relationship of informal action to day-to-day management*

Where the relationship between informal action and day-to-day management is unstated or unclear, informal stages or action may be seen organisationally as being part of day-to-day management or as a separate process, but this cannot be determined from the documents. Example quotes where the relationship of informal action to day-to-day management is unclear are:



*“Informal Stage*

*4.1 The Manager will convene a meeting with the employee. At the meeting the Manager will outline the performance shortcomings, agree the performance standards required and the time-frame over which improvement will be expected and how this will be measured and monitored. This will be confirmed in writing. It is important that the employee is made aware of the consequences of the failure to improve.”<sup>68</sup>*

*“Where it has come to the manager’s attention that an employee is not demonstrating the expected standards of behaviour / conduct the manager should seek to address this at the earliest opportunity and should not wait for the employee’s next supervision meeting. ... The manager may, at a later stage, decide to refer the matter to an appropriate senior manager in order to proceed to the Formal Disciplinary Procedure.”<sup>69</sup>*

*“Informal Stage*

*As soon as there are concerns about performance, the manager should discuss these with the individual, point out where performance is unacceptable, agree standards and timescales for improvement and what support (if any) is needed to achieve this.”<sup>70</sup>*

*“The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the council's management save to the extent that a minor reprimand is given for any minor act of misconduct committed by an employee.”<sup>71</sup>*

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<sup>68</sup> LAD\_R-2\_BRUC11-1\_H-1\_CAPA\_

<sup>69</sup> LAD\_R-3\_BRUC11-3\_M-2\_DISCI\_

<sup>70</sup> LAD\_R-5\_BRUC11-3\_M-2\_CAPA\_

<sup>71</sup> LAD\_R-8\_BRUC11-2\_H-1\_DISCI\_

*Informal action equivalent to day-to-day management*

Where informal action is presented as equivalent to day-to-day management, this is explicitly stated in 91% (87/96) of these documents and implied in 10% (9/96).

Example quotes where explicitly stated:

*"INFORMAL ACTION*

*In the first instance it is usually appropriate for the employee's performance issues to be discussed with them as part of the normal supervisory arrangements and in as constructive a manner as possible. The Manager should meet the employee with specific information about the employee's poor standards of work and attempt to resolve the problem"*<sup>72</sup>

*"Normal Supervisory Process – Counselling*

*The day to day monitoring and counselling of employees forms part of the normal supervisory/management process and will not form part of this Procedure."*<sup>73</sup>

*"This informal stage is part of the day to day line management of an employee."*<sup>74</sup>

*"Stage One – The Informal Process*

*Managers are responsible for ensuring employee performance is managed on a day to day basis. ...Before entering into the formal stages of this procedure, managers should be able to demonstrate that they have attempted to resolve poor work performance issues through these usual line management and supervision practices."*<sup>75</sup>

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<sup>72</sup> LAD\_R-1\_BRUC11-2\_H-1\_CAPA\_

<sup>73</sup> LAD\_R-2\_BRUC11-3\_H-2\_DISCI\_

<sup>74</sup> LAD\_R-5\_BRUC11-3\_M-3\_DISCI\_

<sup>75</sup> LAD\_R-7\_BRUC11-3\_L-1\_CAPA\_

Example quotes where implied:

*“Normally, proper standards of conduct are effectively maintained through supervision, appropriate job training, management advice and guidance”<sup>76</sup>*

*“Performance improvement should be achieved through regular supervision, one to one meetings, coaching, mentoring, training and development.”<sup>77</sup>*

*“Successful managers give feedback and guidance to their employees about their conduct or performance regularly on both an informal and formal basis. This may be through daily contact, one to one discussions and the Performance Review (PR) process”<sup>78</sup>*

*“The objectives of this policy and procedure are to: ensure managing performance is a continuous process achieved through managers holding regular informal meetings with their members of staff to provide ongoing feedback and support”<sup>79</sup>*

*Informal action in addition to day-to-day management*

Where informal action is in addition to day-to-day management, generally in the form of an informal stage, evidence for this is that an informal stage is stated as being used when day-to-day management does not, or cannot, resolve the issue; day-to-day management is advised or stated as good practice before the informal procedural stage; it is stated that an employee should be made aware of concerns about conduct or performance during day-to-day management as opposed to in the informal stage of a procedure; and/or the informal stage is simply stated or evident as being in addition to day-to-day management.

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<sup>76</sup> LAD\_R-9\_BRUC11-3\_M-3\_DISCI\_

<sup>77</sup> LAD\_R-7\_BRUC11-3\_L-2\_PERF\_

<sup>78</sup> LAD\_R-6\_BRUC11-1\_M-2\_DISCI\_

<sup>79</sup> LAD\_R-3\_BRUC11-1\_H-3\_CAPA\_; LAD\_R-3\_BRUC11-1\_H-3\_DISCI\_

Example quotes where an informal stage is in addition to day-to-day management, when day-to-day management does not, or cannot, resolve the issue:

*“Wherever possible, to address and resolve performance issues informally and promptly through day-to-day management, including regular one-to-ones [sic] and appraisals. ...*

*CAPABILITY PROCEDURE 1*

*1.1 Stage One - Informal capability review*

*Informal capability meeting If the capability issues previously discussed with the employee have not been resolved through day-to-day management the manager ...”<sup>80</sup>*

*“Managers should identify any shortcomings in conduct or performance as part of the day to day management of the employee, providing appropriate feedback and support. However, where performance or conduct are giving particular cause for concern, an informal two-way discussion with the employee should be arranged, to point out any shortcomings in conduct or performance, and encourage improvement”<sup>81</sup>*

*“The procedure provides managers with a mechanism to deal with those employees who underperform by allowing opportunities for improvement through a series of informal and formal stages. It is not a substitute for good management practices and should only be invoked when initial attempts to improve performance have been unsuccessful following discussions between the employee and their manager.”<sup>82</sup>*

*“If a manager considers an employee’s performance or conduct is still unsatisfactory after the matter has been raised as part of the normal line management process, or there has been a conduct incident, the manager will arrange a one to one meeting with the employee and agree a way forward.”<sup>83</sup>*

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<sup>80</sup> LAD\_R-4\_BRUC11-1\_M-1\_CAPA\_

<sup>81</sup> LAD\_R-6\_BRUC11-2\_H-1\_DISCI\_

<sup>82</sup> LAD\_R-9\_BRUC11-2\_H-1\_PERF\_

<sup>83</sup> LAD\_R-9\_BRUC11-2\_H-2\_DISCI\_

Here are example quotes where day-to-day management is advised or stated as good practice before the informal stage:

*“Every reasonable step should be taken to provide support and guidance before invoking the informal and formal procedure.”<sup>84</sup>*

*“Stages of the Procedure The Capability Procedure contains the following stages:-*

*Where appropriate, very early concerns raised should be raised in a normal 1 to 1 with the employee and staff appraisal should be consistent with these concerns. ...*

*Informal Stage – Interview of concern*

*Formal Stage – Stage 1 Capability Meeting”<sup>85</sup>*

When it is stated that an employee should be made aware of concerns about conduct or performance during day-to-day management as opposed to in the informal stage of a procedure:

*“Although this meeting is the beginning of the procedure it should not be the first indication given of dissatisfaction. This should be the result of informal discussion between the supervisor and employee, which will be part of the normal supervisory dialogue between manager and employee.”<sup>86</sup>*

and/or when the informal stage is simply stated or evident as in addition to day-to-day management:

*“The right to be represented does not extend to discussions held as part of the day to day management of employees or the informal procedure.”<sup>87</sup>*

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<sup>84</sup> LAD\_R-2\_BRUC11-2\_H-3\_PERF\_

<sup>85</sup> LAD\_R-6\_BRUC11-1\_H-1\_CAPA\_

<sup>86</sup> LAD\_R-2\_BRUC11-3\_M-3\_CAPA\_

<sup>87</sup> LAD\_R-2\_BRUC11-2\_M-1\_CAPA\_

*Informal action instead of day-to-day management*

Very unusually, in just two capability documents, there is the suggestion that an informal stage might be viewed as being appropriate instead of day-to-day management once a problem is identified:

*“Informal stage*

*Employee performance is usually monitored regularly through one to one meetings. Where there are concerns about an employee’s performance the manager should notify the employee about the need to address the matter through the Capability Policy and Procedure.”<sup>88</sup>*

*“PART 6: Stage 1 – Informal Procedure*

*It is mandatory, in accordance with this policy and procedure, that informal action is considered in the first instance. Once a performance related issue has been identified, Line Managers, in consultation with HR, will write to the employee, setting out the nature of the issue(s) which have been identified and inviting the employee to attend at an informal capability meeting”<sup>89</sup>*

*Choice between informal action and day-to-day management*

In one disciplinary document managers are given the choice whether to take informal action as part of day-to-day management or as an informal stage:

*“Wherever possible and appropriate, first occurrences of minor breaches of discipline / standards, should be dealt with informally, either through the normal course of management counselling and supervision or the informal procedure set out in Paragraph 8.1.”<sup>90</sup>*

*Ill-defined or differences in definition*

Occasionally the documents express an ill-defined relationship between day-to-day management and informal stages or between informal and formal stages:

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<sup>88</sup> LAD\_R-4\_BRUC11-3\_H-1\_CAPA\_

<sup>89</sup> LAD\_R-4\_BRUC11-3\_L-3\_CAPA\_

<sup>90</sup> LAD\_R-2\_BRUC11-3\_L-2\_DISCI\_

*“Although this informal meeting is the beginning of the procedure the Line Manager has a responsibility to hold it informal discussion [sic] with the employee as part of the normal supervisory dialogue between manager and employee”<sup>91</sup>.*

*“The procedure is the formal part of the [framework name] Framework and comprises an informal stage and two formal stages”<sup>92</sup>.*

### *Summary*

What is notable from Table D-9, is that there is a difference by document type. Similar numbers of disciplinary and performance or capability documents explicitly state or imply that informal action is equivalent to day-to-day management. Disciplinary documents are however more than twice as likely as performance or capability documents to have an unstated or unclear relationship between informal action and day-to-day management. In contrast, performance or capability documents are more than three times likely than disciplinary documents to have an informal stage or section in addition to day-to-day management. A possible explanation is that the former is likely to be related to disciplinary documents being more likely to position informal action outside the document, and thus not make statements about informal action. The latter raises questions about whether performance or capability processes provide more opportunities to resolve issues informally than disciplinary processes.

### Who carries out informal action

The discussion of how informal action and day-to-day management are related, or conflated, leads to considering who is responsible for informal action and the transition to formal action. This is returned to in more detail later, but at this stage I will simply note that there is no evidence that this would usually not be the employee’s FLM and often the FLM is explicitly stated as responsible. Occasionally documents note that there might be circumstances where it would be appropriate for someone other than the FLM to carry out informal action, but this is stated as exceptional. There are cases where other staff members are involved in decision making, or at least notified, and this is also explored in more detail later.

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<sup>91</sup> LAD\_R-2\_BRUC11-3\_H-3\_CAPA\_

<sup>92</sup> LAD\_R-2\_BRUC11-3\_L-3\_PERF\_

### 8.1.2. Provision for and status of preliminary and main investigation

The status of investigation in the documents was examined to further explore the boundary between informal and formal action. A proportion of the documents describe investigation as occurring in more than one phase and a subset use the concept of preliminary investigation. The types of investigation are therefore categorised here as “preliminary” and “main” although the documents use a variety of terms in relation to investigation and do not always identify activity as investigation as such. Classification of investigation as informal or formal was made either by position in the document or terms used in relation to it. Two assumptions are made in the categorisation of investigation. The first is that preliminary investigation only exists if there is a further main investigation, and the second that main investigation can occur with or without preliminary investigation. If there is only one investigation it is a main investigation. Where informal or formal action does not refer to investigation as such, but contains actions that are seen as investigatory, fact-finding, or giving the employee the opportunity to explain the situation, an inclusive approach was taken to coding, and these were coded as investigation. Inclusion of these documents aims to capture situations where the language of investigation is not used, but a process of investigation of some kind is nonetheless described, as well as when investigation is explicitly referred to.

#### Preliminary investigation

The documents that explicitly refer to preliminary investigation or equivalent, term it: “preliminary investigation”, “initial investigation”, “(initial) fact-finding”, “information gathering” or “evidence gathering”. This is presented as a process of deciding whether and how to proceed, such as whether to take an informal approach, formal approach, suspend the employee, or investigate further.

The status of preliminary investigation was categorised as:

- Informal (52% 118/228);
- No reference made (41% 93/228);
- Informal and/or formal (4% 8/228);
- Formal (3% 6/228); or
- Unclear (1% 3/228).

Table D-10 summarises the status of preliminary investigation by document type.



Where preliminary investigation is categorised as informal, it may be a separate stage in addition to informal action or part of it. Where reference is made to it, preliminary investigation is almost exclusively informal. In the few cases where preliminary investigation is categorised as formal, just over half of these documents allow for preliminary investigation during both informal and formal stages. The remainder that refer to formal but not informal preliminary investigation are documents where informal action is not addressed in the document, with the implication that informal preliminary investigation may occur in practice. Thus, formal preliminary investigation is almost certainly an addition to informal preliminary investigation or the option of it.

Where reference is not made to preliminary investigation, this is a combination of documents that position informal action outside the document (29/93)<sup>93</sup>, documents where the main investigation occurs at an informal stage, all performance or capability (25/93), and documents that either give very little guidance on what should be involved in informal action, or give guidance aimed at telling the employee what they have done wrong but not exploring the reasons for misconduct or poor performance (38/93)<sup>94</sup>.

Of the three disciplinary documents where the status of preliminary investigation is unclear from the way it is positioned or referenced, all three refer to the role of preliminary investigation or factfinding in the decision whether to suspend and/or whether the alleged misconduct should be categorised as gross misconduct, perhaps implying that this is in relation to more serious issues.

Considering document types, where preliminary investigation is informal, the numbers of disciplinary are slightly higher than performance or capability documents. Where no reference is made to preliminary investigation, this is reversed. When preliminary investigation is formal, or its status is unclear, the documents are exclusively disciplinary.

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<sup>93</sup> 19 disciplinary & 10 performance or capability.

<sup>94</sup> 20 disciplinary, 17 performance or capability & 1 *Both*.

## Main investigation

Main investigations are referred to in the documents as “main”, “full”, “further”, or “formal” investigation or, often, simply as “(the) investigation”.

Main investigation was categorised as:

- Formal (84% 191/228);
- Informal (12% 28/228);
- Unclear (4% 8/228); or
- No reference made (3% 6/228).

Table D-11 summarises the status of main investigation by document type. It also provides detail about why percentages do not add to 100 and about a document that is contradictory about the status of main investigation.

The status of main investigation is generally formal. The documents where the status of main investigation is informal are exclusively performance or capability, if we put to one side one disciplinary document that is contradictory about the status of main investigation, possibly in error. These documents are similarly divided into documents where main investigation is explicitly termed or positioned as informal and those where the informal stage or procedure contains elements of investigation, and the formal stage or procedure does not.

In eight documents, it was not possible to tell from the positioning of investigation or the terms used whether main investigation is informal or formal. Of the six documents, performance or capability, that do not refer to main investigation, two are unusual in that they treat action on poor performance action as informal and should formal action be required, this is undertaken under the disciplinary procedure, including formal main investigation. Thus, main investigation has formal status within the LAs for these documents. Only four, simply do not refer to main investigation. Neither do these four documents refer to preliminary investigation.

As well as main investigation having informal status only in performance or capability documents, where main investigation has formal status, there is again a difference between disciplinary and performance or capability documents. Where main investigation is explicitly referred to as formal, 89% of the documents are disciplinary, and where the formal stage contains elements of investigation, but it is not explicitly referred to, 100% of the documents are performance or capability. These differences between investigation in

disciplinary and performance or capability documents, show that investigation is described in disciplinary documents more explicitly and as a more separate stage or process. This may be compared to the approach more often taken in performance or capability documents, where main investigation is more embedded in the process and sometimes occurs from the informal stage, which does not happen in disciplinary documents. These differences will be addressed further in the following discussion chapter.

Neither preliminary nor main investigation referred to

Five documents, all performance or capability, do not refer to either preliminary or main investigation. In other words, investigation or actions that could be considered investigatory are not referred to at all. These documents have the following characteristics:

- One describes action regarding poor performance as informal, and should formal action be required, this is undertaken under the disciplinary procedure, meaning that formal investigation does occur within the LA's written procedure, but not within a single document type.
- Two do not refer to preliminary investigation, but informal action is outside the document, so elements of investigation may occur as part of day-to-day management that is not described in the document.
- Only two documents simply do not refer to either preliminary or main investigation.

Summary

Comparing Table D-10 and Table D-11 for the status of preliminary and main investigation, preliminary investigation is usually informal, and even when it is not referred to there is often potential for informal preliminary investigation. Main investigation is usually formal. Where only main investigation occurs and it is informal, this is a feature of performance or capability documents. Where main investigation is formal, disciplinary documents are more likely to explicitly refer to investigation whereas performance or capability are more likely to not explicitly refer to investigation, but to have formal stages with features of investigation. These very notable differences between the description of preliminary and main investigation in disciplinary and performance or capability documents, point to differences in the processes described by the different document types that will be discussed in Chapter 9.

## 8.2. Organisational expectations and assumptions about when informal action should be taken or not taken

As well as signals in relation to provision for informal action and positioning it in relation to day-to-day management and formal action, the LAs signal organisational assumptions about informal action and expectations about when informal action should be taken or not taken. Once more, there are differences in the assumptions and expectations signalled by the LAs.

### 8.2.1. Informal action as desirable or positive

Documents also often signal in relation to the desirability of the use of informal action and sometimes the reasons for this. 96% (218/228) of the documents state or imply, with or without caveats, that informal action is desirable in at least some situations. This is done in one or both of two ways. One of these, used by 90% (196/218) of the 218 documents, sends signals instructing the use of informal action. This is done by encouraging implementors to use informal action, stating that informal action will be used, or by not making explicit provision for bypassing informal action. The other, used by 22% (48/218) makes positive statements about informal action. Only 4% (10/228) of the documents do not instruct the use of informal action or make positive statements about it. These documents make informal action an option without influencing implementors either towards or away from its use.

Table D-12 and Table D-13 break down approaches by document type. Slightly more performance or capability than disciplinary documents encourage, state, or enforce the use of informal action. Only 21% (10/48) of the documents that make positive statements about informal action are performance or capability, compared to 79% (38/48) disciplinary. Of the small number of the documents that do not signal in any way that informal action is desirable, nine of the ten are disciplinary.

Example quotes that encourage use of informal action:

*“Where a line manager has identified capability/performance concerns, they must attempt to resolve the issues of concern informally.”<sup>95</sup>*

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<sup>95</sup> LAD\_R-3\_BRUC11-1\_H-2\_CAPA\_

*“There is an informal stage of the procedure and it is hoped that matters will be resolved at this level.”<sup>96</sup>*

*“A manager will need to determine if an issue can be resolved informally. This will depend on factors such as the seriousness of the complaint/allegation and the impact on others, e.g. service users, clients, other employees and the public. The Manager should consider whether informal action could quickly and easily be taken to resolve the matter and should make every effort to resolve the matter in this way, immediately, wherever possible.”<sup>97</sup>*

*“The aim is to deal with problems of conduct as early and informally as possible and this should be seen as part of the normal responsibilities of line managers.”<sup>98</sup>*

Examples that state that informal action will be used:

*“Where appropriate, steps will be taken to resolve issues on an informal basis without recourse to the formal procedure.”<sup>99</sup>*

*“All cases of alleged incapability will be dealt with in the first instance informally.”<sup>100</sup>*

*“Formal action is not always required to improve an employee’s performance. The first step therefore is for the Manager to meet with the employee to discuss any concerns that they have surrounding their performance.”<sup>101</sup>*

*“This Procedure is intended to be followed in a linear way which will incorporate the following stages:*

- Informal Action • Investigation • Formal Disciplinary Hearing”<sup>102</sup>*

<sup>96</sup> LAD\_R-3\_BRUC11-3\_M-3\_CAPA\_

<sup>97</sup> LAD\_R-4\_BRUC11-1\_M-2\_DISCI\_

<sup>98</sup> LAD\_R-5\_BRUC11-2\_H-1\_DISCI\_

<sup>99</sup> LAD\_R-2\_BRUC11-1\_H-3\_DISCI\_

<sup>100</sup> LAD\_R-6\_BRUC11-2\_M-3\_CAPA\_

<sup>101</sup> LAD\_R-6\_BRUC11-3\_M-1\_CAPA\_

<sup>102</sup> LAD\_R-8\_BRUC11-1\_M-2\_DISCI\_

Example of both in the same statement:

*“It must, therefore, be recognised that most causes for concern are capable of being resolved under day to day working arrangements and through normal channels of communication. This is to be encouraged and the capability procedure is not intended to replace this well established and successful method”<sup>103</sup>*

Examples of positive statements about informal action:

*“it is in the best interests of all involved if minor faults are dealt with informally”<sup>104</sup>*

*“Informal action may often be a more appropriate method of resolving an issue than a formal investigative process”<sup>105</sup>*

*“Unsatisfactory performance is best dealt with in the first instance on an informal basis by the immediate line manager bringing the matter to the attention of the employee and discussing how the necessary improvements can be achieved.”<sup>106</sup>*

*“It will often be best for managers to deal with issues about performance informally in the first instance. In many cases an informal conversation between the manager and a member of staff will be enough.”<sup>107</sup>*

Reasons why informal action is required or seen as positive are not stated in just under half of the documents (49% 112/228). Where reasons for, or advantages of, using informal action are given, they are most usually presented in terms that I categorised as related to *halting at an early stage* (35% 79/228) or as three documents term it idiomatically, “nipping in the bud”; and/or *taking a supportive approach* (8% 19/228); or *informal action being sufficient* (7% 16/228). It should be noted that the term “all that is needed” and similar phrases that are used in relation to *informal action being sufficient*, are direct or

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<sup>103</sup> LAD\_R-1\_BRUC11-3\_H-1\_CAPA\_

<sup>104</sup> LAD\_R-6\_BRUC11-2\_L-1\_DISCI\_

<sup>105</sup> LAD\_R-5\_BRUC11-3\_L-2\_DISCI\_

<sup>106</sup> LAD\_R-4\_BRUC11-3\_M-2\_PERF\_

<sup>107</sup> LAD\_R-3\_BRUC11-2\_M-2\_CAPA\_

approximate quotes from Advisory, Conciliation and Arbitration Service (Acas) guidance. The relationships between Acas guidance and the documents are explored in a later section. Less common reasons or advantages, all given five or less times, either alone or in combination with other reasons, are: *effects on the team*, *maintaining good relationships*, *improvement of standards*, *avoiding anxiety*, *best chance of enabling correct performance*, and *confidentially*. The terms used to construct these categories are listed in footnotes for each category name in Table D-14, which gives the breakdown by document type.

Table D-14 shows that *halting at an early stage* is stated as a reason that informal action is required or seen as positive two thirds more often in disciplinary than performance or capability documents. Also, *informal action as sufficient*, is seen three times more in disciplinary documents than performance or capability. Whereas, *taking a supportive approach*, is stated twice as often in performance or capability documents as disciplinary.

### 8.2.2. When to take or not take informal action

In light of the causal mechanism of differential use of informal action contributing to disciplinary disproportionality, it is valuable to explore what signals the documents send regarding when informal and formal action should be taken or not taken. As shown above, LAs almost unanimously make provision for informal action, and other than 10 documents, the documents encourage, assume, or make positive statements about, its use. Various quite different approaches are, however, taken in terms of when informal action is expected to be used, or not used. Expectations are expressed in terms of when informal action should be taken or not taken, when formal action should be taken or not taken, or in terms of both. The most common criteria for deciding between informal and formal action is in relation to seriousness. When seriousness-related terms are used, it is to describe misconduct or poor performance; the implications or consequences of these; allegations made; or manager concerns.

66% (151/228) of the documents give guidance about when to take or not take informal or formal action that refers in some way to seriousness. The documents refer to seriousness in relation to either or both of informal action and formal action, that is they signal in terms of taking informal action for less serious issues, taking formal action for more serious issues, or both of these. Table D-15, breaking these numbers down by document type, shows that disciplinary documents are almost three times more likely than performance or capability documents to use seriousness as a criterion for the taking or not taking of either informal, formal action, or both.

Of the 47% (108/228) of the documents that use seriousness as a criterion related to the taking or not taking of informal action, 94% (101/108) of those documents use the term “minor” in relation to misconduct, poor performance, allegations, consequences, or concerns. In 10% (11/108), all disciplinary documents, terms related to a lower level of “seriousness” are used. This is broken down by document type in Table D-16.

Examples of statements related to seriousness that use the term “minor” about when to take or not take informal action:

*“Minor misconduct is usually best dealt with informally and promptly”<sup>108</sup>*

*“the following procedure will be applied in all instances where disciplinary action is regarded by Management as warranted, other than where an informal reprimand or counselling is given for some relatively minor act of misconduct.”<sup>109</sup>*

*“if the informal action does not bring about an improvement, or the unsatisfactory performance is considered too serious to be classed as minor, managers should provide a clear indication of their concerns by taking formal action.”<sup>110</sup>*

*“Minor cases of unsatisfactory performance will normally be addressed informally”<sup>111</sup>*

Of the 50% (115/228) of the documents that use seriousness as a criterion related to the use of formal action, this was in terms of misconduct, poor performance, allegations, consequences, or concerns being: “more serious”, “serious” or “seriousness” (used not as part of the other terms using these words), “[a word] serious” or “serious [a word]”, “gross”, “extreme”, “poor”, significant, “severe(ity)” or “more than minor”. Table D-17 provides more detail of the coding and breaks these numbers down by document type.

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<sup>108</sup> LAD\_R-1\_BRUC11-3\_M-3\_DISCI\_

<sup>109</sup> LAD\_R-2\_BRUC11-2\_H-1\_DISCI\_

<sup>110</sup> LAD\_R-4\_BRUC11-2\_L-1\_CAPA\_

<sup>111</sup> LAD\_R-6\_BRUC11-3\_L-2\_CAPA\_



Examples of statements related to seriousness that use the term serious about when to take or not take formal action:

*“In general, the procedure will not be invoked unless: (i) informal action has proved ineffective; or (ii) serious or gross incompetence is under consideration.”<sup>112</sup>*

*“Where your manager feels that under performance is of a very serious nature, for a very limited number of circumstances, s/he may, and only in agreement with HR, move straight to the formal stage of the procedure. Refer to guidance for managers – moving straight to the formal procedure.”<sup>113</sup>*

*“Where it becomes clear that the misconduct is more serious managers should consider taking formal disciplinary action under this policy.”<sup>114</sup>*

*“This [formal] stage can also be invoked in genuinely exceptional circumstances where the Manager believes a more serious lack of capability exists (i.e. serious financial mismanagement arises as a result of the employee’s action/inaction).”<sup>115</sup>*

One document only, a disciplinary document, explicitly considers issues to be disciplinary matters when they are serious enough to need formal action to be taken. They are not considered to be disciplinary matters when they can be handled by day-to-day management:

*“It may not always be possible to deal with issues of concern as part of the ‘normal’ management process and sometimes, conduct or behaviours may be so unsatisfactory that they have to be treated as disciplinary matters (see section 13). In these circumstances, this procedure will apply.”<sup>116</sup>*

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<sup>112</sup> LAD\_R-9\_BRUC11-3\_M-3\_CAPA\_

<sup>113</sup> LAD\_R-9\_BRUC11-1\_M-1\_PERF\_

<sup>114</sup> LAD\_R-8\_BRUC11-3\_L-2\_DISCI\_

<sup>115</sup> LAD\_R-6\_BRUC11-3\_M-1\_CAPA\_

<sup>116</sup> LAD\_R-4\_BRUC11-3\_L-2\_DISCI\_

This points to the possibility that LAs may view disciplinary and performance or capability matters, and informal action in relation to them, in different ways to each other. This will be explored further in the Discussion chapter (Chapter 9).

The seriousness of the issue is not the only consideration signalled regarding whether informal or formal action should be taken or not taken. 53% (120/228) of the documents use other criteria in addition to, or instead of, seriousness. 31% (70/228) of the documents use terms that award and demand significant manager discretion, for example “concerns being such”. The other terms that I categorised as awarding discretion are included in Table D-18. Two other criteria used are that informal action should be taken when day-to-day management cannot or has failed (11% 24/228); or that the choice between informal or formal action should be dependent on the impact of the issue (7% 15/228). Less commonly used criteria are listed and broken down by document type in Table D-18.

Amongst these lesser used criteria, Table D-18 shows that terms related to a first occurrence or repetition of an issue are exclusively used by disciplinary documents, possibly suggesting less tolerance in disciplinary policy and procedure for repeated issues. It also shows that of the documents that use terms that award significant manager discretion to interpret, two thirds are disciplinary, compared to one third being performance or capability. Documents using impact as a consideration are nearly three times more likely to be performance or capability than disciplinary.

Closely related to the way that the taking or not taking of informal action is presented, is how the documents present the bypassing of informal action to move directly to formal action. Where documents signal in what circumstances informal or formal action are appropriate, there is either an implied or stated assumption that informal action may be bypassed in favour of formal action. For example, if there is a statement that informal action is for minor misconduct or minor poor performance, or for first instances of such issues, there is an implication, whether stated or not, that it is not for serious issues, or cases where there has been previous misconduct, and that in these cases informal action should be bypassed and formal action used.

16% (36/228) of the documents do not refer to or imply the possibility of bypassing, and 6% (13/228) state that informal action cannot be bypassed. 19% (43/228) explicitly reserve bypassing of informal action for exceptional circumstances. Eight of these documents, all performance or capability, state that informal action may not be bypassed, but later in the documents contradict this by stating circumstances where this may occur (the terms used in

relation to this are “gross incapability” and/or “gross negligence”, “sudden and acute poor performance”, “sufficiently” or “so serious” or “serious consequences”). This leaves the majority of the documents, 60% (136/228), making clear provision for bypassing informal action. There are, however, clear differences between document types in relation to bypassing informal action. 82% (111/136) of the documents that make clear provision for bypassing are disciplinary, compared to 17% (23/136) performance or capability, whereas 86% (37/43) of the documents that make bypassing exceptional are performance or capability compared to 14% (6/43) disciplinary. All documents that state that informal action cannot be bypassed are performance or capability, as are 92% (33/36) of the documents that do not refer to or imply the option of bypassing. Table D-19 summarises signalling related to bypassing by document type.

Examples of statements disallowing the bypass of informal action:

*“An informal approach e.g. through monitoring, supervision and coaching will be followed before any formal procedure is implemented.”<sup>117</sup>*

*“Where a line manager has identified capability/performance concerns, they must attempt to resolve the issues of concern informally. Therefore it is essential that the informal stage of the procedure is carried out by the line manager before any formal action is taken and that every effort is made to resolve the issue(s) at this stage.”<sup>118</sup>*

*“Steps taken to improve performance in this [informal] way will be outside the scope of the formal procedure. It is only where reasonable measures have failed that the procedure should be invoked.”<sup>119</sup>*

*“The policy will also ensure that managers deal with any issues of under performance or lack of capability through on going open discussion, support and training opportunities and no formal action will take place until the Council is satisfied that informal attempts to improve performance to a satisfactory standard have been unsuccessful.”<sup>120</sup>*

<sup>117</sup> LAD\_R-2\_BRUC11-2\_M-3\_CAPA\_; LAD\_R-2\_BRUC11-3\_H-1\_PERF\_

<sup>118</sup> LAD\_R-3\_BRUC11-1\_H-2\_CAPA\_

<sup>119</sup> LAD\_R-5\_BRUC11-1\_H-1\_CAPA\_

<sup>120</sup> LAD\_R-5\_BRUC11-2\_M-3\_PERF\_

Examples making bypass exceptional by stating that bypass is not allowed and then later in the document identifying an exception:

*“The primary objective in all cases is to get the employee to improve to the required standards. Only if efforts such as training, guidance and other supportive measures fail should formal action for lack of capability be taken.*

...

*In matters of serious or gross incapability/incompetence, earlier stages of the policy may be bypassed.”<sup>121</sup>*

*“Any performance issues should first be dealt with informally through normal day to day performance management.*

..

*Under normal circumstances, a performance capability hearing should not be conducted without first issuing the employee with warnings and giving them an opportunity to improve their performance with appropriate support. However, in exceptional cases, where one performance error has serious consequences (e.g. if it results in the health and safety of service users or other employees being put in jeopardy), this policy will not apply. Instead the process for gross misconduct, as outlined in the Disciplinary policy, should be used. Where serious incapability is suspected, Human Resources must be contacted for advice before proceeding.”<sup>122</sup>*

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<sup>121</sup> LAD\_R-5\_BRUC11-3\_L-3\_PERF\_

<sup>122</sup> LAD\_R-6\_BRUC11-2\_M-1\_PERF\_

*“Once it has been identified that there is a performance related issue the following procedure should be followed. Each stage of the procedure [which includes an informal stage] must be carefully followed and documented.*

*...*

*No permanent [LA name] employee can be the subject of a formal Capability Hearing for performance reasons without first having been issued with at least two formal warnings,’ unless their actions are so serious and potentially damaging to the organisation, that they put their own and/or others health and safety at risk, or they may seriously damage the credibility and/or the reputation of [LA name]. In such serious cases, the issue of a final written warning, without a prior capability poor performance formal warning, may still merit a Capability Performance Hearing and could include the possibility of dismissal as a sanction.”<sup>123</sup>*

*“the informal process will have been exhausted before the formal procedure is initiated ...*

*“Informal action should be used in the first instance to improve performance before formal action is considered. It is anticipated that the majority of poor performance issues will be dealt with informally.*

*3.2 The exception will be where unsatisfactory performance is sufficiently serious to warrant bypassing the informal stage altogether (see 4.6 below).*

*...*

*4.6.1 Where an employee commits an act of gross incapability or gross negligence which is so serious as to endanger the welfare and safety of colleagues, service users or residents, or that results in the loss or significant damage to a Council asset, a full investigation will take place.”<sup>124</sup>*

Examples making bypass exceptional by other means:

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<sup>123</sup> LAD\_R-8\_BRUC11-2\_M-2\_CAPA\_

<sup>124</sup> LAD\_R-8\_BRUC11-3\_L-2\_PERF\_

*“INFORMAL ACTION. In the first instance it is usually appropriate for the employee’s performance issues to be discussed with them as part of the normal supervisory arrangements and in as constructive a manner as possible.”<sup>125</sup>*

*“7.1 Informal Procedure. Informal counseling [sic], guidance and support are a part of normal management practice. The formal procedure will not normally be implemented without guidance first being offered informally. However, in some circumstances it may be appropriate to invoke the formal procedure where the employee’s poor performance or competence warrants such action.”<sup>126</sup>*

*“It is expected that the majority of performance related issues will be resolved promptly and informally at this [informal] level.”<sup>127</sup>*

*“The policy [which does not include an informal stage] should only be used for dealing with matters where normal day today supervision is insufficient (e.g. gross misconduct or some instances of repeated misconduct).”<sup>128</sup>*

19% (43/228) of the documents do not give guidance about when informal or formal action should be taken or not taken. These are almost exclusively performance or capability and either disallow bypassing, do not state it as an option, or only allow it exceptionally. The one disciplinary document also does not state or imply that bypassing is an option. This implies that use of informal action before formal may be an assumption in these documents.

6% (14/228) of the documents send mixed messages about when informal or formal action should be taken or not taken. The documents are two disciplinary and 12 performance or capability. Examples of mixed messages are to:

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<sup>125</sup> LAD\_R-1\_BRUC11-2\_H-1\_CAPA\_

<sup>126</sup> LAD\_R-2\_BRUC11-1\_H-3\_CAPA\_

<sup>127</sup> LAD\_R-2\_BRUC11-3\_L-1\_CAPA\_

<sup>128</sup> LAD\_R-3\_BRUC11-3\_M-1\_DISCI\_

- State that informal action cannot be bypassed but then later in the documents state exceptions to this (this is the documents referred to and quoted above).
- Imply in one part of the document that informal action will occur before formal and that it need not in another part.
- A similar situation to that above, but where tokenistic use of informal action may be allowed.
- Generally confused and confusing text.

The example below shows that an informal stage can be tokenistic in that informal action is signalled as required to have taken place, but may involve no more than deciding to move to formal action:

*“If, during the [informal] meeting, it becomes obvious that the matter is more serious than first thought, taking into consideration the circumstances available at the time, the discussion should be adjourned. It should then be made clear that the matter may be pursued under the formal part of this procedure ... . Any concerns or queries should be discussed with the relevant HR Advisor.*

...

*If the employee has not met the required standards then the employee moves into Stage 1 of the Formal process (Template [code]). Please note that confirmation that the informal stage has taken place is required prior to moving to the formal stage.”<sup>129</sup>*

One document<sup>130</sup> illustrates particularly well the possibility for mixed messages or lack of clarity around the use and avoidance of informal and formal action. There are two mixed messages in the section of text quoted below. Firstly, the document states that “The procedure is the formal part of the [name related to performance] Framework and comprises an informal stage and two formal stages”. This raises questions about the status of an informal stage that is part of a formal framework and its relationship to the informal parts of the Framework. Secondly, the relationship between the policy and procedure and the Framework is expressed in a highly complex way that leaves the relationship between informal action and day-to-day management unclear.

<sup>129</sup> LAD\_R-2\_BRUC11-2\_H-3\_PERF\_

<sup>130</sup> LAD\_R-2\_BRUC11-3\_L-3\_PERF\_

*“The [policy name related to performance] Policy and Procedure is part of the council’s overall [framework name related to performance] Framework. The [framework name] Framework governs the day to day management of all employees’ performance and informal management of under performing employees ([framework name] Framework). Where performance issues still remain after informal management in line with the [framework name] Framework then performance should be managed formally in line with the [policy name] Policy and Procedure.*

...

*Before entering into the [policy name] Policy and Procedure the manager will, wherever possible, work with the employee to resolve any performance issues as part of the normal council’s [framework name] Framework of day-to-day supervision processes, providing support to the employee as appropriate. Notes on performance issues should be kept with normal supervision notes for the employee.*

...

*The [policy name] Policy and Procedure will ordinarily progress through the stages, however, in exceptional circumstances stages may be missed or improvement periods accelerated because the issue(s) represent ‘gross incapability’, e.g. the performance issues of the employee are putting the health and safety of clients or the public at risk or causing the council to lose a great deal of money.*

...

*7.1 The procedure provides clearly defined stages, through which the employee will be taken to resolve performance issues. This will provide a consistent and thorough approach. **The procedure is the formal part of the [framework name] Framework and comprises an informal stage and two formal stages [emphasis added].***

...

*7.2 This procedure for handling poor performance will not be triggered until a manager is satisfied that informal management in line with the performance framework has not resulted in a significant improvement in performance.*

*7.3 A manager should have managed the employee’s performance in*



*line with the council's [framework name] Framework and guidance and if performance management in line with the framework is sufficient it may be appropriate to progress directly to the formal stage of the [policy name] Procedure if there are issues. However, if the framework has not been followed and the management of performance is not thoroughly documented then managers need to refer back to the [framework name] Framework and manage the performance issues in line with the [framework name] Framework Guidance.*

...

**8. Informal Stage - Please refer to the [framework name] Framework Guidance (emphasis added).**

**9. Formal Stage One**<sup>131</sup>.

This is an extreme example but is not unique within the dataset in terms of the fact that the relationship between day-to-day management and informal action is often not stated. This is seen in documents that do not address informal action in the document, or that do, but in which the relationship is not stated.

Returning to the criteria given in the documents for deciding between informal and formal action, broken down by document type in Table D-20, shows that where seriousness is used as a criterion for choosing between informal and formal action, this is nearly three times more likely to be by disciplinary documents than performance or capability documents. Where no guidance is given, which is associated as seen above with the use of informal action before formal action being usual, this is almost exclusively in performance or capability documents. The findings also show that the prohibiting of bypassing is exclusive to performance or capability documents, and that only six and three disciplinary documents respectively signal that bypassing is exceptional or do not refer to or imply the option to bypass, as opposed to 37 and 34, respectively, performance or capability documents. Informal action is more likely and bypassing less likely for performance or capability documents compared to disciplinary documents.

Further guidance about when to take or not take informal action is potentially given through examples of the types of situations that are suitable to address in this way.

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<sup>131</sup> LAD\_R-2\_BRUC11-3\_L-3\_PERF\_

### 8.2.3. Examples of the types of situations that are suitable for use of informal action to address

The documents were coded for examples of misconduct suitable for addressing by informal action. The term misconduct is used in this section to refer to what the documents refer to as either misconduct or poor performance. The common usage of the term “minor” in relation to informal action, prompted minor misconduct to be included as misconduct suitable for addressing using informal action. 12% (28/228) of the documents give examples of minor misconduct or misconduct suitable for informal action. 20 of these give the examples in lists of between just one and five items (one statement is used by a LA in two documents). These lists are given in Table D-22 in full. Very limited numbers of examples of minor misconduct or misconduct suitable for informal action are given within documents that provide examples. Across the 19 statements there are several uses or reuses of the term minor within the examples given, thus still requiring significant interpretation from the FLM. These are: “attitude causing minor concern”, “minor breaches of Council policies”, “minor inaccuracies in time recording” and “minor conduct issues”. Also, examples are given mostly in disciplinary documents (24 disciplinary and four performance or capability).

Across the lists above, of examples of misconduct that are minor or suitable for informal action, 20 different examples are given. Most used are examples related to timekeeping (18 times<sup>132</sup>), such as: timekeeping generally; absence; lateness; and extended lunch breaks. Followed by examples given twice: “attitude”; lack of “care” or “attention to detail”; lack of “understanding” / “self-awareness”; a “need to improve a particular skill” (e.g., “communication”), “inability to prioritise workload”, or “personal problems”. The remaining examples are only given once each: “conflict”; “relationship breakdown”; “personality clashes”; “communication problems”; “bullying and harassment” (all in relation to mediation); “failure to follow procedures”; “failure to wear a corporate ID badge”; “first occasion of a missed deadline”; “improper use of work facilities”; “inaccuracies in time recording”; “inappropriate use of telephone/internet”, “low motivation” / “lack of interest”; “smoking on Council premises”; “unintentional leakage of information”.

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<sup>132</sup> Note, some types of examples were given more than once in a document; for example, absence and lateness would be counted under timekeeping twice.

Nine documents, eight disciplinary and one performance or capability, give longer lists of misconduct seen as minor or suitable for informal action. In these cases, though, the examples are categorised more generally as examples of misconduct. In one example, from a performance document, bypassing informal action is only allowable for serious or gross incapacity so all examples of, in this case, poor performance, not seen as serious or gross are appropriate for informal action. The examples in this document are:

*“Employees failing to:  
perform their role and responsibilities  
provide the level of service expected  
meet individual and /or team targets  
meet levels of competency set for the job.  
... the employee needing constant support/ help in undertaking day-to-day activities  
general observation of the employee indicating a problem”<sup>133</sup>*

The other eight documents represent further examples of FLMs needing to use significant discretion to make decisions about whether informal or formal action is appropriate. In six of the eight documents, all disciplinary, it is stated or implied that the examples of misconduct given could be addressed by informal or formal action. In two of the eight, the guidance is rather circular, where informal action is stated as being suitable for minor misconduct and misconduct is described in terms of being minor. For example:

*“Misconduct  
Examples of misconduct include minor and/or first instances of offences  
e.g. lateness, minor unauthorised absence from work or minor cases of neglect of duty ...  
Informal Action Pre Disciplinary Action  
Corrective Guidance Cases of minor misconduct should, in the first instance, be dealt with by issuing corrective guidance in the form of an informal discussion”<sup>134</sup>*

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<sup>133</sup> LAD\_R-5\_BRUC11-3\_L-3\_PERF\_

<sup>134</sup> LAD\_R-2\_BRUC11-2\_H-2\_DISCI\_

*“General misconduct is likely to cover minor wrongdoing, such as making personal calls during working time, lateness for work any general misconduct that is likely be a minor conduct which is a breach of any polices and Employee Code of Conduct. This sort of behaviour might lead to a conversation of concern or written warning ...*

*Informal Conversations of Concern / Minor Offences*

*Where a minor offence or offences have been committed, ...”<sup>135</sup>*

Where no examples are given of minor misconduct or misconduct suitable for informal action, but examples of general misconduct are given (35% 79/228), there are further examples of significant discretion around choosing to use informal action. For example, 19 of these documents, all disciplinary, put informal action outside the policy or procedure, so the examples of misconduct are likely to be given in relation to formal action only. 65 of these documents, 59 disciplinary and six performance or capability, give guidance using terms related to seriousness in relation to use of informal or formal action, again leaving implementors to interpret the seriousness of the situation.

There are examples of discretion being reduced. Ten of the documents, three disciplinary and seven performance or capability, either state that bypassing informal action is not allowed, or very rarely allowed, or do not refer to or imply the possibility of bypass. Two documents, both disciplinary, state that the examples warrant disciplinary action, implying that informal action is not appropriate.

Just over half (53% 120/228) of the documents do not give examples of either minor misconduct or misconduct suitable for informal action or of misconduct more generally, again creating significant levels of discretion for implementors in their decision whether to use informal or formal action. Here there are differences between document types. For disciplinary documents the percentage not giving such examples is 24% (29/120), whereas for performance or capability documents it is 74% (89/120). In this respect, disciplinary documents give more guidance about when to take or not take informal action. However, we have also seen that performance or capability documents disallow or restrict options to bypass informal action much more frequently than disciplinary documents, perhaps reducing the need for examples.

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<sup>135</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

If we focus on disciplinary documents for a moment because these documents give examples more often, we can highlight the contrast between examples related to informal action and those related to formal action. 20% (24/120) of disciplinary documents give examples of minor misconduct or misconduct suitable to be addressed with informal action. 73% (88/120) give examples of general misconduct. Serious and gross misconduct are more consistently associated in the documents with formal action than minor or general misconduct. Only 13% (15/120) of disciplinary documents give examples of serious misconduct, mirroring the situation with examples of minor misconduct largely leaving the decision about what constitutes such misconduct to manager discretion. Almost all (94% 113/120) disciplinary documents, however, give examples of gross misconduct. It should be noted that in disciplinary documents where there are examples of misconduct of any type, 95% (108/114) of these have caveats stating that lists are not exhaustive and 31% (35/114) state that examples may potentially be judged to be more or less serious depending on circumstances, in another example of the awarding of discretion regarding the classification of misconduct. Table D-21 shows percentages of the documents giving examples by document type. Documents giving examples of misconduct that is minor or suitable for informal action are 86% (24/28) disciplinary, compared to 14% (4/28) performance or capability. Performance or capability documents give examples less overall, representing 18% (26/141) of the documents giving examples of misconduct of any type, as compared to disciplinary documents representing 81% (114/141).

#### 8.2.4. Summary

It is notable that, again across the sample, there is a lack of consistency or standardisation, and several different approaches are used to signal when the taking or not taking of informal and formal action and of bypassing informal action is recommended. This is the case in terms of the signalling of informal action as desirable or positive, when to take or not take informal action, and examples of misconduct suitable for addressing with informal action. There are also notable differences seen by document type.

## 8.3. The Implications of Informal Action for employees

This section explores the implications of informal action, both at the time that it occurs and in the future. Exploring these implications creates another insight into the signals that LAs send in relation to expectations regarding informal action.

### 8.3.1. Implications of informal action at the time it occurs

The implications of informal action at the time that it occurs are considered here in terms of whether informal action is punitive or supportive, employee rights, and whether it is formalised. As found in section 8.2.1 above, some LAs encourage informal action in the name of taking a supportive approach. I assume that approaches that I identify below as supportive are positive in terms of both employee experience and attempting to solve a problem rather than just punish it.

Punitive or supportive

One way I consider the implications of informal action, is to consider whether the LAs signal to implementing managers, and indeed to employees, that informal action might be seen broadly as *supportive* or *punitive*, or to include both supportive and punitive elements. I have identified components of informal action from the documents and categorised them. Those categorised as *supportive* are: *help-and-review*; *making aware of requirements*; *mediation*; *considering organisational changes*; *personal support*; and “*a quiet word*”. *Help-and-review* is a coding category covering strategies where assistance such as training, mentoring, coaching, advice, or “counselling” (from a manager) is offered, and after a time the employee’s conduct or performance is reviewed. Use of the term “counselling” is as a synonym for advice and/or coaching and does not refer to therapeutic counselling provided by a psychologist or psychotherapist. *Mediation* is categorised as a separate supportive component because, whereas the *help-and-review* approaches involve ways for the employee to change or develop, mediation explores ways to resolve relationship issues that may also involve changes of behaviour from other employees involved in the situation. *Personal support*, such as therapeutic counselling, support from other external specialists, or support from occupational health, is also considered as separate because this is offered in the documents as more general support outside of a *help-and-review* cycle. “*A quiet word*” or “*the right word*”, may in practice have similarities to the help offered as part of the *help-and-review* cycle, but is used in the documents in a way that implies a more immediate resolution, rather than the longer-term process of *help-and-review*. It is worth noting that the “quiet” or “right word” terms are direct or near quotes respectively from the forward to

the Acas code of practice that states, “A quiet word is often all that is required to resolve an issue” (Acas, 2015, p.6) and similar wording in the accompanying Acas Guide (Acas, 2017, p.10). The influence of Acas guidance is explored in a later section.

Examples from the documents referring to *supportive* elements:

*help-and-review & making aware of requirements:*

*“The manager should ensure that the employee is clear about what is expected of them and agree an action plan with timescales and reviews”<sup>136</sup>*

*“Management counselling will normally take the form of an interview at which the employee will be informed what improvement in their conduct is expected and for how long this will be kept under review. ... the manager will: ... identify any necessary training, development, support or other interventions; ...”<sup>137</sup>*

*mediation:*

*“Some issues that fall within this procedure may be suitable for mediation, usually at the informal stage of the process where the disciplinary is linked to conflict and/or a breakdown in work relationships.”<sup>138</sup>*

*“Informal performance management ... will include the suite of tools which Managers will use to support, manage and develop the performance of their teams. These are generally as listed below but Managers may feel that there are other options which may be supportive to employees e.g. reflection, mentoring, toolbox briefings or any other relevant performance management tool.”<sup>139</sup>*

*considering organisational changes:*

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<sup>136</sup> LAD\_R-5\_BRUC11-3\_M-3\_CAPA\_

<sup>137</sup> LAD\_R-3\_BRUC11-2\_M-1\_DISCI\_

<sup>138</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

<sup>139</sup> LAD\_R-1\_BRUC11-1\_H-1\_PERF\_

*“Managers should also ensure that employees are provided with the necessary equipment to in order to undertake their duties and perform to the required standard.”<sup>140</sup>*

*“Consider together whether ... any adjustment can be made in the workplace to support the employee in resolving the matter”<sup>141</sup>*

*personal support:*

*“Further additional action as an outcome of an informal meeting at this stage may include the provision of: ... d) An occupational health referral for consultation, counselling or medical assessment may be appropriate”<sup>142</sup>*

*“Full account will be taken of the employee’s circumstances within the work place and, if appropriate, outside work. If the difficulty seems to be related to health, an occupational health adviser should be consulted. ... Other employee support options should also be considered e.g. referral to the counselling service or life coaching where appropriate.”<sup>143</sup>*

*a quiet word:*

*“In many situations the right word, at the right time and in the right way may be all that is needed and will often be a more productive method of dealing with issues of discipline, rather than a formal process”<sup>144</sup>*

*“A quiet word is often all that is required to resolve an issue.”<sup>145</sup>*

Punitive components are: *an informal warning or management instruction; admonishment or reprimand; redeployment or demotion; a cycle of review without offering associated help; or informal action being stated to be a sanction.* The punitive nature of admonishment or reprimand, or informal action being stated to be a sanction is clear. The reasons for classifying the other components of informal action as punitive are perhaps less so. As well as the components used in its name, the category informal warnings or

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<sup>140</sup> LAD\_R-7\_BRUC11-3\_L-1\_CAPA\_

<sup>141</sup> LAD\_R-9\_BRUC11-3\_H-3\_DISCI\_

<sup>142</sup> LAD\_R-4\_BRUC11-3\_H-1\_DISCI\_

<sup>143</sup> LAD\_R-9\_BRUC11-3\_H-3\_CAPA\_

<sup>144</sup> LAD\_R-1\_BRUC11-1\_H-1\_DISCI\_

<sup>145</sup> LAD\_R-4\_BRUC11-2\_L-1\_CAPA\_



management instructions, includes “advisory cautions”, “corrective guidance”, “improvement notes”, “letters [or registers] of concern”, “letters of expectation”, “letters of management advice”, “standards setting letters”, and “verbal [or oral] warnings”. In practice these forms of informal warnings and management instructions may be similar to the supportive category making aware of requirements. These forms of action have been classified as punitive, however, because of the form that they take in the documents. Management instructions in all of the forms listed above are something that is issued or given – something done to employees rather than with them or for them. Informal warnings are seen as punitive because they carry a threat of further consequences. What is significant about redeployment or demotion, when considered at the informal stage is that this is extremely early in the potential disciplinary, performance or capability process. All but one of the documents coded to redeployment or demotion states that such a move must be with the agreement of the employee. Nonetheless, this does not seem to be a supportive act if it is considered at the informal stages when the employee has not been given full opportunity to find solutions to issues related to conduct or performance first. Similarly, a cycle of review without offering associated help is coded as punitive because the employee is potentially left to work out how to resolve the issue without organisational support. What characterises the punitive components; is the fact that they are a way of expressing to the employee that there is a problem, without, when used on their own, offering support or help to solve that problem.

Examples from the documents referring to *punitive* elements:

*an informal warning or management instruction:*

*“Informal Procedure*

*Before invoking the formal procedure, managers should try to resolve disciplinary matters on an informal basis, where appropriate, by discussing the situation with the employee to avoid the necessity of formal proceedings. For minor misconduct issues, a line manager may decide that it is appropriate to make a record of the discussion and issue the employee with a Letter of Concern which will be placed on their personal file.”<sup>146</sup>*

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<sup>146</sup> LAD\_R-1\_BRUC11-3\_L-1\_DISCI\_

*"Informal Procedure 9.2.1 Informal 'Warning'*

*... The employee should be left in no doubt as to what will happen if there is no improvement. In other words they should be 'informally warned' that if there is no improvement it could put their future employment in jeopardy."*<sup>147</sup>

*admonishment or reprimand:*

*"Corrective action may involve admonishment, instruction on appropriate behaviour or management counselling"*<sup>148</sup>

*"This [formal] policy and procedure does not apply in circumstances where a minor reprimand is given for any minor act of misconduct committed by an employee."*<sup>149</sup>

*redeployment or demotion:*

*"Whilst there can be no guarantee of redeployment under this procedure, where it seems appropriate and practicable, this may be considered as an option at any stage during the procedure with the agreement of the employee. If so the line manager in consultation with the HR Manager, will discuss with the employee whether there is a possibility of finding them suitable alternative work with the Council."*<sup>150</sup>

*"In cases where at the end of the review period the employee has not achieved the required improvements, a move to another post in the service area at the equivalent or lower grade could also be considered as an alternative to progressing to the formal stages of this policy. A move of this nature would be subject to the availability of an appropriate post, on a voluntary basis with the employee's agreement, and cannot be enforced at this stage of the process."*<sup>151</sup>

*a cycle of review without offering associated help:*

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<sup>147</sup> LAD\_R-3\_BRUC11-2\_M-2\_CAPA\_

<sup>148</sup> LAD\_R-3\_BRUC11-2\_M-1\_DISCI\_

<sup>149</sup> LAD\_R-4\_BRUC11-1\_M-1\_DISCI\_

<sup>150</sup> LAD\_R-3\_BRUC11-3\_M-3\_CAPA\_

<sup>151</sup> LAD\_R-4\_BRUC11-3\_L-2\_PERF\_

*“In cases of minor breaches of discipline (e.g. lateness for work, careless mistakes, lack of attention to detail/instructions/procedures), the immediate line manager should discuss these concerns with the employee to ensure that the employee is:  
aware of the concerns  
knows what is required to meet expected standards of conduct  
made aware of the timescale over which an improvement is required  
made aware of the consequences of not achieving the required standard”<sup>152</sup>*

*“(viii) informal warnings (see below).*

*Minor cases of misconduct may best be dealt with by informal advice, and encouragement to help the employee to improve. It is important that the employee understands what needs to be done, how conduct will be reviewed, and over what period. There is no right of appeal, no right to be accompanied, and no tangible punishment. However, the employee should be made aware that further misconduct might lead to formal disciplinary action if they fail to improve. Make a record of the meeting, and write to the employee to confirm what was said in terms of the standard of expected conduct, timescales, etc.”<sup>153</sup>*

*informal action being stated to be a sanction:*

*“Minor faults, including those which give rise to the sanction of informal action set out at paragraph 3.2.1 will normally be dealt with informally,  
... ”<sup>154</sup>*

The documents often make provision for one or more of the elements, and these may be a combination of both *supportive* and *punitive* components; the picture is rarely simply supportive or punitive. We will, however, see below that there are notable differences between the use of *supportive* and *punitive* components by the different document types. Table D-23 summarises the percentages of the documents signalling informal action as having a *supportive* and/or *punitive* nature. We can see that: 1) only disciplinary documents signal just *punitive* components; 2) performance and capability documents are

<sup>152</sup> LAD\_R-8\_BRUC11-3\_L-2\_DISCI\_

<sup>153</sup> LAD\_R-3\_BRUC11-2\_M-2\_DISCI\_

<sup>154</sup> LAD\_R-5\_BRUC11-1\_H-1\_DISCI\_

more likely compared to disciplinary documents to signal just *supportive* components; and 3) disciplinary documents are more than three times likely to signal both *supportive* and *punitive* components than performance and capability documents. Only 9% (21/228) of the documents do not signal informal action as either *supportive* or *punitive*. Of these, 18 position informal action outside the document and thus give no guidance.

Table D-24 and Table D-25 show the percentages of the documents that signal the various components of informal action classified here as *supportive* or *punitive* respectively. A document may signal more than one element from these tables. Notable, is the fact that almost all (93% 37/40) of the documents that *consider organisational changes* as part of informal action are performance or capability documents, the remaining three being disciplinary. Also, that performance and capability documents are more than five times more likely to include *personal support* in informal action as disciplinary documents. In terms of *punitive* components, *informal warnings or instructions* are seen in more than six times disciplinary documents than performance or capability. *Admonishment or reprimand* and *informal action as a sanction*, where they occur, are exclusively seen in disciplinary documents. The numbers are small, but we can also note that *review without help* is seen in disciplinary documents in six of the seven documents where this occurs. All six documents offering *redeployment or demotion* at the informal stage are performance or capability documents.

#### *Summary*

There is again a lack of consistency and/or standardisation and there are differences between approaches taken by the LAs. Documents may present just *supportive*, just *punitive* or both *supportive* and *punitive* approaches to informal action. Alternatively, documents may not state the components of informal action. There are also differences between types of documents. *Punitive* approaches are more likely in disciplinary documents. The small number of the documents (14) that take *punitive* approaches without *supportive* components are exclusively disciplinary, and where both *punitive* and *supportive* components are present, this is in almost three times more disciplinary documents than performance or capability. Where *supportive* components are present, either alone or in addition to *punitive* components, 47% of these documents are disciplinary and 52% performance or capability, but where *punitive* elements are present, either alone or in addition to *supportive* elements, 80% of these documents are disciplinary and 19% performance or capability.

## Employee Rights

The documents also signal different approaches between LAs, to withholding or granting employee rights during informal action. I have classified the differences in comparison to *rights during formal action* and to *rights when no disciplinary or performance management action is being taken*.

During formal disciplinary action, employees have a statutory right to be accompanied at any meeting that might result in a disciplinary warning or other sanction, and to appeal any formal disciplinary sanction (Acas, 2015). In relation to accompaniment during informal action the LAs take three approaches:

1. to not refer to accompaniment in relation to informal action (60% 137/228);
2. to allow accompaniment with or without caveats (24% 54/228); or
3. to state that there is no right to be accompanied during informal action (16% 37/228).

Table D-26 presents these categories by document type.

Of documents where accompaniment during informal action is not referred to, the documents all refer to the right to accompaniment during formal disciplinary hearings and in some cases formal investigatory or appeal meetings. It seems likely that reference to the right to accompaniment only in relation to formal meetings, without reference to informal meetings, implies that there is no right to accompaniment at informal meetings awarded, although this cannot be certain. If this is the case, there is no right to accompaniment during informal action in 76% (174/228) of the documents. Table D-29 breaks down the number of documents by document type if the assumption is made that no reference to accompaniment is synonymous with accompaniment not being allowed.

46% (25/54) of the documents where accompaniment during informal action is allowed, do so in all situations without caveat. This is stated either as a right, or as allowed, with or without the addition of a statement that there is no statutory right to accompaniment during informal action. Here it is worth noting that the term "right" is used in the documents sometimes to refer to a statutory right and sometimes a right granted by the organisation. It is not always clear which type of right is being referred to. 44% (24/54) allow accompaniment in some situations, for example if this is reasonable or will not cause delay. 9% (5/54) allow accompaniment as a reasonable adjustment or requirement for some groups. I will suggest reasons why reasonable adjustment is so infrequently given as a reason to allow accompaniment in the discussion chapter. More detail is given in Table

D-27 that presents the categories related to whether accompaniment during informal action is allowed in some or all situations, and Table D-28 that presents the specific situations when accompaniment is allowed during informal action, both tables by document type. Examples of text from the documents where accompaniment is allowed either with or without caveat are:

*“Managers should not unreasonably refuse a request from the employee to be accompanied by a trade union representative or work colleague for such a meeting providing it does not unduly delay the meeting”<sup>155</sup>*

*“Whilst there is no Statutory right to be accompanied by a Trade Union representative or colleague to an informal meeting throughout the investigation process, the organisation allows the employee to be accompanied during these meetings if they so wish.”<sup>156</sup>*

*“The employee should be given the opportunity to bring to the meeting a union representative or work colleague for support.”<sup>157</sup>*

*“INFORMAL ACTION*

*In the majority of cases an informal conversation between the Manager/Headteacher and the employee maybe all that is needed. The employee has the right to be accompanied”<sup>158</sup>*

Of the 37 documents that state that there is no right to accompaniment during informal action, seven, of which four are capability documents and three disciplinary, add that accompaniment is either not seen as good practice or appropriate during informal action. The documents do not state why this is the case, so it is not clear what is being signalled here. One document states that there is no right to representation because *“the aim is to try and resolve matters on a 1 to 1 basis in an informal capacity”<sup>159</sup>* but, again, does not state why this is desirable. Five documents, three disciplinary and two capability, make statements about the manager’s right to manage in day-to-day and informal situations, but not in reference to accompaniment. It is possible that accompaniment is seen as undesirable in these situations because it is seen as obstructing the right to manage, but

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<sup>155</sup> LAD\_R-8\_BRUC11-2\_M-3-ALT\_CAPA\_

<sup>156</sup> LAD\_R-4\_BRUC11-1\_H-2\_DISCI\_

<sup>157</sup> LAD\_R-2\_BRUC11-3\_H-3\_CAPA\_

<sup>158</sup> LAD\_R-3\_BRUC11-3\_H-1\_DISCI\_

<sup>159</sup> LAD\_R-6\_BRUC11-1\_H-1\_CAPA\_

this cannot be shown from the documents. Examples of text from the documents are given below where accompaniment is not allowed:

*“There is no right to be accompanied at the meeting as it is informal and part of day to day management of employees”<sup>160</sup>*

*“Representation is not allowed at the informal stage of the process.”<sup>161</sup>*

*“Informal action is part of the normal discussions between employees and their managers. It is not part of the formal Managing Poor Performance Policy and as a result, individuals are not entitled to representation at any meetings to discuss their performance at the informal stage, although they may find it helpful to seek advice and support from a trade union representative or a fellow employee.”<sup>162</sup>*

*“It is not appropriate for anyone other than the employee and their manager to be involved in the meetings at this stage.”<sup>163</sup>*

The second statutory right during formal action is the right to appeal any formal sanction. No documents state a right to appeal informal sanctions, although some do state a right to record disagreement, which is explored below in relation to formalised informality. 9% (20/228) of the documents state that there is no right to appeal informal action or sanction and 91% (207/228) of the documents do not refer to the presence or absence of a right to appeal an informal action. Of the latter almost all, 98% (203/207), refer to the right to appeal a formal sanction. Four documents, all performance or capability, do not refer to appeal in relation to either formal or informal action. Table D-30 breaks these categories down by document type. Examples of text from the documents are given below where appeal is stated as not allowed regarding informal action:

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<sup>160</sup> LAD\_R-8\_BRUC11-3\_M-2\_PERF\_

<sup>161</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

<sup>162</sup> LAD\_R-8\_BRUC11-3\_L-2\_PERF\_

<sup>163</sup> LAD\_R-2\_BRUC11-1\_H-3\_DISCI\_

*"There is no right of appeal at the informal stage"*<sup>164</sup>

*"As this is not part of the formal process, there is no right of appeal."*<sup>165</sup>

*"As counselling is not part of the formal Disciplinary Procedure the employee will have no right of appeal against the decision of the manager. However, they can add their own comments on the action taken (see paragraph 10.6 above). The employee will also have access to the Grievance Procedure if they feel that it has been improperly conducted or convened."*<sup>166</sup>

*"This process is part of a manager's normal relationship with employees and you do not have a right of appeal against this informal action."*<sup>167</sup>

Three documents give hints that other, non-statutory, rights can be absent during informal action, that would be present during formal action. These are that an informal warning may not have a limited time during which it will be referred to or after which it will be removed from the employee's record (two disciplinary), the right to call witnesses (one capability), and the right to reasonable notice of a meeting (one capability). Quotes from these documents are:

*"Letter of Expectation*

...

*Remains on the employee's personnel file indefinitely."*<sup>168</sup>

*"It is not possible under this policy and procedure for witnesses to be involved in a matter concerning the alleged incapability of another at the informal stage."*<sup>169</sup>

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<sup>164</sup> LAD\_R-1\_BRUC11-3\_M-3\_CAPA\_

<sup>165</sup> LAD\_R-7\_BRUC11-3\_M-1\_DISCI\_

<sup>166</sup> LAD\_R-4\_BRUC11-2\_M-1\_DISCI\_

<sup>167</sup> LAD\_R-9\_BRUC11-1\_H-2\_DISCI\_

<sup>168</sup> LAD\_R-6\_BRUC11-1\_H-1\_DISCI\_

<sup>169</sup> LAD\_R-4\_BRUC11-3\_L-3\_CAPA\_



*“With the exception of any informal action being taken, the employee will be given reasonable notice (no less than ten working days, unless by agreement) to attend any review meetings or hearings.” [emphasis added]<sup>170</sup>*

Moving from rights in comparison to formal action to rights in comparison to when no disciplinary or performance action is being taken, there are documents that show loss of rights during informal action. Despite the small number of documents where this phenomenon is described, it seems important to highlight the potentially serious implications for employees. The rights withheld during informal action are to incremental progression (5/228), and agile working or working from home (2/228). The documents are all performance or capability. Examples in relation to these losses of rights are:

*“Where an employee is either in the informal or formal part of the Managing Employee Performance Procedure, they will not be eligible for incremental progression. If performance reaches the required standards during the performance management cycle then the increment should be implemented effective from the date that satisfactory performance is reached.”<sup>171</sup>*

*“If you are currently subject to the [name of procedure] performance procedure, your manager may ask you to work in a hub and reserves the right to suspend any agreement to working some hours at home. This is to assist monitoring of your work and to help you achieve the required standard in your role.”<sup>172</sup>*

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<sup>170</sup> LAD\_R-9\_BRUC11-3\_M-3\_CAPA\_

<sup>171</sup> LAD\_R-2\_BRUC11-3\_M-1\_PERF\_

<sup>172</sup> LAD\_R-9\_BRUC11-1\_M-1\_PERF\_

## Formalised Informality

Another implication of informal action is that, despite the term informal, it may be formalised to a greater or lesser degree. This section will explore formalisation of informal action, by considering written recording requirements and other factors that might imply a formalised process. Recording is considered here to be a sign of formalisation because it creates potential for there to be future implications of informal action, and a situation where employees often know that a record is being made of an informal meeting that may be referred to as part of a future formal process.

### *Recording*

Once again, there are significant differences in what the documents state that LAs require regarding the written recording of informal action. In 77% (175/228) of the documents, some form of recording of informal action is required. In 10% (22/228) recording is optional and in 14% (31/228) the requirement or lack of requirement for recording is not stated. Table D-31 showing the numbers by document type, shows that recording as optional is seen in more than six times, and not being stated in almost three times, as many disciplinary documents as performance or capability, respectively.

Table D-32 lists the types of written recording of informal action by document type for the 86% (197/228) of the documents where recording of informal action was required or optional. Examples are “notes”, “records”, “letters” and “plans”. Even where the same terms are used in documents, there are differences of emphasis. Where notes or records are referred to, these are described as “brief” in 13 documents, of which nine are disciplinary and four performance or capability, and as “detailed” or “full” in seven, of which four are disciplinary and three performance or capability. In all but two documents where plans, programmes, or agreements are recorded, these are performance or capability documents referring to improvement plans, programmes, or agreements. The other three documents using plans are disciplinary documents, one referred to a “mediation agreement”, one a “performance improvement plan”, and the other an “improvement plan”. The single document that referred to a report as recording informal action, used this to inform a senior manager and to allow their input in the decision whether to proceed to formal action.

26% (51/197) of the documents where recording is required or optional, provide a proforma or template for one or more type of record. The same proforma is used for recording both informal and formal action in 18 of these documents. For the 15 of these

that are performance and capability documents, the broad categories of record that these proforma belong to are: *Plan, programme, or agreement* for 13 documents; *Note, Record, account, or documentation* for 3 documents; and one *Letter, written instruction, or register of concern*. The three disciplinary documents do not use *Plans, programmes, or agreements* across informal and formal action. Three documents use the same *Notes, Records, account, or documentation*; and one a *Letter, written instruction, or register of concern* during both informal and formal action. Within the 33 documents providing proforma for recording informal action only, examples of broad proforma types are again: *Plans, programmes, or agreements, almost all performance or capability (of the seventeen documents, only two and one respectively are disciplinary and Both documents)*; *Notes, Records, account, or documentation* (for fourteen documents, six performance or capability and eight disciplinary); twelve *Letters, written instructions, or registers of concern* (seven performance or capability and five disciplinary); and in one, disciplinary document, a *Report*.. Proforma types for these documents are recorded in full in Table D-33, for performance or capability documents, Table D-34, for disciplinary documents and Table D-35 for *Both* documents.

Another layer of formalisation identified in the documents, related to recording during informal action, is the practice of requiring the signing of records by employees (and sometimes also managers); of employees having the opportunity to add comments or notes to the record; and of employees being given confirmation of the discussion, plan etc in writing. The numbers of the documents requiring these measures are broken down by document type in Table D-36.

There are also differences in how records of informal action are held. While 21% (42/197) of the documents where recording is required or an option, state or imply that records are held by the FLM and are either not placed on the employee's personnel or personal file or not held by HR, 16% (31/197) of the documents state that records should be transferred or copied to HR. 18% (36/197) of the documents state that records will be held on the employee's personal or personnel file but do not make clear whether this is held by the FLM or HR. In a further 48% (95/197) of the documents it is made clear that records are to be completed by line managers, but not where records are held. Table D-37 summarises who keeps records by document type.

Examples of text regarding recording, where recording is required or optional and with different types of record and how records are kept:

*“The Manager will give the employee a written record of what was discussed at the Guidance Meeting, and a copy sent to HR for the personal file where it will be held for 12 months.”<sup>173</sup>*

*“Whichever course of action is taken, the line manager must make brief notes of what is said and record their decision. The line manager must keep a copy of this locally. Such records must not be kept on the employee’s personal file, unless a decision has been taken to pursue formal action.”<sup>174</sup>*

*“Notes will be taken of the Manager’s conversation with the employee and, except in the most minor cases, the outcome of the meeting, including any remedial action, will be recorded normally using the Record of Actions (ROA) Form.”<sup>175</sup>*

*“Where you feel that it would be appropriate for a record of the discussion to be noted, you can issue a letter of management advice to the employee. You should contact your HR representative for advice before you issue the letter. The letter should include: The detail of the issues and the required improvement; Any support that can be provided. A template letter is available here.”<sup>176</sup>*

*“Your manager may keep a note of the meeting (e.g. diary note) but there will be no details of the meeting kept on your personal file. Under no circumstances will such a meeting be viewed in a disciplinary context even where the content of the meeting is summarised by a letter.”<sup>177</sup>*

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<sup>173</sup> LAD\_R-7\_BRUC11-3\_L-3\_DISCI\_

<sup>174</sup> LAD\_R-7\_BRUC11-3\_M-1\_DISCI\_

<sup>175</sup> LAD\_R-4\_BRUC11-2\_M-2\_DISCI\_

<sup>176</sup> LAD\_R-1\_BRUC11-1\_H-2\_DISCI\_

<sup>177</sup> LAD\_R-9\_BRUC11-1\_H-2\_DISCI\_

*“At each stage of the performance improvement process (including the informal stage) there is a required set level of information and documentation that must be recorded to ensure that sufficient monitoring and progression can be made. ... A Performance Enhancement Plan has been developed to assist managers in doing this (Template PEP1). ...If the issue is judged to be a relatively straightforward one that the manager and employee expect to resolve by the time of the review meeting, the manager can make a simple diary note, for reference purposes, that counselling took place – date, subject, agreed action and review date. Although it is important that this is kept as an informal [sic], it would be appropriate to keep notes of the discussions, and any improvement plans that are agreed, that are then shared with the employee so they can be referred to later. ... Alternatively and if the issue is not a relative straightforward matter, follow up the conversation with a letter and keep a copy on the employee’s file (Template PEP2).”<sup>178</sup>*

*“A brief written record of discussions should be kept by the manager and should include any issues raised, the employee’s response, any standards, expectations and actions agreed, together with agreed time scales. ... It is essential that any action taken at an informal level is monitored and progress recorded.”<sup>179</sup>*

#### *Other formalised informality*

There are other elements of informal action referred to in the documents that are formalised. One LA candidly states in its performance policy document that the informal meeting will feel quite formal. In two capability documents employees are to be sent written invitations to the informal meeting. More generally, 46% (104/228) of the documents warn employees during informal action that if conduct or performance does not improve that they will be subject to formal action. 5% (11/228) give an employee a copy of the relevant procedure document as part of informal action. Table D-38 breaks the

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<sup>178</sup> LAD\_R-2\_BRUC11-2\_H-3\_PERF\_  
<sup>179</sup> LAD\_R-2\_BRUC11-2\_M-3\_CAPA\_

categories down by document type. Examples of warnings about possible future formal action are:

*“The [informal] conversation of concern will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action.”<sup>180</sup>*

*“The manager will advise the employee that if underperformance continues, this may result in a formal procedure being instigated”<sup>181</sup>*

*“The employee should also understand the consequences of failing to meet that standard in the future.”<sup>182</sup>*

*“Ensure that employees are made aware of the consequences of failing to meet the required performance standards ... Make the employee aware that if their performance does not improve, it could result in formal action ... Employees must be informed that in the event of insufficient improvement the formal procedure will be commenced.”<sup>183</sup>*

4% (9/228) of the documents make the informal process more formal for some groups of employees. The forms that this phenomenon takes are:

1. to require that a “vulnerable” employee is accompanied by a companion at any disciplinary-related meeting (2/9 where the same disciplinary document is shared by the two LAs);
2. to require human resource practitioner (HRP) or occupational health attendance for disabled employees (3/9, all capability); or
3. to bypass informal action for probationary employees (4/9, 2 disciplinary, 2 capability). It should be noted that in many of the documents it is stated that different procedures apply to probationary employees, so this will be a significant underestimation of the numbers of the documents that this formalisation applies to.

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<sup>180</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

<sup>181</sup> LAD\_R-6\_BRUC11-3\_L-2\_CAPA\_

<sup>182</sup> LAD\_R-6\_BRUC11-3\_M-1\_DISCI\_

<sup>183</sup> LAD\_R-6\_BRUC11-2\_M-1\_PERF\_

### *Summary*

As well as evidence of formalisation, the actions that I have categorised as being formalised, provide more evidence of differences in approach taken by LAs to informal action. Even within the 77% of the documents that require written records, there are significant differences in the types of record made and who holds them, although not in who makes the record.

#### 8.3.2. Future implications of informal action

As well as having implications at the time that it occurs, informal action also has future implications in that it may be used to invoke or inform future formal action. Some of the documents, place limits on these future implications in some situations.

To invoke, justify or evidence formal action

If informal action is taken, it may later be cited as a reason to invoke formal action. My analysis identifies that this may occur when:

1. the informal process is exhausted without the required improvement to conduct or performance, and thus formal action is invoked as a progression of the disciplinary, performance, or capability process (89% 204/228);
2. the informal process is considered to be frustrated in some way or to have become inappropriate (10% 23/228); or
3. further disciplinary or performance issues or events occur after informal action (31% 70/228).

When the informal process is exhausted without the required improvement to conduct or performance, formal action may be invoked as a progression of the disciplinary, performance, or capability process. 89% (204/228) of the documents refer to moving to formal action in this way. Where reference is not made to progression (11% 24/228), 23 (96%) of the 24 documents are disciplinary, with only one performance or capability document. In 14 of these documents, including the performance or capability document, this is likely to be because informal action is outside the procedure, rather than because the concept of progression from informal to formal action does not exist in the LA. It also seems unlikely that the concept of progression does not exist in the final ten, disciplinary documents, although this cannot be stated for certain. Table D-39 summarises these categories. Examples of statements about formal action being invoked as progression are:

*“Where early intervention and good management practice through the normal channels does not achieve the required improvement in performance, ..., the manager must proceed to the next stage (i.e. first formal stage ...)”<sup>184</sup>*

*“Whenever possible issues of misconduct will initially be handled informally between the manager and the employee, however the formal stages of the procedure may be applied when: Informal approaches have not led to the standard of conduct required, or...”<sup>185</sup>*

*“Only if such informal discussion does not lead to improvement should the formal stages of this procedure be applied”<sup>186</sup>*

Formal action may also be invoked when the informal process is considered to be frustrated in some way or to have become inappropriate. This is different to where informal action has been exhausted in that the process has not run its full course when the process is seen as frustrated. The scenarios given in the documents are largely related to employee admission of guilt, acceptance that there is a problem, or cooperation with the informal process. Non-admission of misconduct, non-acceptance that there is a problem, or non-cooperation with the informal process may lead to formal action. Alternatively, where admission of misconduct or other information makes the manager realise that the matter is more serious than previously believed, then this can also lead to formal action. A summary of these scenarios is given in Table D-40. Examples of statements about invoking formal action when informal action is frustrated are:

*“An informal reprimand (management instruction) may be given for a relatively minor act of misconduct. This is designed to reflect the proportionality of the misconduct and the individual’s response to it i.e. their acceptance of the reprimand. If there is no acceptance, the matter will be addressed via the formal procedure.”<sup>187</sup>*

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<sup>184</sup> LAD\_R-7\_BRUC11-3\_L-2\_PERF\_

<sup>185</sup> LAD\_R-7\_BRUC11-3\_L-3\_DISCI\_

<sup>186</sup> LAD\_R-7\_BRUC11-3\_M-1\_PERF\_

<sup>187</sup> LAD\_R-2\_BRUC11-3\_H-1\_DISCI\_



*“Where you admit to an allegation at an informal stage and your line manager feels the allegation is serious enough to warrant disciplinary consideration, you and your manager will sign a written record of your discussion and your line manager will explain to you that the matter will be investigated in line with the formal Disciplinary Procedure.”<sup>188</sup>*

*“If the Council can no longer sustain the under performance, the matter will be addressed through a Capability Hearing.”<sup>189</sup>*

*“Minor Misconduct This will be dealt with informally, either in supervision or a separate discussion. .... If a satisfactory explanation is not evident then the issue will be dealt with under the formal disciplinary procedure”<sup>190</sup>*

Further disciplinary or performance issues or events after initially successful informal action may also prompt formal action. The documents show that the LAs use a range of different criteria to trigger formal action when further issues occur. Of the 70 documents where this is seen, 44% (31/70) trigger formal action if the same issue, previously dealt with informally, reoccurs; 34% (24/70) if there has been any previous informal action; 20% (14/70) for timescale related reasons, be they related to a time limit for the informal process or for further misconduct or poor performance occurring; 14% (10/70) if misconduct or poor performance becomes regular or repeated; and 10% (7/70) if a number of different transgressions occur. Table D-41 breaks these categories down by document type. Examples where formal action is invoked if the same or a related issue reoccurs are:

*“If the misconduct is repeated then the employee should be dealt with under the formal part of this procedure.”<sup>191</sup>*

*“Additionally, if the employee has been dealt with under the informal procedure within the preceeding [sic] 12 month period for the same (or substantially the same) performance issues the matter will proceed directly to Stage One of the formal process.”<sup>192</sup>*

<sup>188</sup> LAD\_R-8\_BRUC11-2\_L-2\_DISCI\_

<sup>189</sup> LAD\_R-4\_BRUC11-3\_H-1\_CAPA\_

<sup>190</sup> LAD\_R-6\_BRUC11-1\_M-1\_DISCI\_

<sup>191</sup> LAD\_R-5\_BRUC11-2\_M-2\_DISCI\_

<sup>192</sup> LAD\_R-6\_BRUC11-3\_M-3-ALT\_PERF\_

*“Minor misconduct will typically be dealt with using informal management action, mediation or counselling in the first instance, but may result in formal action where there is a repeat of the behaviour.”<sup>193</sup>*

*“Where improvements in performance prove to be of a temporary nature following application of the formal stages of the Capability Procedure, the manager, in conjunction with People Services, has the option to return immediately to Stage 1 of the Formal Procedure, if the performance concerns are related.”<sup>194</sup>*

Examples where formal action is invoked if there is any further issue whether related to the previous one or not:

*“If the employee’s performance deteriorates less than a year after a warning is issued, the manager can re-start the procedure at the next level”<sup>195</sup>*

*“If ... further instances of minor misconduct occur formal action may need to be taken.”<sup>196</sup>*

Examples related to a timescale:

*“if their performance declines as a result of capability within the next 6 months, they will enter the procedure at the formal stage.”<sup>197</sup>*

*“If the same misconduct is repeated in a reasonable time period following the letter, it may be referred to and, if appropriate, following a full investigation, disciplinary action may be taken.”<sup>198</sup>*

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<sup>193</sup> LAD\_R-8\_BRUC11-2\_L-2\_DISCI\_

<sup>194</sup> LAD\_R-4\_BRUC11-2\_M-2\_CAPA\_

<sup>195</sup> LAD\_R-6\_BRUC11-2\_M-1\_PERF\_

<sup>196</sup> LAD\_R-6\_BRUC11-2\_M-3\_DISCI\_

<sup>197</sup> LAD\_R-2\_BRUC11-3\_H-1\_PERF\_

<sup>198</sup> LAD\_R-9\_BRUC11-3\_M-2\_DISCI\_

Examples related to regular or repeated misconduct or poor performance, or a number of transgressions:

*“Where there is a consistent record of underperformance, ... a [formal] performance improvement plan will be established to achieve and maintain a satisfactory standard of work.”<sup>199</sup>*

*“If minor incidents, (for example, poor timekeeping) become a frequent occurrence despite informal discussions and providing the opportunity for improvement, ..., the formal disciplinary procedure will be invoked.”<sup>200</sup>*

*“An employee with more than 2 previous managements instructions in a 24 month period would be dealt with under the formal process should a further minor transgression occur”<sup>201</sup>*

Where formal action occurs after informal action, records of that informal action are stated or implied as used to justify or evidence the formal process in 44% (100/228) of the documents. This number is probably an underestimate of when records are intended to be used because a cautious approach to coding was taken. For example, when a bundle of “evidence” is referred to but there is no statement or implication that this includes records of informal action, it seems possible that records of informal action would be included in such a bundle. This could not be said for certain though, so was not coded as records of informal action being used to justify formal action. Table D-42 breaks this category down by document type. Examples of records of informal action used to justify or evidence formal action:

*“The [formal] stage 1 manager will provide the manager who will deal with [formal] stage 2 with all relevant documentation from both the informal stage and stage 1. The employee will also be provided with a copy of this information in advance of the meeting.”<sup>202</sup>*

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<sup>199</sup> LAD\_R-4\_BRUC11-1\_H-1\_PERF\_

<sup>200</sup> LAD\_R-6\_BRUC11-3\_L-2\_DISCI\_

<sup>201</sup> LAD\_R-2\_BRUC11-3\_H-3\_DISCI\_

<sup>202</sup> LAD\_R-9\_BRUC11-3\_H-3\_CAPA\_

*“However, in certain circumstances it will be necessary for the discussion and improvement required to be confirmed in an ‘improvement plan’ letter, as it may become necessary to pursue the issue through the formal Disciplinary Policy if there is a re-occurrence or a failure to improve to the required standard.”<sup>203</sup>*

*“This [informal guidance] is a normal part of the managerial function and does not constitute disciplinary action, although, if documented, it may be referred to at a later stage.”<sup>204</sup>*

*“During the [formal] meeting: At the meeting, using examples from the Performance Improvement Plan, explain how the standards for the role have not been met. Through this discussion, identify why their performance is not satisfactory. Agree how the performance issue can be addressed including any learning, development or support and the timeline involved.”<sup>205</sup>*

#### Summary

Almost all documents are clear about invoking formal action when informal process is exhausted without the desired improvement in conduct or performance. Differences in approach relating to invoking formal action are seen when informal action is frustrated in some way, or when a further disciplinary, performance or capability issue occurs. The role of admission in frustrating informal action is the major contributor to the types of frustration identified, and only occurs in disciplinary documents.

When informal action is initially successful but further misconduct or poor performance occurs, the differences in criteria for when informal or formal action should be triggered represent significant differences in the number of chances to resolve an issue informally before formal action is taken. As with previous aspects of the documents, where no guidance is given, as in 90% (205/228) of the documents regarding frustration and 69% (158/228) regarding future events, this represents the awarding of discretion to line-managers.

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<sup>203</sup> LAD\_R-8\_BRUC11-3\_L-2\_DISCI\_

<sup>204</sup> LAD\_R-6\_BRUC11-2\_H-2\_DISCI\_

<sup>205</sup> LAD\_R-6\_BRUC11-2\_M-2\_CAPA\_

## Limits on the future implications of informal action

Some LAs impose limits on when and whether previous informal action invokes or informs future formal action. 8% (19/228) of the documents do this by setting time limits on the retention of records of informal action or their use to inform later formal action. Five of the documents award an amount of discretion by stating what the limit is “normally” or “usually”. Another five documents award discretion in that they state that there is no set time limit or that any time limit must be reasonable. 89% (204/228) of the documents do not refer to time limits and thus award further discretion to implementing managers. Table D-43 breaks down the limits imposed by document type and Table D-44 sets out the stated time limits. Examples of statements about such time limits are:

*“The line manager should make notes of any meeting and ensure that the employee has a copy. These notes may be put in writing in the form of a ‘Letter of Concern’ which will be placed on the employee’s personal file and may be used as evidence if performance/conduct does not improve and formal disciplinary action is instigated. This will be disregarded for any subsequent formal disciplinary purposes after 12 months.”<sup>206</sup>*

*“A copy of the Record of Discussion Form should be given to the employee and a copy retained on their personal file but it will be discounted for disciplinary purposes after 6 months of the final review meeting, provided that they are not required as part of a formal capability case.”<sup>207</sup>*

Five documents go a step further in limiting the impact of informal action, four by stating that records of informal action will be discounted, ignored, or have no bearing on, formal action, and one that mediation has no bearing on formal action. Another five documents state that records should be discarded if they are not needed as part of a formal process at the end of informal action, i.e., if there is no progression to formal action at that stage. Two documents state that records of informal action may be referred to during formal action only if it is reasonable to do so. One of the two gives an example of recurrence of an issue as being a reasonable reason to refer to previous records of informal

<sup>206</sup> LAD\_R-5\_BRUC11-3\_M-3\_DISCI\_

<sup>207</sup> LAD\_R-2\_BRUC11-1\_H-3\_CAPA\_

action. Table D-45 breaks down these categories by document type. Examples of statements about records of informal action not influencing formal action are:

*“Notes taken during informal action will be discounted for the purposes of formal action/sanction under this procedure.”<sup>208</sup>*

*“Where appropriate, a note of any informal discussions may be kept on file but will be ignored for the purposes of a disciplinary hearing.”<sup>209</sup>*

Other measures that I classify as increasing opportunities to resolve an issue informally, used in only one or two documents each, are a requirement to begin again at the informal stage if the same issue recurs, seen in two capability documents; that an informal warning does not contribute to the escalation of formal sanctions, seen in one disciplinary document; and a statement that the chair of formal disciplinary hearing “should not make judgements about the employee’s conduct prior to any formal stage of the policy”<sup>210</sup>, also seen in one disciplinary document.

#### *Option to extend informal action*

Another factor that may influence whether the transition is made to formal action from informal, and reduce the possibility of this, is whether policy or procedure allows for the informal process to be extended. 29% (67/228) of the documents allow informal action to be extended or state that it should not end until one or more criteria have been met. The most common provision for extending informal action is related to ensuring that sufficient informal action or support has occurred (40% 27/67); if the employee has almost met expectations (27% 18/67) or if reasonable (15% 10/67). The full list of criteria and breakdown by document type are summarised in Table D-46. Again, many of the criteria award high levels of manager discretion, such as in judging the meaning of “sufficient”, “almost” and “reasonable” in the examples above. It is also notable that the option to extend informal action is present in more than four times as many performance or capability documents as disciplinary. Examples of statements about extending informal action are:

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<sup>208</sup> LAD\_R-4\_BRUC11-3\_L-1\_CAPA\_

<sup>209</sup> LAD\_R-6\_BRUC11-3\_M-2\_DISCI\_

<sup>210</sup> LAD\_R-5\_BRUC11-3\_L-3\_DISCI\_

*“Where performance concerns continue or where they has [sic] only been minor improvement, the Manager needs to consider whether appropriate support has been provided. If not, the support plan can be extended. If so, then the concerns can be escalated to the formal performance procedure.”<sup>211</sup>*

*“Before progressing to formal disciplinary action, managers will need to consider whether: The employee had reasonable opportunity and time to know what is acceptable behaviour and has been given the opportunity to improve.”<sup>212</sup>*

*“Where there are reasonable signs of improvement but the standard remains unsatisfactory, consideration should be given to extending the monitoring period.”<sup>213</sup>*

*“Arrange for a further period of monitoring support to correct the situation and stop it from getting worse if the employee’s performance has improved and has almost met the standards”<sup>214</sup>*

*“If satisfactory performance has not been achieved, the manager will need to determine whether it is reasonable to extend the action plan of support, or whether to progress to the formal stage of the procedure.”<sup>215</sup>*

*“A reasonable period will not normally be less than one month or more than three months (or until all the agreed steps have been taken to encourage and support the individual) [emphasis added]”<sup>216</sup>*

#### *Informal outcomes of formal action*

The documents show that in some cases moving into formal stages is not a one-way trip. 35% (80/228) of documents provide the option to return to informal action from one or more stages of formal action. Examples relate to outcomes of formal investigation, hearing,

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<sup>211</sup> LAD\_R-1\_BRUC11-1\_H-1\_PERF\_

<sup>212</sup> LAD\_R-6\_BRUC11-2\_M-1\_DISCI\_

<sup>213</sup> LAD\_R-5\_BRUC11-1\_H-1\_CAPA\_

<sup>214</sup> LAD\_R-1\_BRUC11-2\_H-1\_CAPA\_

<sup>215</sup> LAD\_R-1\_BRUC11-1\_H-2\_PERF\_INFDOC\_

<sup>216</sup> LAD\_R-4\_BRUC11-2\_L-1\_CAPA\_

or appeal. This may be significant as a failsafe against inappropriate formal action. It may not avoid the formal process being entered, but depending on the point at which the return to informal action is allowed for has potential to avoid an unnecessary formal hearing or sanction. Table D-47 summarises this by document type and formal stage. Examples of statements about returning to informal action from formal action are:

*“The Manager/ Investigating officer may recommend one or a combination of the following: ... Any concerns can be addressed through informal management guidance, mediation or counselling”<sup>217</sup>*

*“To decide [at formal performance hearing] whether there has been any improvement in performance and if so whether this is sufficient to revert back to informal performance management”<sup>218</sup>*

*“The chair of the [formal disciplinary] hearing will consider all of the evidence presented and then decide if there has been:*

*... A breach of conduct, but it is not serious enough to warrant formal disciplinary action and/or mitigating circumstances have been taken into account and it can be dealt with appropriately by informal action, e.g. by day to day management and/or by issuing written management instructions; ...”<sup>219</sup>*

#### *Summary*

The overall percentage of the documents within which the implications of informal action are reduced in the ways identified is small at 16% (36/228).

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<sup>217</sup> LAD\_R-8\_BRUC11-2\_L-1\_DISCI\_

<sup>218</sup> LAD\_R-1\_BRUC11-1\_H-1\_PERF\_

<sup>219</sup> LAD\_R-6\_BRUC11-1\_M-1\_DISCI\_



## 8.4. The involvement of another (IoA) in decision making or action

The involvement of someone other than the FLM in the decision to begin informal or formal action is potentially an important failsafe against inequitable or inconsistent approaches by FLMs (Cooke, 2006; Lopez-Cotarelo, 2011; Jones and Saundry, 2012). I term this the *involvement of another*. *Involvement of another* in informal action or decision making was explored in detail to find out to what extent FLMs are solely responsible for informal action and the transition to formal action, and to what extent others are involved.

Within the documents, who is involved in action or decision-making is sometimes determined by the seriousness of the issue. For the purposes of this analysis, the person responsible is assumed to be the one who carries out the action or makes the decision when a situation is minor or could be addressed informally. Or at least not when very serious or gross misconduct or poor performance is suspected, where formal action would almost always be taken in the first instance. *Involvement of another* was only recorded when it was not optional or was not the decision of the FLM. This is because when involving another is at the discretion of the FLM, it cannot be seen as a failsafe against inconsistent or differential treatment because the FLM could simply choose to act alone. This means that where, for example, FLMs “may” or “can” seek advice or guidance “as necessary” or “when appropriate”, or where “advice is available”, this was not categorised as the *involvement of another*. The example quotes from documents relate to when *involvement of another* is required, but for all of the transitions or stages there are more documents where involvement is not required than when it is.

The sections below address the non-optional *involvement of another* in the decision to begin informal and formal action, and also during informal action. Involvement was coded as non-optional if the document states that it will occur or uses the terms: “advised to”, “should”, “encouraged to”, “please”, “will”, “must”, “are responsible for”, “do”, “needs to”, “in all cases”, “should always”, or “required”. Involvement was seen as optional when these terms are modified by terms such as “if required” or “as appropriate” that introduce optionality, or the terms “can” or “may” are used.

Examples where involvement of another is optional:

*“Managers are responsible for seeking advice and guidance from the HR team where necessary to ensure that each case is dealt with appropriately.”<sup>220</sup>*

*“Managers can seek advice from the HR Service when deciding on the best approach for a particular case.”<sup>221</sup>*

Examples where involvement of another non-optional:

*“Where a manager, ..., considers that a case needs to be dealt with under this [formal] procedure, he/she must seek the advice of a member of staff from HR services.”<sup>222</sup>*

*“Formal disciplinary action may not be taken against any member of staff without discussing with the H.R Advisory Services Team.”<sup>223</sup>*

#### 8.4.1. The transition to informal action

In terms of whether the *involvement of another* is required, the decision to begin informal action is almost always decided by the FLM without the *involvement of another* (87% 199/228). When another member of staff is involved, this is more often HRPs (12% 27/228) than senior managers (1% 2/228). The breakdown for such involvement between disciplinary and performance or capability documents is similar. Table D-48 summarises this involvement by document type. A senior manager is involved in the transition to informal action in just two documents, both performance or capability. One requires the FLM to seek advice from their own line manager before an informal meeting with the employee (and states that the senior manager may in turn seek advice from HR). The other requires the FLM to keep their own line manager informed of work being undertaken to address performance issues, with the implication that this may be done early in the process rather than before it.

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<sup>220</sup> LAD\_R-2\_BRUC11-1\_H-1\_DISCI\_

<sup>221</sup> LAD\_R-3\_BRUC11-3\_L-3\_PERF\_

<sup>222</sup> LAD\_R-1\_BRUC11-3\_H-1\_CAPA\_

<sup>223</sup> LAD\_R-2\_BRUC11-2\_H-3\_DISCI\_

Looking more closely at when the documents require the *involvement of another*, 18 documents explicitly require this before informal action, another six require involvement but it is either early in the process, or unclear whether before or early. The documents are not always explicit about whether the *involvement of another* is required before the FLM makes a decision to proceed with action, after the decision but before action is taken, or early in a process. An additional four documents require the *involvement of another* in the transition to informal action in the particular situation that an issue spans more than one policy. *Involvement of another* that is required early, or may be before or early, is considered a failsafe because of its potential to provide an opportunity to identify and reconsider differential or inconsistent action. Table D-49 summarises *involvement of another* before informal action by document type.

The nature of the, almost exclusively HRP, involvement in the transition to informal action, from most to least used, was categorised as: *advice or guidance; discussing the categorisation of the misconduct or poor performance; notifying or making aware; consultation; and HR consideration how to proceed*. *HR consideration how to proceed*, which was identified in just one, disciplinary, document, is the only type of involvement that seems to put decision making in the hands of the HRP, as opposed to the other involvement that provides a source of advice or debate but does not necessarily take a share of responsibility from the FLM. Table D-50 summarises the percentages and counts by document type. Examples of statements about *involvement of another* in the transition to informal action are:

*“counselling will be undertaken in most cases by the immediate line manager of the employee concerned. It is advised that Human Resources are contacted before any action is undertaken.”<sup>224</sup>*

*“When a performance problem cannot be resolved by day-to-day management support, advice and guidance the Manager should follow a [initially informal] structured method to try and resolve this. Advice should be sought from HR”<sup>225</sup>*

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<sup>224</sup> LAD\_R-4\_BRUC11-2\_M-1\_DISCI\_

<sup>225</sup> LAD\_R-1\_BRUC11-3\_M-3\_CAPA\_

*“Line Managers should notify their Group Personnel Officer of all potential disciplinary matters.”<sup>226</sup>*

*“Your manager will seek the advice of an HR case adviser as soon as a performance issue is recognised. This may therefore be during the process of normal 1-1’s or supervision with your manager and before this procedure is commenced.”<sup>227</sup>*

*“Before [informal] discussion with the individual they should take advice from their own line manager who will, where appropriate, discuss the details and process with HR.”<sup>228</sup>*

#### 8.4.2. IoA during informal action

Whether *involvement of another* is required during informal action was also explored, with the assumption again that such early involvement has potential to act as a failsafe against differential or inconsistent action. 82% (186/228) of the documents do not require the *involvement of another* during informal action. 18% (41/228) refer to non-optional *involvement of another*, and again this is almost always HRP involvement. Reference to HRP involvement (17% 39/228) is five times more likely to be in performance or capability documents than disciplinary. In contrast, senior management involvement is only referred to in three documents, all disciplinary. One of these documents requires both HRP and senior manager involvement. Notably, three documents, two disciplinary and one capability, state that it is not appropriate for anyone other than the FLM and employee to “be involved”<sup>229</sup> in informal meetings. These documents also do not require any other *involvement of another* in relation to informal action, such as HRP advice, before or in relation to informal meetings. All three do, however, require HR involvement before formal action. Table D-51 presents *involvement of another* during informal action by document type.

When involvement is required, this is most commonly in two specific situations: where a performance or capability problem is seen to be related to a *health issue or disability* (20

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<sup>226</sup> LAD\_R-9\_BRUC11-3\_M-2\_DISCI\_

<sup>227</sup> LAD\_R-9\_BRUC11-1\_M-1\_PERF\_

<sup>228</sup> LAD\_R-9\_BRUC11-1\_H-1\_CAPA\_

<sup>229</sup> LAD\_R-2\_BRUC11-1\_H-3\_CAPA\_; LAD\_R-2\_BRUC11-1\_H-3\_DISCI\_; LAD\_R-2\_BRUC11-2\_H-3\_DISCI\_

*documents*); or where a manager is considering *changing the procedure* that informal action is being taken under (12 documents). Involvement regarding a health issue or disability might be of HRP and/or occupational health. Both of these scenarios relate almost exclusively to performance or capability documents. These and the other situations where involvement is required are mostly very specific, meaning that the coding of the documents where no *involvement of another* is required will be an underestimate, because *involvement of another* will not be required in cases where these criteria do not apply. Four documents or less each, require the *involvement of another* in situations regarding: *action being taken as a result of preliminary investigation; generally; the outcome of the informal meeting or before extending informal action; arranging support; before preliminary investigation, when there is insufficient progress; regarding the monitoring period, sickness absence, the issuing of a letter, or to ensure sensitivity*. Table D-52 breaks these categories down by document type.

The nature of non-optional HRP involvement during informal action is most commonly *advice and guidance* (25 documents); followed by HRP *action* (nine); then *consultation or liaison* (eight). HRP *Action*, which is required only in performance or capability documents, takes the form of one document where the HRP makes the decision to change procedure, and eight where the HRP make referrals to occupational health or to other specialist support. Three or less of the documents each, require *joint decision making; discussion, involvement, meeting, or notifying*. Only HRP *action* and *joint decision making*, in 12 documents, all but one that is performance or capability, seem to put decision making or action in the hands of the HRP, jointly in two documents, and only in very specific circumstances in the other ten. Table D-53 breaks the codes regarding nature of HRP involvement during informal action down by document type. Examples of statements about *involvement of another* during informal action are:

*“An appropriate suitable manager conducts [informal] initial enquiries to establish if there is a case to answer.*

*Managers are encouraged to seek advice from HR.”<sup>230</sup>*

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<sup>230</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

*“If the employee’s problems are domestic or health related, then they should be referred to Human Resources to initiate appropriate action. For example, referral to the Occupational Health physician or for other specialist input.”<sup>231</sup>*

*“Where you feel that it would be appropriate for a record of the discussion to be noted, you can issue a letter of management advice to the employee. You should contact your HR representative for advice before you issue the letter.”<sup>232</sup>*

*“It is imperative that the HR Manager/or his/her representative is involved throughout the informal stages as well as the formal stages of the Procedure.”<sup>233</sup>*

Two documents, both disciplinary, require non-optional involvement of a senior manager during informal action. Both require the senior manager to make a decision, one whether to issue a management instruction and the other to decide the way forward following preliminary investigation. Another disciplinary document requires the involvement of both HRP and a senior manager during informal action, in the form of making a joint decision how to proceed from preliminary investigation.

#### 8.4.3. Transition to formal action

Turning to the transition to formal action and whether *involvement of another* is required, 52% (118/228) of the documents do not require the *involvement of another*, with similar numbers of disciplinary and performance or capability documents. 42% (95/228) require non-optional HRP involvement, also with similar numbers of disciplinary and performance or capability documents. 4% (9/228) of the documents require both HRP and senior manager involvement and 3% (6/228) require senior manager involvement. Table D-54 presents non-optional *involvement of another* in the transition to formal action by document type.

Regarding when involvement is required, 31% (70/228) of the documents require HRP involvement before formal action or before the decision to begin formal action. 14% (31/228) require involvement early in the formal process or it is not clear whether

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<sup>231</sup> LAD\_R-2\_BRUC11-2\_M-3\_CAPA\_

<sup>232</sup> LAD\_R-1\_BRUC11-1\_H-2\_DISCI\_

<sup>233</sup> LAD\_R-5\_BRUC11-2\_M-1\_CAPA\_

involvement is required before or early. 3% (7/228) require involvement in particular situations: when the transition to formal action is *bypassing informal action*; when there is a *disability or health issue*; when a *fast-tracked approach* is being considered; or when *the employee is an apprentice*. Table D-55 presents these values by document type.

The nature of HRP involvement is most commonly, in order of frequency, *advice, support and guidance* (21% 48/228); *consultation* (11% 24/228); *notification* (8% 19/228); *discussion* (4% 10/228); and *making a decision* (3% 6/228). Less frequently, four documents or less each, *involvement; action* in the form of writing to the employee; *in conjunction* (arrange meeting, not decision); *liaison*; and *working closely with*. Only six documents, coded to *making the decision*, make an action related to the decision to proceed the responsibility of the HRP rather than the FLM. Table D-56 presents these values by document type. Examples of statements about HRP *involvement of another* in the transition to formal action are:

*"If the line manager decides that the matter should be handled formally, after having contacted HR & OD for advice, then a disciplinary investigation should be undertaken. The line manager should contact HR & OD in the first instance to determine who will be responsible for undertaking the investigation."*<sup>234</sup>

*"Where a manager, or senior member of staff acting under authority delegated by the manager, considers that a case needs to be dealt with under this procedure, he/she must seek the advice of a member of staff from HR services."*<sup>235</sup>

*"Before any formal action is taken, the nominated manager must consult with Human Resources;"*<sup>236</sup>

*"At all times HR must be consulted when formal action under this policy is considered."*<sup>237</sup>

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<sup>234</sup> LAD\_R-7\_BRUC11-3\_M-1\_DISCI\_

<sup>235</sup> LAD\_R-1\_BRUC11-3\_H-1\_CAPA\_

<sup>236</sup> LAD\_R-5\_BRUC11-3\_M-1\_DISCI\_

<sup>237</sup> LAD\_R-8\_BRUC11-3\_M-1\_CAPA\_

*“Formal disciplinary action may not be taken against any member of staff without discussing with the H.R Advisory Services Team.”<sup>238</sup>*

*“If managers have not already informed HR by this point it is strongly advised that they do so before initiating the formal capability process”<sup>239</sup>*

Of the nine documents requiring *senior manager and HRP* involvement in the transition to formal action, seven of these nine documents are disciplinary and two performance or capability. Eight documents state that involvement is required before formal action begins or before the decision is made, one document requires early involvement, or it is not clear whether involvement is required before or early in the formal process. Table D-57 presents these values by document type. The nature of *senior manager and HRP* involvement, in order of frequency, all coded to four documents or less each, is to: *consult or liaise; decide; take forward; agree; and work with (to identify roles)*. Only five documents, coded to *decide* and *take forward*, make responsibility for progressing to the formal stages the responsibility of the senior manager and HRP rather than the FLM. Table D-58 presents these values by document type.

Of the six documents that require senior manager (but not HRP) involvement in the transition to formal action, four are disciplinary and two are performance or capability. Four, all disciplinary, state that involvement is required before formal action begins or before the decision is made to transition to formal action. The other two documents, both performance or capability, require early involvement or it is not clear whether involvement is before or early. Table D-59 presents these values by document type. The nature of senior manager involvement in three of the six documents, all disciplinary, is to *decide*. In each of the other three documents, it is to *consult or liaise; inform; or refer concerns to*. Only three documents make the decision the responsibility that of the senior manager rather than the FLM. Table D-60 presents these values by document type. Examples of statements about senior manager *involvement of another* in the transition to formal action are:

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<sup>238</sup> LAD\_R-2\_BRUC11-2\_H-3\_DISCI\_

<sup>239</sup> LAD\_R-5\_BRUC11-1\_H-3\_CAPA\_



*“they may decide to invoke the formal procedure as set out in Section 7 of this policy and procedure, in consultation and agreement with their Head of Service and HR.”<sup>240</sup>*

*“If the line manager believes that the employee’s conduct is such that formal disciplinary action should be considered, they should contact the Human Resources Department and their Senior Manager who will be able to give guidance and begin any appropriate investigation.”<sup>241</sup>*

*“The manager may, at a later stage, decide to refer the matter to an appropriate senior manager in order to proceed to the Formal Disciplinary Procedure.”<sup>242</sup>*

#### 8.4.4. Comparison of the stages

*Involvement of another* during the transition to informal action and during the informal action itself is very low, in both cases less than 25% of the documents, and when it occurs is almost exclusively of a nature that appears not to remove responsibility from the FLM or share it jointly. The transition to formal action is more likely to require *involvement of another*, but still only in just less than half of the documents. For this transition, still only a handful of the documents make the decision to proceed the responsibility of a member of staff other than the FLM. Thus, non-optional involvement such as seeking advice, or discussing the matter, that leaves responsibility with the FLM occurs in a small proportion of the documents, and the decision being required to be made by someone other than the FLM in an extremely small number. No involvement of another is required in 47% of the documents for the transition to informal action, during it, and the transition to formal action. This raises to 87% and 82% respectively for the transition to and during informal action, and 52% for the transition to formal action. Table D-61 presents these values by document type.

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<sup>240</sup> LAD\_R-4\_BRUC11-3\_L-3\_CAPA\_

<sup>241</sup> LAD\_R-1\_BRUC11-1\_H-1\_DISCI\_

<sup>242</sup> LAD\_R-3\_BRUC11-3\_M-2\_DISCI\_

This exploration of the *involvement of another* in the transitions to informal and formal action has simplified the processes involved in progressing into or towards formal action, the next section will explore more of the complexity of this transition.

#### 8.4.5. Investigation

Investigation is an opportunity to explore whether there is a case to answer and whether an issue needs to be dealt with formally, and so should be seen as a neutral act, rather than the beginning of a disciplinary or performance process. It is also helpful for the purposes of this analysis to view investigation as a separate act, or acts, and as neutral, despite the fact that it is so often positioned or referred to as part of the formal procedure in the documents (see 8.4.5). The next sections will explore the subtleties of *involvement of another* in investigative processes up to and including the transition to post-investigative formal action. Returning to the categorisations of preliminary and main investigations introduced above, this section will explore who is responsible for the elements of decision-making related to these phases of investigation. Again, the role coded as responsible for carrying out or making decisions about investigation or how to proceed, is the person stated to do this when a situation could be handled informally. That is, not in situations where the seriousness of the potential misconduct or poor performance mean that a formal approach would almost always be taken, which are also situations where different or additional roles may be involved. These situations are discounted because the phenomenon of interest to this study is where FLMs choose formal approaches where informal ones could be taken. Doing so also simplifies the highly complex combinations of roles that emerge.

Some assumptions have been necessary in identifying when FLMs make decisions. Documents often do not explicitly address who makes decisions, especially where there appears to be an unstated assumption in the document that the same person is responsible throughout the process. One strategy would have been to code all of these cases as *unknown*, but this would have masked the detail of many of the documents. Instead, where there was *no suggestion that another is expected to be involved* in a decision, the role was coded to the FLM. My coding includes sub-codes that distinguish between text where this assumption is made and where the person carrying out the role is stated. Again, it is non-optional *involvement of another* that is of interest, identified using the same criteria as above. Two coding categories are used to identify where responsibility lies when there is *involvement of another*. *Decision solely another's* assigns responsibility to someone

other than the FLM. *Involvement alongside FLM* either leaves responsibility with the FLM or responsibility is shared. Who is involved is also identified.

#### Preliminary investigation

##### *Transition to preliminary investigation*

*Involvement of another* in the transition to preliminary investigation is not required in 85% (194/228) of the documents. In the 15% (34/228) of those that do require this, it is exclusively *involvement alongside the FLM*, rather than *another making the decision*. Of these 34 documents, 32 require HRP involvement and two require senior manager involvement. The nature of the HRP involvement, in descending order of frequency, is: *advice and guidance; discussing the categorisation of the issue; notifying or making aware;* and, in one document each, *HR consideration how to proceed;* and *consultation*. The senior manager involvement is *advice*, and *keeping the senior manager informed*. Table D-62, Table D-63, and Table D-64 present these values by document type. The quotes below are from documents with a separate preliminary investigation stage. Where the informal stage has elements of investigation, *involvement of another* is the same as before informal action.

*“An appropriate suitable manager conducts initial enquiries to establish if there is a case to answer. Managers are encouraged to seek advice from HR.”<sup>243</sup>*

*“seek Human Resources advice at all stages of the procedure [which includes a separate preliminary investigation stage] in advance of any steps being taken;”<sup>244</sup>*

##### *Who carries out preliminary investigation*

In relation to carrying out preliminary investigation or equivalent, there is no requirement for *involvement of another* in 98% (224/228) of the documents. The four performance or capability documents, where involvement is required, all require HRP *involvement alongside the FLM*. None of these documents have separate preliminary investigation stages. This involvement is either *advice and guidance* or *to be involved*. No documents require that preliminary investigation be carried out by another member of

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<sup>243</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

<sup>244</sup> LAD\_R-8\_BRUC11-3\_L-1\_DISCI\_

staff, or jointly by the FLM and another. Table D-65 - Table D-67 presents these values by document type. Examples of statements about *involvement of another in preliminary investigation* are:

*"It is imperative that the HR Manager/or his/her representative is involved throughout the informal stages [which has elements of investigation] as well as the formal stages of the Procedure"*<sup>245</sup>

*"Informal stage [which has elements of investigation] ... The line manager should consult HR Services who will provide advice, support and guidance."*<sup>246</sup>

#### *Transition from preliminary investigation*

Transition from preliminary investigation, that is deciding the outcome of the preliminary investigation, does not require the *involvement of another* in 96% (219/228) of the documents. Nine documents make up the remaining 4% where *involvement of another* is required. Six, split equally between disciplinary and performance or capability documents, require *involvement alongside the FLM*. This takes the form of *advice or guidance; consultation or liaison; or involvement*. Of the six, two documents, both disciplinary, require the decision to be made *jointly* between the *FLM and HRP* and *FLM and a senior manager*, respectively, and the remaining four, one disciplinary and three performance or capability, required *HRP involvement*. Three documents, all disciplinary, require the decision to be made by *another or others*, that is not the FLM: one document by a *senior manager* and two by a *senior manager and HRP*. Table D-68 - Table D-71 present these values by document type. Examples of statements about *involvement of another* in the transition from preliminary investigation are:

*"When an alleged misconduct emerges a preliminary investigation needs to be undertaken as soon as possible by the line manager or another nominated manager and reviewed with the People Services HR Business Partnering Team."*<sup>247</sup>

<sup>245</sup> LAD\_R-5\_BRUC11-2\_M-1\_CAPA\_

<sup>246</sup> LAD\_R-6\_BRUC11-3\_M-2\_CAPA\_

<sup>247</sup> LAD\_R-8\_BRUC11-3\_L-1\_DISCI\_

*“The manager/supervisor conducting the preliminary enquiry will report to the findings to the appropriate Director and the Human Resources Team.”<sup>248</sup>*

*“Senior Manager – it is the responsibility of the appropriate senior manager to give full consideration to any concerns or issues regarding any member of their staff’s conduct, and to make the decision as to whether the formal procedure should be followed.”<sup>249</sup>*

*“Following the fact finding meeting, and after consideration of all mitigating factors, the Head of Service may determine whether the allegation or issue can and should be dealt with through as a management instruction.”<sup>250</sup>*

#### Main investigation

A complex picture emerges from the analysis of the combinations of decision-makers regarding main investigation. Decisions are described by the documents in relation to whether a main investigation occurs, who should carry it out, and the way forward from the main investigation. Who makes these decisions and carries out the investigation is described by the documents in several different ways with the picture complicated by the fact that decision makers may be identified by roles that do not identify them in relation to the FLM. There are several points in the procedures at which the *involvement of another* or others may occur, or perhaps more significantly often not occur.

The transitions “from preliminary investigation” and “to main investigation” are addressed separately, despite representing what is often a single decision, because the documents sometimes make a distinction between these two stages or emphasise more one or the other. The two unusual documents referred to in the status of main investigations section were excluded from the analysis relating to main investigation because of the way the procedures operate across more than one document; they were coded as *N/A*. There are more document quotes for disciplinary than performance or capability documents in this section because disciplinary documents always have main

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<sup>248</sup> LAD\_R-3\_BRUC11-2\_H-1\_DISCI\_

<sup>249</sup> LAD\_R-1\_BRUC11-1\_H-1\_DISCI\_

<sup>250</sup> LAD\_R-2\_BRUC11-3\_H-3\_DISCI\_

investigation as a separate stage whereas performance and capability documents may have elements of investigation as part of a more general informal or formal stage. In these documents decisions and roles are less often explicitly stated and were often coded based on context rather than explicit statements.

*Transition to main investigation*

No requirement for the *involvement of another* in the decision whether to begin a main investigation is required in 66% (150/228) of the documents, with similar numbers of disciplinary and performance or capability documents. *Involvement of another* is required in 33% (76/228), with *involvement alongside the FLM* required more than three times as often as when the *decision is solely another's*. 25% (58/228) of the documents require *involvement of another alongside the FLM*, with a ratio of disciplinary documents to performance or capability of 40:60. Looking at who is involved, it is an HRP in 23% (53/228) of the documents. As above, the most frequent type of involvement is *advice and guidance*; followed by *consultation or liaison*; *notification or making aware*; *involvement*; *discussion*, and finally in one document, *arranging a meeting in conjunction with*. *Involvement alongside the FLM* is also, in one or two documents each, a *joint FLM and HRP decision*; *senior manager involvement*; and *senior and HRP involvement*. In the latter the HRP is stated as not making the decision. Where the *decision is solely another's* (8% 18/228), 17 of the 18 documents are disciplinary and one performance or capability. Here the decision is made by a *senior manager* in 6% (13/228) of the documents; *jointly by a senior manager and HRP* in 1% (3/231); and by an *HRP*; and *senior manager with HRP involvement*, in one document each. Table D-72 - Table D-75 present these values by document type. The quotes below relate to *involvement of another* alongside the FLM:

*"If the line manager and their HR representative decide that an investigation is required ..."*<sup>251</sup>

*"[When the FLM decides that] There is a case to be investigated. Managers should always seek HR advice and submit the Notification of Disciplinary Investigation Form"*<sup>252</sup>

<sup>251</sup> LAD\_R-8\_BRUC11-1\_M-1\_DISCI\_

<sup>252</sup> LAD\_R-7\_BRUC11-3\_L-1\_DISCI\_

*“Human Resources staff will have a key role throughout the process, and will advise and support managers in all cases at each stage of the procedure, ... At this stage, the manager should have carried out an investigation”<sup>253</sup>*

*“The role of the HR representative is to provide advice and guidance throughout the process.”<sup>254</sup>*

The quotes below relate to involvement where the decision or action is solely that of another:

*“Members of the Corporate team (consisting of Heads of Service, Strategic Directors and the Chief Executive) have authority to instigate a disciplinary investigation, ...”<sup>255</sup>*

*“The senior manager is someone more highly graded than the employee’s manager, usually within the same service and the same reporting line. ... They [the senior manager] can: ... commission an Investigation.”<sup>256</sup>*

*“Line Managers are responsible for reporting the disciplinary offence in the case of an employee under their supervision or another Line Manager to HR for consideration to proceed in line with this Disciplinary policy and procedure.”<sup>257</sup>*

*“From the information that is collected as part of the preliminary enquiry, the Director, in conjunction with a member of the Human Resources Team will decide whether to ... or arrange for a formal disciplinary investigation to take place.”<sup>258</sup>*

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<sup>253</sup> LAD\_R-5\_BRUC11-3\_M-1\_CAPA\_

<sup>254</sup> LAD\_R-1\_BRUC11-3\_M-2\_DISCI\_

<sup>255</sup> LAD\_R-9\_BRUC11-2\_H-1\_DISCI\_

<sup>256</sup> LAD\_R-3\_BRUC11-3\_M-2\_DISCI\_

<sup>257</sup> LAD\_R-4\_BRUC11-3\_L-3\_DISCI\_

<sup>258</sup> LAD\_R-3\_BRUC11-2\_H-1\_DISCI\_

*Who decides who investigates*

No *involvement of another* is required in deciding who carries out the main investigation in 73% (166/228) of the documents. In some documents included in this coding this is not a decision as such because the document wording assumes that the FLM carries out the role. In contrast, 26% (60/228) of the documents do require *involvement of another* in this decision. In 23% (14/228) of the documents this is *involvement alongside the FLM*. In these 14 documents, in 13 this is HRP involvement. The documents are ten disciplinary and three performance or capability. Again, the nature of the involvement is most often *advice and guidance*; followed by *consultation*; *involvement*; and *discussion*. The remaining one, disciplinary, document, requires *joint decision making by the FLM and a senior manager*. The decision is solely another's in 20% (46/228) of the documents. When this is the case, 12% (27/228) of the documents, 24 disciplinary and three performance or capability, require decision making by a senior manager. 2% each (5/228), or less, of the documents require decision making by the *HRP; someone other than the FLM (who is unclear); joint senior manager and HRP; senior manager with HRP involvement; or senior manager or HRP*. Table D-76 - Table D-79 present these values by document type.

The quotes below relate to *involvement of another* alongside the FLM:

*"The line manager of the employee or the Operational Manager will confirm when a matter should be investigated and appoint an Investigating Officer, in consultation with an HR Specialist."*<sup>259</sup>

*"You will need to decide whether it is appropriate to investigate the issue yourself, or if feel you may be compromised, it may be appropriate to appoint someone to investigate on your behalf. ... You should take advice from your HR representative to discuss the options available to you."*<sup>260</sup>

*"At this point you will need to work with your line manager to identify the managerial roles in the formal disciplinary procedure (see below). Please also contact HR who will be able to give you additional support and guidance if you need it"*<sup>261</sup>

<sup>259</sup> LAD\_R-8\_BRUC11-3\_M-2\_DISCI\_

<sup>260</sup> LAD\_R-1\_BRUC11-1\_H-2\_DISCI\_

<sup>261</sup> LAD\_R-6\_BRUC11-2\_M-2\_DISCI\_



*“This decision will be made in consultation with the Assistant Director – Human Resources and Payroll.”<sup>262</sup>*

The quotes below relate to involvement where the decision or action is solely that of another:

*“The Chief Executive/ Executive Director/ Head of Service will appoint an Investigating Officer (either from within the same service or, if appropriate, from a different service) who has not already been involved in the case and who will not be the person conducting any disciplinary hearing as a result of the investigation.”<sup>263</sup>*

*“The line manager’s manager (The Senior Manager) will appoint a Reviewing Officer, the choice of which is at the discretion of the Council”<sup>264</sup>*

*“HR Operational and Commercial Lead will appoint an investigating officer”<sup>265</sup>*

*“If the line manager and their HR representative decide that an investigation is required, the HR representative will normally liaise with the relevant strategic director to appoint an appropriate investigating officer, usually someone at head of service or tier four manager level.”<sup>266</sup>*

*Who carries out main investigation*

No *involvement of another* in carrying out a main investigation is required in 71% (162/228) of the documents. In contrast, 28% (64/228) do require the *involvement of another*. 18% (42/228) of the documents require involvement alongside the FLM and 10% (22/228) require the investigation to be *solely carried out by another*.

Where documents require *involvement alongside the FLM*, 71% (30/42) are disciplinary and 29% (12/42) performance or capability. 79% (33/42) of these documents require

<sup>262</sup> LAD\_R-4\_BRUC11-2\_H-1\_DISCI\_

<sup>263</sup> LAD\_R-5\_BRUC11-3\_M-1\_DISCI\_

<sup>264</sup> LAD\_R-8\_BRUC11-2\_L-2\_CAPA\_

<sup>265</sup> LAD\_R-3\_BRUC11-2\_M-1\_DISCI\_

<sup>266</sup> LAD\_R-8\_BRUC11-1\_M-1\_DISCI\_

involvement of the *HRP*. The *HRP* involvement follows a similar pattern to the involvement seen in the sections above, with *advice and guidance* by far the most commonly required involvement (10% 22/228); followed in five or less documents each by, *attendance; involvement; consultation; help with planning; keeping informed; liaison; notification (general); notification of progress and reasons for delay; to work closely with HRP; and writing the investigation report in conjunction with HRP*. Also, interestingly because of the contradictory nature of these approaches, three disciplinary documents require the *HRP* supporting the investigation to be different to the one supporting any future hearing whereas another disciplinary document requires the same *HRP* to support both. Other *involvement alongside the FLM* takes the form of the requirement for the investigation to be carried out *jointly by the FLM and an HRP manager*, in eight documents, seven disciplinary and one performance or capability, and *involvement of a senior manager* where the senior manager oversees the investigation, in one disciplinary document.

Where the investigation is *solely carried out by another*, 19 of the documents are disciplinary and two performance or capability. 7% (15/228) of the documents, require this to be an *unknown-other*, 12 disciplinary, two performance or capability and one *Both*. The term *unknown-other* is used to refer to a member of staff other than the *FLM* whose role is unknown. 2% (4/228), all disciplinary, require an *unknown-other with HRP involvement*. One document each, all disciplinary, require an *HRP; joint unknown-other and HRP; or senior manager and/or HRP* to carry out the investigation.

In addition, 7% (17/228) of the documents, all disciplinary, also make statements about the investigator needing to be independent of the situation. This could not be assumed to imply that the *FLM* would be excluded from the role, because nine documents, all disciplinary, make such a statement but allow for the *FLM* to carry out the main investigation. 26% (60/228) of the documents, all but one disciplinary, require that the investigator be different to the hearing chair. In contrast, two documents, both disciplinary, state that the hearing chair may carry out the investigation where misconduct is minor. One disciplinary document states that an *HRP* would not carry out the investigation. Table D-80 - Table D-83 present these values by document type.

The quotes below relate to where the FLM investigates and there is no non-optional *involvement of another* required. Examples of documents where no involvement is required are generally difficult to give because they are evidenced by the absence of a requirement.

*“In respect of any staff they manage, all managers are usually responsible for: ... Investigating problems of work performance which may lead to formal action under the procedure and gathering objective evidence of the shortfalls; ... ”*<sup>267</sup>

*“Managers are responsible for monitoring conduct and behaviour within their team. Under usual circumstances, managers are responsible for taking appropriate informal and formal action to ensure the standards of the Council are maintained within their team, undertaking investigations, disciplinary hearings and/or appeal hearings as appropriate.”*<sup>268</sup>

The quotes below relate to *involvement of another* alongside the FLM:

*“A member of Human Resources will be present at all formal stages of the Procedure [main investigation is formal].”*<sup>269</sup>

*“An employee’s line manager and a representative from HR will promptly and thoroughly investigate any allegation of misconduct”*<sup>270</sup>

*“A member of HR should be consulted by managers at all stages within the disciplinary process for advice and guidance on matters of policy, procedure and all such related employment matters.”*<sup>271</sup>

*“At all stages under sections 5 [5 is a formal stage with elements of investigation], 6, 9 and 16, the involvement of HR staff is required”*<sup>272</sup>

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<sup>267</sup> LAD\_R-2\_BRUC11-2\_M-3\_CAPA\_

<sup>268</sup> LAD\_R-2\_BRUC11-1\_H-1\_DISCI\_

<sup>269</sup> LAD\_R-5\_BRUC11-2\_M-2\_CAPA\_

<sup>270</sup> LAD\_R-6\_BRUC11-1\_H-2\_DISCI\_

<sup>271</sup> LAD\_R-3\_BRUC11-1\_H-3\_DISCI\_

<sup>272</sup> LAD\_R-1\_BRUC11-3\_H-1\_CAPA\_

The quotes below relate to involvement where the decision or action is solely that of another:

*"It is important that the line manager has no involvement in the investigation process to ensure that an impartial decision is made."*<sup>273</sup>

*"It is likely that a Manager unconnected with the service in question will be asked to take on the role of Investigating Officer."*<sup>274</sup>

*"These are allegations where more formal action may be required. The senior manager will need to identify and appoint a manager who has no line management responsibility for the employee concerned to undertake an investigation"*<sup>275</sup>

*"The investigation itself should be undertaken by a member of HR,"*<sup>276</sup>

#### *Transition from main investigation*

The outcome of the main investigation is decided without the requirement for the *involvement of another* in 74% (169/228) of the documents. Of the 25% (57/228) that require the *involvement of another* in this decision, 47 are disciplinary, nine performance or capability, and one a *Both* document. The involvement required is *involvement alongside the FLM* in 11% (25/228) of the documents, 18 disciplinary and seven performance or capability. This is *HRP* involvement in 16 documents, nine disciplinary and seven performance or capability. *HRP* involvement takes the form of *advice and guidance* in 11 documents; then in three documents or less each, *involvement; consultation; attendance; or liaison*. In one disciplinary document, *HRP advice and guidance* is required, but it is stated that the *HRP* will "not take part in the decision making process". In eight documents, all disciplinary, *involvement alongside the FLM* is a *joint decision between FLM and HRP*, and one document, also disciplinary, a *joint decision between FLM and senior manager*.

The decision is *solely another's* in 14% (32/228) of the documents, 29 of which are disciplinary. 11% (24/228) of the documents, 21 disciplinary, two performance or capability

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<sup>273</sup> LAD\_R-2\_BRUC11-3\_M-1\_DISCI\_

<sup>274</sup> LAD\_R-4\_BRUC11-2\_M-2\_DISCI\_

<sup>275</sup> LAD\_R-5\_BRUC11-3\_L-3\_DISCI\_

<sup>276</sup> LAD\_R-4\_BRUC11-3\_M-2\_DISCI\_

and one *Both*, require the decision to be made by an *unknown other*. 3% (6/228) of the documents, all disciplinary, require a *joint decision between an unknown other and HRP*, and 1% (2/231), again disciplinary, require the decision to be made by an *unknown other with HRP involvement*. Table D-84 - Table D-87 presents these values by document type.

The quotes below relate to *involvement of another* alongside the FLM:

*“On receiving the investigation report the nominated manager [who may be the FLM] will need to consider and review the case and make a decision on what action, if any, should be made within ten working days. Contact the nominated HR representative for advice/guidance.”<sup>277</sup>*

*“At all formal stages of this process advice and assistance should be sought from the HR Service.”<sup>278</sup>*

*“The manager [FLM] will hold a case review with (and organised by) HR to consider the investigation report and determine whether or not there is a case to answer based on balance of probability.”<sup>279</sup>*

*“Human Resources staff will have a key role throughout the process, and will advise and support managers in all cases at each stage of the procedure”<sup>280</sup>*

The quotes below relate to involvement where the decision or action is solely that of another:

*“On completion of the investigation, the investigating officer [who is not the FLM] will recommend to the line manager who instigated the investigation whether the matter should be dropped or whether a disciplinary hearing should be arranged. The line manager should accept the investigating officer’s decision and not put undue pressure on them for any particular outcome.”<sup>281</sup>*

<sup>277</sup> LAD\_R-5\_BRUC11-3\_L-3\_DISCI\_

<sup>278</sup> LAD\_R-3\_BRUC11-3\_L-2\_CAPA\_

<sup>279</sup> LAD\_R-5\_BRUC11-1\_H-2\_DISCI\_

<sup>280</sup> LAD\_R-5\_BRUC11-3\_M-1\_CAPA\_

<sup>281</sup> LAD\_R-8\_BRUC11-1\_M-1\_DISCI\_

*“At the end of the investigation, the Investigating Officer [who may be the FLM], in conjunction with the HR Adviser, will write up the investigation in the ‘Management Statement of and the authorised officer will take the decision whether or not the case will progress to a Disciplinary Hearing.”<sup>282</sup>*

*“The Senior Manager [who is not the investigating officer] will consider the report, and may opt to take one of the following options.”<sup>283</sup>*

*“Following completion of the investigation, the Investigating Officer will compile a summary of their findings together with a recommendation to a senior manager who will consider whether there is a disciplinary case to answer.”<sup>284</sup>*

#### 8.4.6. Summary

*Involvement of another* of any sort, and particularly joint decision making or a decision being solely the responsibility of someone other than the FLM, becomes more common in relation to main investigation. Despite this, over a third of the documents (36% 81/228) require no *involvement of another* throughout the investigative stages outlined above. 52% (118/228) require no *involvement of another* in the transition to formal action, 66% (150/228) require no involvement in the transition to main investigation and 74% (169/228) in the transition from main investigation. Table D-61 and Table D-88 present these values by document type. It is also worth noting that even where the *involvement of another* is required, the mechanism for how this involvement is instigated is often not stated, particularly when general statements about involvement being required are made. For example, “It is imperative that the HR Manager/or his/her representative is involved throughout the informal stages as well as the formal stages of the Procedure”<sup>285</sup>.

Returning to where *involvement of another* is required, it is notable that, in relation to main investigation, sole responsibility of another or others is vastly higher in disciplinary than performance or capability documents: more than 14 times more for the decisions

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<sup>282</sup> LAD\_R-3\_BRUC11-1\_M-1\_DISCI\_

<sup>283</sup> LAD\_R-8\_BRUC11-2\_L-2\_CAPA\_

<sup>284</sup> LAD\_R-2\_BRUC11-1\_H-1\_DISCI\_

<sup>285</sup> LAD\_R-5\_BRUC11-2\_M-1\_CAPA\_

whether to investigate and the outcome, and more than nine times more for the act of investigation. This effect is also seen to a lesser degree (more than 2 times more) for the non-optional *involvement of another* alongside the FLM, except for the transition to main investigation, that is the decision whether to carry out a main investigation. See Table D-73, Table D-77, Table D-81, and Table D-85 for values. This again points to differences in the processes described by the different document types as identified above in relation to the status of preliminary and main investigation, that will be discussed later.

A section follows summarising this chapter's findings about the HRM-signals sent by the documents and different approaches taken by the LAs.

## 8.5. Summary of findings

The previous chapter has presented features of the documents that illustrate signalling regarding informal action, investigation, and the transition to formal action. This chapter summarises these findings. Clear provision for informal action is shown to be almost universal in the documents, and I have suggested is almost certainly universal in practice. It is also almost exclusively stated or implied to be enacted by the immediate line-manager (FLM). My analysis has shown that by every criterion by which informal action has been explored, local authorities (LAs) take a variety of approaches to informal action and the transition to formal action in their disciplinary and performance or capability policy and procedure.

This chapter reviews the HRM-signals identified and the forms that the different approaches take, broadly categorised in terms of procedural approaches to informal action and the transition to formal action; and different approaches taken between the document types.

### 8.5.1. HRM-signals that the documents send

Chapter 8 and this summary-list directly answer research question 1, "What HRM-signals about informal action are sent by written policy and procedure?". HRM-signals are identified in relation to:

- The position of informal action and investigations:
  - The relationship between informal and formal action and processes;
  - The relationship between informal action and day-to-day management;
  - Who carries out informal action;
  - Provision for and status of preliminary and main investigation.

- Organisational expectations and assumptions about when informal action should be taken or not taken:
  - Whether informal action is desirable or positive;
  - When to take or not take informal action;
  - Examples of the types of situations that are suitable for use of informal action to address;
- Implications of informal action for employees at the time that it occurs:
  - Whether it is punitive or supportive;
  - Employee rights (regarding accompaniment, appeal, and occasionally other rights);
  - Formalisation (including in relation to recording).
- Future Implications of informal action for employees:
  - To invoke, justify or evidence formal action;
  - Limits on the future implications of informal action (including regarding time limits, options to extend informal action, and informal outcomes of formal action).
- The *involvement of another* in decision making, in relation to:
  - The transition to informal action or formal action, or during informal action, and to stages in relation to preliminary and main investigation.
  - Non-optional involvement of an HRP, senior manager, or other employee, who is not the FLM, either alongside the FLM or solely.

### 8.5.2. Procedural approaches to informal action and the transition to formal action

Chapter 8, this summary section, and 8.5.3 below, answer research question 2, “What procedural approaches to informal action do these signals represent?”. This answer is extended below by 9.1.1, 5) Impacts for disciplinary and performance or capability processes in comparison with each other.

The first broad category of differences is procedural approaches to informal action and the transition to formal action. Procedural approaches include signals related to organisational expectations and values around the taking or not taking of informal action; the elements that are included in or omitted from documents; and whether the involvement of someone other than the FLM is required. Some of this signalling, for example what documents do not address, may not be part of a planned approach, but



nonetheless has implications that will be explored below. LAs use a wide variety of approaches to how informal action is termed and positioned in the procedure and in relation to formal action. In some documents, informal action is treated within written policy and procedure as being part of the same procedure as formal action, such as when the same terms are used in relation to the two types of action, and both are included in the document. In others informal action is treated as a different process or procedure, such as when either different terms are used, or by explicitly or by implication placing informal action outside the procedure and/or omitting it from the document. In some documents, the status of informal action is absent or unclear. Another distinction between the ways LAs position informal action procedurally is in relation to “day-to-day” management, as compared to informal action not considered to be day-to-day. Five categories were identified by my analysis:

1. The relationship between informal action and day-to-day management was unstated or unclear within the documents;
2. Informal action was either explicitly stated or implied to be equivalent to day-to-day management;
3. Informal action was in addition to day-to-day management;
4. Informal action was instead of day-to-day management; or
5. There was a choice between informal action and day-to-day management.

There are also differences in the status of investigation. Preliminary investigation is usually informal and even when it is not referred to there is often potential for informal preliminary investigation. Main investigation is usually formal. Despite this apparent consistency, there are differences of approach related to whether preliminary investigation is referred to or not, and notable differences between document types, elaborated below.

Documents also take very different approaches to when to take or not take informal or formal action:

1. clear provision may be made for bypassing informal action;
2. bypassing may be exceptional;
3. the option not referred to or implied; or
4. bypassing is not allowed.

Where bypassing is allowed, seriousness may be the only consideration in whether to use informal or formal action, or there may be other considerations, for example, whether this is the first occurrence of an issue. Criteria may be clear or use terms open to interpretation. No guidance may be given, or mixed messages. Differences in approach to the future implications of informal action, include differences in when LAs require or give the option to return to informal action, and when managers may or must move to formal action. Almost all documents are clear about invoking formal action when the informal process is exhausted without the desired improvement in conduct or performance. Differences in approach are seen, however, relating to the invoking of formal action from or after informal action, when informal action is frustrated in some way, or when a further disciplinary, performance or capability issue occurs. The role of admission of misconduct by the employee, or realisation by the FLM that the issue is more serious than thought, in frustrating informal action are the major contributors to the types of frustration identified, and only occur in disciplinary documents. A small number of the documents reduce the implications of informal action by placing time, or other, limits on when further issues may or must lead directly to formal action. Rights may be awarded or denied in relation to informal action. In comparison to rights during formal action, the right to accompaniment might be 1) awarded; 2) awarded in some circumstances, or 3) denied. A small number of the documents withhold rights such as incremental progression or working from home during informal action.

There are notable differences in how formalised the informal process described is. I have classified the differences in terms of requirements for written records to be made, and associated processes such as a requirement for the signing of records, how records are held, and in terms such as warnings that formal action may follow if informal action is unsuccessful. It is illustrative of the contradiction between terming processes “informal” and their commonly formalised nature, to note that warnings during informal action may be termed “verbal” or “oral”, but that written records may still be made and copied to the employee. There is a clear contrast between the extremes of an optional requirement to record, or a brief note kept only by the manager that is explicitly not kept on the employee’s file, and a detailed record, completed using a proforma that is also used in relation to formal action, that is required to be signed by the employee and manager and copied both to HR to be stored in the employees file, and to the employee.

The documents also differ in what is stated or implied, or not stated or implied about organisational attitudes, expectations, and values around the taking or not taking of informal action. Examples of attitudes that might be signalled are that informal action is desirable; or is supportive or punitive. An example of an assumption is the kinds of misconduct that are seen as minor or suitable for informal action, or as serious or not suitable. Different LAs also categorise misconduct differently. Some of the examples of misconduct given appear in different categories across the different LAs, suggesting that the seriousness of some acts of misconduct may be viewed differently by different LAs. Further research is needed to analyse in detail how consistent the LAs are in their categorisation of different examples of misconduct as minor, simply misconduct, serious, or gross.

What is often most notable about differences of approach is the number of the documents that do not address particular aspects of a process. For example, 60% of the documents do not address whether accompaniment is allowed during informal action; 53% give no examples of minor misconduct or misconduct suitable for informal action or examples of general misconduct; and 49% do not state why informal action is desirable. For further examples of omissions, see Table D-89.

There are also differences in whether the involvement of someone other than the FLM, usually a senior manager and/or human resource practitioner (HRP), is required in decision making or action related to informal processes or the transition to formal processes. I term this '*involvement of another*'. FLMS are often solely responsible for decisions and action. Over a third of the documents require no *involvement of another* throughout the investigative stages outlined above. 52% require no *involvement of another* in the transition to formal action, 66% require no involvement in the transition to main investigation, and 74% the transition from main investigation. The *involvement of another* person, particularly joint decision making or a decision being solely the responsibility of someone other than the FLM, does however, become more common in the transitions to and from, and during, main investigation. It is worth noting though that even where the *involvement of another* is required, how this involvement is instigated is often not stated, particularly when statements such as "Human Resources staff will have a key role throughout the process, and will advise and support managers in all cases at each stage of the procedure"<sup>286</sup> are made. Where it is stated, such as "HR should be contacted at all

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<sup>286</sup> LAD\_R-5\_BRUC11-3\_M-1\_CAPA\_

stages for advice”<sup>287</sup>, the FLM is relied on to instigate this. It seems likely that this will also be the case where this is not stated. This has potential implications for *involvement of another* acting as a failsafe against inappropriate FLM action if the involvement relies on the FLM acting appropriately. Accompaniment as presented above under the heading Rights, is also seen as a form of *involvement of another* and will be discussed further in the implications section of the Discussion chapter (Chapter 9) below.

### 8.5.3. Different approaches taken between the document types

The differences of approach have, so far, been considered between different LAs. The second broad category of differences are patterns of approach observed between different document types. There are a series of notable differences between how disciplinary and performance or capability documents address matters related to informal action or the transition to formal action. Disciplinary documents are more than twice as likely than performance or capability documents to position informal action outside the document, that is to omit it other than brief mention. Performance or capability documents are more than three times likely than disciplinary documents to use the terms informal and formal “stages”, whereas for the term “action” the opposite is true. Compare this to the term informal and formal “procedure” which is used by similar numbers of both document types. Disciplinary documents are more than twice as likely as performance or capability documents to have an unstated or unclear relationship between informal action and day-to-day management, whereas performance or capability documents are more than three times likely than disciplinary documents to have an informal stage in addition to day-to-day management.

Where only main investigation occurs and it is informal, this is a feature exclusive to performance or capability policy, except for a single disciplinary document where the status of the main investigation is contradictory and informal status stated possibly in error. Where main investigation is formal, disciplinary policy is more likely to explicitly refer to investigation whereas performance or capability is more likely not to, but to have formal stages with features of investigation. 79% of the documents that make positive statements about informal action are disciplinary. Of the small number of the documents that do not state or imply that informal action is desirable, nine out of ten are disciplinary. Regarding reasons that informal action is required or seen as positive, terms related to *halting an issue at an early stage* are given as a reason a third more often in disciplinary than

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<sup>287</sup> LAD\_R-6\_BRUC11-1\_H-2\_CAPA\_; LAD\_R-6\_BRUC11-1\_H-2\_DISCI\_ (Note same LA)

performance or capability documents. Whereas, *taking a supportive approach*, is stated twice as often in performance or capability documents as disciplinary. *Informal action as sufficient* is seen three times more in disciplinary documents than performance or capability. *Punitive* approaches are more likely in disciplinary documents. The small number of the documents (14) that take *punitive* approaches without supportive components are exclusively disciplinary, and where both *punitive* and *supportive* components are present, this is in more than three times more disciplinary documents than performance or capability. Where *supportive* components are present, either alone or in addition to *punitive* components, 47% of these documents are disciplinary and 52% performance or capability, but where *punitive* elements are present, either alone or in addition to *supportive* elements, 80% of these documents are disciplinary. Documents giving examples of misconduct that is minor or suitable for informal action are 86% disciplinary. Performance or capability documents give examples less overall, representing 18% of the documents giving examples of misconduct of any type, as compared to disciplinary documents representing 81%, but as the paragraph below shows, allow bypassing of informal action much less.

Turning to bypassing, 82% of the documents that make clear provision for bypassing are disciplinary, compared to 17% performance or capability, whereas 86% of the documents that make bypassing exceptional are performance or capability compared to 14% disciplinary. All documents that state that informal action cannot be bypassed are performance or capability, as are 92% of the documents that do not refer to or imply the option of bypassing. Disciplinary documents are almost three times more likely than performance or capability documents to use seriousness as a criterion for the taking or not taking of either informal or formal action or both, and nine times and seventeen times, respectively, to use seriousness terms in relation to both informal and formal action and just informal action. Performance or capability documents are more than twice as likely as disciplinary documents to use seriousness terms in relation to formal action and not to informal action.

Regarding the *involvement of another* in investigation, it is notable that, for the transitions to and from, and actions of, main investigation, sole responsibility of a person other than the FLM, or others, is vastly higher in disciplinary documents than performance or capability – above 90% disciplinary for the decisions and above 85% for the act of investigation. This effect is also seen to a lesser degree (above 70% disciplinary) for non-

optional *involvement of another* alongside the FLM, except for the transition to main investigation, that is the decision whether to carry out a main investigation.

Regarding recording, similar numbers of disciplinary and performance or capability documents use “notes”, “records”, “accounts” or “documentation”. Where “plans”, “programmes” or “agreements” are used this is almost always in performance or capability documents. Where “letters”, “written instructions” or “registers of concern” are used it is more often in disciplinary documents. Recording of informal action being optional and not being referred to in relation to later formal action is seen in more than six times, and four times, as many disciplinary documents as performance or capability, respectively.

The Discussion chapter will re-examine these findings in terms of their implications and possible reasons for the differences of approach and lack of consistency in LA disciplinary and performance or capability documents.

## Chapter 9. Discussion of local authority written policy and procedure analysis

An overarching theme to emerge from the findings is that there is a notable lack of consistency and standardisation regarding informal action in local authority (LA) written policy and procedure. LAs take a wide variety of different approaches to informal action and the transition to formal action<sup>288</sup>. As elaborated in Chapter 8, I have categorised these differences in relation to procedural approaches to informal action and the transition to formal action; organisational expectations and values around the taking or not taking of informal action; the elements that are included in or omitted from documents; whether the involvement of someone other than the front-line manager (FLM) is required; and approaches taken in the different document types. My argument is that the approaches have implications that are highly significant for the potential for the documents to allow or deter differential use of informal action, and in turn, contribute to or reduce the risk of disciplinary disproportionality. This chapter first looks at the implications of the forms these differences take and possible reasons for them. Second, *Action pathways* are introduced as a method to conceptualise the processes that the documents describe. These first two sections (9.1 and 9.2) address research question 3, “How does written policy and procedure potentially allow or deter the differential use of informal action and other factors leading to disciplinary disproportionality?”. Third, the answers to the three research questions are summarised (9.3).

### 9.1. Implications of and reasons for different approaches

This section discusses the implications of the forms that the different approaches take, before proposing reasons for the lack of consistency. The elements of the documents addressed in my analysis are discussed in terms of their role as HRM-signals (Bowen and Ostroff, 2004; Ostroff and Bowen, 2016), that signal organisational expectations, requirements, assumptions, or values.

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<sup>288</sup> Despite the wide range of approaches taken, it is valuable to note that the dataset also provides evidence for the sharing of policy documents. In some cases, LAs clearly use shared documents or adaptations of each other's documents. This represents adoption of similar approaches between LAs. Policy sharing was not recorded or analysed as part of the study, but I believe that such sharing is often associated with geographical proximity. I identify exploration of the ways that policy approaches are shared and how they might travel between organisations as a topic for future research in the conclusion chapter.

### 9.1.1. Implications of differences of approach

The implications are: 1) the number of opportunities to resolve an issue using informal action; 2) differences in FLM discretion; 3) that HRM-signalling may have a *direction of travel* towards informal action or away from it; 4) formalisation of informal action; 5) impacts for disciplinary and performance or capability processes in comparison with each other; and 6) that some approaches deter and some allow differential use of informal or formal action.

1) The number of opportunities to resolve an issue using informal action.

How informal action is termed and positioned in the documents, and in relation to formal action, represent procedural differences in whether informal action takes place as a single stage or multiple stages. This has the implication of increasing or decreasing the number of opportunities to avoid formal action. Examples are whether informal action is equivalent to day-to-day management (representing one stage), or in addition to it (representing two); and whether a preliminary informal investigation is part of or in addition to one of these (representing an additional stage). Another factor that effects the number of informal stages is the bypassing of informal action. Where bypassing informal action is permitted there is potential for no opportunity to be taken to resolve an issue informally. Where bypassing is not permitted an opportunity to attempt to resolve an issue informally should always be taken. This is important because this is precisely the causal mechanism identified in the literature by which disciplinary disproportionality can occur when managers use formal action with employees from Black, Asian and minority ethnic groups in preference to informal action (Tamkin, 2000; Morris et al, 2004; Archibong and Darr, 2010; Smith et al, 2012; Sehmi, 2015). Disproportionality of representation in records of formal processes may be more likely in disciplinary situations than performance or capability because almost all disciplinary documents make clear provision for bypassing informal action. In contrast, performance or capability documents are much more likely to either limit bypassing, disallow it, or not refer to the option to bypass, which should make informal action more likely. This suggests that there should be less opportunity in performance or capability procedure in general, for the mechanism of avoidance of informal action to lead to disciplinary disproportionality.

Another factor that influences the number of opportunities to take informal action is the criteria for when informal or formal action should be triggered when informal action is initially successful but further misconduct or poor performance occurs. Processes that limit



when previous informal action can be used to invoke or inform future formal action should increase opportunities to use informal action. The proportion of documents that apply such limits is however small; only 16%. This suggests that in the vast majority of situations there is nothing in written procedure to signal to FLMs that reducing the implications of previous informal action is expected or seen as desirable.

There is a hint in one document that even when informal action is mandatory, that it may sometimes be tokenistic in nature, in that the informal stage is stated as having to be used before formal action, but that this may be as nominal as realising at the informal meeting that the matter is serious and telling the employee that formal action is needed. Although this is only seen once when informal action is mandatory, other procedures in the sample would allow informal action to be used in this tokenistic way. Although not expressed in these terms in the document, such an approach should perhaps be considered, rather than as an informal stage, as a preliminary investigation.

## 2) Differences in FLM Discretion.

FLM discretion is highly significant to potentially allowing or preventing inconsistent or differential action. If FLMs are awarded lower levels of discretion by written policy and procedure, they can potentially be guided towards consistent and equitable decisions. In contrast, high levels of discretion potentially allow biased actions, that may lead to disciplinary disproportionality. One way that the documents restrict discretion is to remove the option of some decisions in the policy or procedure, such as by disallowing the bypassing of informal action (discussed above). Another is by clearly defining when a certain course of action should be taken or not taken. This is signalling expectations and requirements. Signalling of assumptions or values is also significant because this moves beyond specific instructions and thus primes managers' decisions and potentially attitudes.

The *involvement of another*, that is involvement of someone other than the FLM, in decision-making is also a way to limit FLM discretion (Lopez-Cotarelo, 2011; Jones and Saundry, 2012; Saundry et al, 2019). When the *involvement of another*, takes the form of advice-giving or discussion, this has potential to discourage or reverse an approach being embarked on or proposed, by giving the opportunity for a human resource practitioner (HRP) or senior manager to identify that it is inconsistent with that usually taken within the organisation or seems disproportionate. Where *involvement of another* takes the form of a decision being made by someone other than the FLM, this is potentially a firebreak in the process because responsibility for decision making about how to proceed is awarded to

someone other than the person who seeks to initiate it. Accompaniment, which I consider to be another form of *involvement of another*, is seen here in terms of employee wellbeing in that it may provide moral or practical support (Saundry et al, 2008; Antliff and Saundry, 2009), and in terms of protecting the interests of the employee in that it provides an opportunity to scrutinise the fairness of management actions and procedure (ibid). An accompanying trade union official, who believes a procedure is being followed improperly, unfairly, or inconsistently has an opportunity to invoke scrutiny of the process (Rahim et al, 2011). Accompaniment may also help facilitate successful informal action when an employee feels more able to disclose personal mitigating circumstances to their union representative (Saundry et al, 2008; Saundry and Wibberley, 2014), or where the representative negotiates between the employee and FLM (Saundry and Wibberley, 2014). Lack of accompaniment may particularly disadvantage some employees from Black, Asian and minority ethnic groups, who the literature has suggested may be less likely to have skills and knowledge needed to navigate disciplinary situations (Archibong and Darr, 2010, p.44; Sehmi, 2015, p.188). Accompaniment as a reasonable adjustment is referred to less often than might be expected. This may be because reasonable adjustments are a statutory right for disabled employees under the Equality Act (2010), which may mean that those writing policy and procedure feel that the fact that accompaniment is allowed during informal action as a reasonable adjustment does not need to be stated. It also seems likely that more broad statements about the legal responsibility to make reasonable adjustments may occur in other policy documents. The requirement for accompaniment for “vulnerable” or disabled employees is considered below.

Returning to the awarding of discretion, despite the limits imposed on discretion by some documents, levels of FLM discretion in many of the documents are generally high. As well as elements of procedure being stated to be the FLM’s decision, discretion is also awarded by use of language that is open to interpretation: by not stating when particular actions or decisions should be taken; by not signalling organisational expectations or values; and by not involving others in decisions or action. It is notable that many of the criteria for the taking or not taking of informal or formal action, use terms that are highly subjective and open to interpretation. For example, guidance given regarding the decision to take or not take informal action, uses the terms “less serious”, “minor”, “not serious”, “not serious enough”, “not too serious”, “relatively minor”, “seriousness”, and “very minor”, expressed in relation to misconduct or poor performance; the implications or consequences of these; allegations made; or manager concerns. FLMs have high levels of discretion in interpreting

when these terms apply. In addition, little further guidance is given in the form of examples of situations that might warrant the use of informal action that could otherwise clarify these terms and reduce discretion. The ways that examples of misconduct are given, also leave significant discretion as to whether informal or formal action is appropriate. In disciplinary documents where there are examples of misconduct of any type, 93% of these have caveats stating that lists are not exhaustive and 31% state that examples may potentially be judged to be more or less serious depending on circumstances, thus demanding further discretion in the classification of misconduct. If informal action is not addressed within policy and procedure this will almost certainly equate to it falling within an area of management that is less prescribed and thus potentially grants complete discretion to the FLM about when and how to use informal action. If the relationship between informal and formal action is unclear, managers will be forced to interpret the nature of this relationship using their own criteria. Where documents do not state the components of informal action, this also represents the granting of discretion to FLMs to decide what informal action involves. Again, where no guidance is given when informal action stalls or is otherwise frustrated or is initially successful but further misconduct or poor performance occurs, this awards discretion. This is the case in 90% of documents regarding frustration and 69% regarding future events. Returning to the *involvement of another*, the findings chapter shows that a notable proportion of documents do not require the *involvement of another* at key points in the procedures relating to informal action, investigation, and the transition to formal action. This represents another major source of FLM discretion.

3) Signalling may be towards informal action or away from it.

I propose that many of the signals identified in my analysis direct FLMs towards or away from informal action. In other words, signals have a *direction of travel*. Examples of signals with a direction of travel towards informal action are statements about the desirability of informal action; components of informal action that are supportive of employees; and examples of misconduct that are minor or suitable for informal action. These signals put value on informal action in general and informal action particularly as a supportive approach.

In more detail, when informal preliminary investigation is stated as required as a separate stage or as part of an informal process, this represents a signal with direction of travel towards informal action, that FLMs are expected to explore the reasons for an issue

at an informal stage rather than to simply act in response to the issue as they first perceive it. Whether informal action is presented in terms of punitive or supportive elements is significant because of the potential to encourage different attitudes in FLMs about whether their role is to simply to express displeasure or dissatisfaction on behalf of the organisation, or to help and support the employee to meet organisational conduct or performance expectations and resolve underlying issues.

Examples of signals with a direction of travel towards formal action, and thus away from informal action, are statements allowing bypassing of informal action; criteria for moving to formal action with a low threshold of seriousness or other criteria; and signals awarding high levels of FLM discretion. In terms of the focus of this research, signals are not just of importance in terms of how well, or consistently they deliver messages about organisational aims, as they are for Bowen and Ostroff (2004). They are also vital in terms of what those aims are and their implications for fairness, for non-instrumental reasons related to employee experience.

#### 4) Formalisation of Informal action.

The status of informal processes as defined by written policy and procedure has already been identified as unusual and possibly questionable. Where informal action is formalised, I would argue that this status becomes more so. Formalisation of informal action, such as requirements for record keeping and confirming in writing to the employee, is seen in a large proportion of documents. In a smaller proportion, this process can be formalised in additional ways, such as requirements for records to be signed, warnings of future formal action, and, for some groups, mandatory attendance of an HR practitioner, or mandatory accompaniment that is not usually required. It is worth noting that such formalisation may in certain scenarios have serious potential implications for organisations if they unintentionally render informal acts legally formal. A 2002 employment appeal tribunal (London Underground Ltd v Ferenc-Batchelor EAT/1039/01/PRW) found, with reference to the Acas Code (Acas, 2015), that a warning stated by the organisation to be an informal oral warning was in fact a formal oral warning. It was deemed so because the warning was made part of the employee's record or disciplinary record (both terms are used in the appeal decision document). The judge made a distinction between a record of an informal warning made as a manager's own record or usual reporting (as not affecting the status of the warning as informal) and one that forms part of the employee's disciplinary record (as making the warning formal). The fact that the warning was confirmed in writing, would be

referred to in the event of further similar issues, and that a time limit was set during which this would happen, was also taken into account in deeming the warning formal. This last point, of seeing setting time limit as formalising, is a contradictory view to the one that I have taken that a time limit limits the future effects of informal action. Considering my dataset in relation to this tribunal appeal decision:

- 67 documents require that records of informal action are held by HR or in the employee/personnel record or file.
- 95 documents do not make clear who holds the written record.
- 19 set a time limit for a record of informal action being held or referred to.
- 134 confirm what was discussed in writing to the employee.
- 104 state that the employee should be told during informal action that formal action may follow.
- 70 state that formal action will be invoked if another event occurs after informal action. Of these, for 30 this is when the same issue reoccurs, for 14 it is timescale related.
- 100 documents state that records of informal action will be referred to, to evidence or justify formal action.

Whilst my coding relates to records of informal action not informal warnings per se, it seems likely that a proportion of documents are handling the recording of informal warnings in a way that might render them formal in the eyes of a tribunal judge.

The literature suggests that formalising measures are primarily motivated by a desire to evidence that informal action has occurred or to prove that later formal action is justifiable (Jones and Saundry, 2012) and an organisational priority to avoid litigation (Jones and Saundry, 2012; Hann and Nash, 2020) rather than employee need. As I show in the employment tribunal decision analysis chapter (Chapter 7), tribunal cases can hinge on organisations being able to demonstrate in writing what informal action has been taken. Taking into account the tribunal appeal decision discussed above highlights the need to maintain the status of informal action as informal whilst ensuring action can be demonstrated. This will be discussed further in 9.1.2.

Where formalisation of informal action exists, this raises the question of whether informal action is informal in any meaningful way? To consider the status of informal action further, the variety of ways that the term informal is used in extant literature identified by the discussion in Chapter 3 will be revisited. The ways that informality is identified in

literature is in relation to a structure or process that is: organisationally unsanctioned; outside formal structure or policy; related to norms climate or culture; spontaneous or unplanned; motivated by individual wellbeing reasons (as opposed to instrumental reasons); originating bottom-up within the organisation; personalised in nature (as opposed to generic); or involving relationships or social interaction to a greater extent. The documents use the term in relation to informal action differently in most cases: informal action is organisationally sanctioned; almost always sits within organisational policy even if just as a mention; is planned for in written policy and procedure; literature suggests is motivated by instrumental reasons; and originates top-down. It is not possible to say from the documents, if its use is seen as part of a norm, climate, or culture but this is not inherent in the term's usage in the documents. Some documents do aim for an informal approach that is personalised.

The term informal is also used very differently to how the term might generally be understood using a dictionary definition such as the one introduced in Chapter 3. Whilst organisational terms may legitimately be used in ways that differ to their dictionary definition, comparing such a definition to the term informal as used in the documents helps to illustrate that it may not be helpful to term informal action in this way if this is how employees with little previous experience of disciplinary action understand the term. Terms from the definition are presented in double quotes. Even when informal action is left entirely to manager discretion and might be seen to not follow established procedure, it is not "unofficial". It may be argued that the FLM-employee relationship in the workplace, with its power differential (Clegg et al, 2006), inherently creates an official context. We have also seen that organisations expect consistency rather than "irregularity" in implementation of policy and procedure. There is not an "absence of formality" in a process where records are being signed by and copied to the employee or used to justify future formal action. Given the common warning of the possibility of future formal action during informal action, it also seems likely that informal action is not "casual" or "relaxed" for the employee.

Use of the term "day-to-day management", which 42% of the documents see informal action equivalent to or part of, is also problematic given that many of the situations that informal action is being used to address require a change of behaviour, attitude, or skill set and thus, I propose, are extraordinary rather than routine situations.

I propose that use of terms such as informal or day-to-day to refer to processes that are anything but, has the potential for creating misleading employee expectations. I also propose that the term 'non-statutory' might be more appropriate than 'informal' or 'day-to-day'. The justification for this, I would argue, is that usage of the term informal in relation to intended processes described in the documents is in fact defining a legal boundary between statutory and non-statutory action. The Advisory, Conciliation and Arbitration Service (Acas) (2017) makes this clear in the Guide by stating "Be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied" (p.11) (and almost identical wording in the 2020 version of the Guide, p.10). The use of the term informal to mark a statutory boundary is also backed up by the way that despite the purpose of investigation being to, to quote the Acas Code, "establish the facts of the case" of "**potential** disciplinary matters" (2015, p.5, emphasis added), 84% of documents position main investigation formally. I propose that this is because full investigation is a statutory requirement of the Acas Code.

5) Impacts for disciplinary and performance or capability processes in comparison with each other.

There are differences of approach between disciplinary and performance or capability documents. Performance or capability documents more often take an approach that describes a process that: includes informal action; uses plans or programmes, sometimes using the same proforma across informal and formal stages; investigates from the beginning of the process, but often not as a separate stage; and is less likely to take a punitive approach. Disciplinary documents are more likely to: allow the bypassing of informal action; have main investigation as a separate and formal stage; and to give sole responsibility of others in decision making or main investigation. I propose that this adds up to performance or capability documents using an approach aimed more towards a process of education and improvement. There are disciplinary approaches that also do this, but disciplinary action may alternatively be less *processual*, operating more as separate, or discrete, events, with informal and formal parts more separated. In these cases, informal disciplinary action may not include an investigative element and appears to consist mostly of telling the employee what they did wrong and what will happen if they do it again. This *discrete-event* approach has the implication of potentially neglecting to explore both the broader picture of personal circumstances and organisational factors within which misconduct occurs and the potential need for ongoing measures or support. The

implications of this approach will be explored further when the reasons for different approaches are considered.

6) Some approaches deter, and some allow differential use of informal action.

The implications of the differences of approach are important because I propose that approaches may deter differential use of informal and formal action, and thus reduce the likelihood of disciplinary disproportionality; or allow such differential use and thus increase the likelihood of disciplinary disproportionality. The documents are just one part of a complex open system of causal mechanisms that might influence whether disciplinary disproportionality occurs, but they are influential, because they define, or fail to define, organisational expectations about how the processes should be implemented. Another reason that the documents are influential is because, as we saw in the employment tribunal decision chapter (Chapter 7), employment tribunal judges measure organisations against whether their own written procedure was followed, including in relation to informal action.

Written policy and procedure that makes the taking of informal action and consistent and fair approaches more likely, will reduce the likelihood of disciplinary disproportionality. Making informal action more likely might be by encouraging it, discouraging bypassing, and by stating what is required regarding informal action. Making consistent and fair approaches more likely might be by clear description of criteria for choosing between informal or formal action, and the involvement of someone other than the FLM in decision making. Thus, I propose that differential action by FLMs and thus the likelihood of disciplinary disproportionality will be reduced by:

- More opportunities to resolve an issue informally;
- Restricted opportunities to bypass informal action;
- Signalling that informal action is desirable;
- *Involvement of another;*
- Informal action and the transition to formal action included in the procedure as well-defined stages with criteria for when to use and not use them, with examples to guide the decision, and statements about who is responsible or involved.

Having explored implications of the differences of approach, I shall now turn to possible reasons for them.



### 9.1.2. Possible reasons for differences of approach

My analysis of the document content and signalling suggests three reasons why LAs could be taking such significantly different procedural approaches to each other: 1) that the nature of Acas guidance may be a contributing factor; 2) that LAs may make different assumptions that influence the content of written policy and procedure; and 3) that LAs may be influenced by tensions between aims related to informal action.

#### 1) The nature of Acas Guidance may be a contributing factor.

I propose that there is insufficient guidance relating to informal action to facilitate similar approaches across LAs and that this is likely to be why LAs take such a range of approaches. As Acas guidance is a driver of the form of written disciplinary policy and procedure (Rahim, 2011), this may be a contributing factor. Two key sources of guidance for organisations on disciplinary matters are the statutory Acas “Code of Practice on disciplinary and grievance procedures” (Acas, 2015) and associated non-statutory guidance document, “Discipline and Grievances at Work The Acas Guide” (Acas, 2017). I will refer to these documents as the Acas Code, or the Code, and the Acas Guide, or the Guide, and collectively as “the Acas guidance”. The Guide has been updated since 2017 (Acas, 2020), but the 2017 Guide was the current version at the time of my data collection and so this, or possibly an earlier version, would be the version that informed the documents in my dataset. The Acas Code is highly influential to the development of disciplinary policy and procedure (Saundry et al, 2008; Rahim et al, 2011; Saundry and Wibberley, 2014; Saundry et al, 2014; Wood et al, 2014; Saundry et al, 2016), as, perhaps to a lesser extent, is the Acas Guide (Rahim et al, 2011). Some of Rahim et al’s (2011) HRP participants felt that the Guide was more easily operationalised than the Code. Although following the Code is not a legal requirement, whether the Code of Practice has been followed is one of the factors considered by employment tribunal judges and plays a part in determining compensation levels (Acas, 2015). Also, following the Code is seen within organisations as a way to avoid legal action (Saundry et al, 2016; Hann and Nash, 2020), something that is a, and sometimes the, key driver in policy and procedure development (Saundry et al, 2008; Saundry and Wibberley, 2014) and in approaches to conflict management more broadly (Jones and Saundry, 2016; Saundry et al, 2016; 2017; Hann and Nash, 2020).

The key role played by the Acas Guidance in informing written policy and procedure, makes it valuable to examine how informal action is addressed by it. The Code (Acas, 2015) itself does not address informal action other than very briefly in its forward (see Appendix E

for quotation). Similarly, the example disciplinary procedures provided as an appendix to the Guide (Acas, 2017, Appendix 2, pp.55-58). The example procedure for small organisations (Acas, 2017, Appendix 2, pp.57-58) does not refer to informal action at all and the example procedure for any size organisation (Acas, 2017, Appendix 2, pp.55-57) only makes one short reference to informal action (see Appendix E for quotation). The non-statutory Guide (Acas, 2017), however, does make more detailed reference (see Appendix E for quotation). Given the influence of the Acas Guidance, it seems likely that a reason that there are so many differences in how LAs describe informal action and the transition to formal action, is because the Acas Code of Practice and associated example procedures give so little guidance about informal action. In line with this, Rahim et al (2011) state that the Code may not be sufficient to create a culture of early resolution.

It is also possible that the different forms that the LA documents take are caused by being more strongly influenced by the Code, the example procedures, or the Guide. If LAs take their lead from the Code of Practice or example procedures, they may decide not to address informal action, other than brief mention, in written policy and procedure and thus leave the approach to be taken to the discretion of line-managers. What leads me to suggest that some documents may be more strongly influenced by the example procedures, is that of the documents that do not address informal action within the procedure, there is a subset that structures formal disciplinary procedure using the distinctive structure used in the Acas example procedures (Acas, 2017, Appendix 2, pp.55-58) that use levels of sanction as headings to structure the formal procedure: a first warning (or improvement note), a final warning, then dismissal or action short of dismissal. Whilst the documents do not divide cleanly into three types, there are also documents that give detailed guidance on informal action within the procedure that seem more related to the Guide, and ones that do not, and also do not use the example structure, that seem to be more related to the code of practice. There are, however, also LA documents that seem to be more hybrid in terms of the Acas Guidance documents, or different to them all, so this is not a clear-cut case of documents always being clearly influenced most strongly by one of the Acas Guidance documents. Nonetheless, given that changes to the Acas Code are documented as prompting changes to written policy and procedure (Rahim et al, 2011; Saundry and Wibberley, 2014; Saundry et al, 2016), it seems likely that more detailed guidance on informal action across the Acas guidance would prompt policy and procedure change by organisations.

- 2) LAs may make different assumptions that influence the content of written policy and procedure

The different assumptions proposed as potential influences on policy and procedure content are regarding: a) the situations that should be dealt with by informal action; b) FLMs' ability to act fairly and consistently; and c) the nature of disciplinary and performance or capability issues.

*a) Different assumptions about the situations that should be dealt with using informal action.*

The approaches taken in the documents suggest that LAs may make different assumptions about the situations that should be dealt with by informal action. This may be in terms of whether it is routine, whether informal action is part of the same process as formal action, the seriousness of issue that can be dealt with informally, and whether the matter being dealt with is seen as a disciplinary matter at the informal stage.

*“Those with line management responsibility must ensure that employees receive regular feedback and development including (but not limited to) one to ones, team meetings and annual appraisals. They must also ensure sufficient support is available to support employees with meeting their objectives. They are responsible for managing performance concerns.” ... “Informal performance management is the regular performance management which most employees will be involved in. This includes 1:1s, team meetings and supervision between Managers and direct reports.”<sup>289</sup>*

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<sup>289</sup> LAD\_R-1\_BRUC11-1\_H-1\_PERF\_

*“Informal Stage*

*4.1 The Manager will convene a meeting with the employee. At the meeting the Manager will outline the performance shortcomings, agree the performance standards required and the time-frame over which improvement will be expected and how this will be measured and monitored. This will be confirmed in writing. It is important that the employee is made aware of the consequences of the failure to improve.”<sup>290</sup>*

Two quotes, above, illustrate the fact that the authors of written policy and procedure may intend informal action to be used differently in terms of routine or otherwise management. Both from performance documents, the former suggests a process that is routine, expected, and unexceptional, whereas the latter suggests something more out of the ordinary and formalised. This pair of quotes draws attention to the fact that the differences observed in how the documents present the relationship between informal action and day-to-day management, may represent not just differences in procedural approach, but also in unstated assumptions about what happens outside of policy, and about what represents routine management of expected or ordinary variation in conduct or performance, and what is a much less routine reaction to an irregular situation. This difference may be related more broadly to different assumptions about workplace conflict. The first quote above may suggest an approach aimed at avoiding issues in the first place (Saundry, 2019) and the second an approach that is more reactive (Saundry et al, 2016). This is significant in terms of disciplinary disproportionality because the conflict management literature suggests that an approach that treats conflict as inevitable and approaches it strategically may create organisational cultures that are more comfortable to discuss conflict (Latreille and Saundry, 2015), which may help FLM feel confident to address conflict and less likely to avoid informal action. For Hann and Nash’s (2020) large representative sample of British private sector organisations 76% of respondents’ views were that “disputes are not inevitable but instead occur as the result of misbehaviour, poor performance or misunderstanding” (p.4), 16% “embrace disputes as constructive to workplace relations by offering chances to examine, question and adapt routine approaches” (p.4), and 8% “disputes are inevitable, but management strategies and

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<sup>290</sup> LAD\_R-2\_BRUC11-1\_H-1\_CAPA\_

techniques should be derived to try to lessen the impact of such conflict on the organisation” (p.4).

There also appear to be assumptions about the seriousness of matters that are suitable to be dealt with informally. Some documents retain the use of informal action for the most minor of issues, where a “quiet word” (Acas, 2015, p.1) really is all that is needed, whereas others use informal action for all but “very” or “particularly” serious misconduct. The implication of this is that informal action will be more likely to be used when a broader range of types of issue and seriousness of issue are identified in written procedure as suitable to be addressed with informal action.

*“It may not always be possible to deal with issues of concern as part of the ‘normal’ management process and sometimes, conduct or behaviours may be so unsatisfactory that they have to be treated as disciplinary matters (see section 13). In these circumstances, this procedure will apply.”<sup>291</sup>*

*“The following formal procedure will be used if [other scenarios] or if the disciplinary matter is more serious than a minor fault.”<sup>292</sup>*

Related to the nature of issue that can be dealt with informally is what constitutes a disciplinary matter. The pair of quotes, above, suggests differences in assumptions about this. The disciplinary document quoted first, considers issues to be disciplinary matters only when they are serious enough to require formal action to be taken, and not when they can be handled by day-to-day management. Compare this with the second quote where a disciplinary matter can be a “minor fault” that does not warrant use of the formal procedure. These examples place the boundary differently for when a manager is handling a “disciplinary matter” and when they are dealing with an “issue of concern”. Given that disciplinary procedures can gain an “unstoppable momentum”, at least in the formal stages (Jones and Saundry, 2016, p.11), there are likely to be positive implications in terms of use of informal action if minor matters are not seen as disciplinary.

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<sup>291</sup> LAD\_R-4\_BRUC11-3\_L-2\_DISCI\_

<sup>292</sup> LAD\_R-2\_BRUC11-2\_M-1\_DISCI\_

Also related and with similar implications, is how informal action is seen in relation to formal action. The differences of approach to naming and locating informal action and formal action, identified in Chapter 8, seem to point to differences in how the status of informal action is seen. I propose that where the same term is used in relation to informal and formal action and they are addressed within the same policy or procedure, that this points to them being seen as steps or stages in the same process. Whereas when informal and formal action are not addressed in the same document or are addressed but different terms are used in relation to them, I propose that they may be seen as separate processes.

These assumptions, related to situations that informal action is seen as suitable for addressing, are relevant assuming that disciplinary disproportionality is less likely when informal action is more likely to be taken. This is because they will affect the likelihood of informal action being considered appropriate, with approaches that set a low bar for the use of formal action or for deeming an issue disciplinary, making informal action less likely.

As well as assumptions about the use of informal action, assumptions may be made about FLMs.

*b) Different assumptions about FLMs' ability to act fairly and consistently.*

It seems, from the way the documents approach the processes that they describe, that there may also be different assumptions made about FLMs. Some documents give very high levels of discretion to FLMs which may imply that there is an assumption that FLMs are always competent and able to make unbiased decisions. Others build in fail safes that suggest that this assumption is not being made. In documents that I propose have been written with the assumption that FLMs are competent and unbiased, high levels of discretion are awarded by omitting or giving little detail and guidance about informal action and the transition to formal action, by using language open to interpretation, by making decisions solely the responsibility of the FLM, and by not involving HRPs or senior managers in decision making. Some documents make statements that investigators need to have not been involved in the disciplinary situation, but also allow the FLM to act as investigator. This may illustrate a lack of recognition that FLMs are fundamentally involved in situations relating to their staff and thus may not be objective (Earnshaw et al, 2000) or that FLMs may knowingly or unconsciously make biased decisions resulting in differential treatment of some groups of employees. In documents that I propose recognise the potential for incompetence or bias in FLMs, the opposite to the picture above is seen. Discretion is limited by describing in detail and giving detailed guidance about informal action and the

transition to formal action, by using language less open to interpretation, and by involving others alongside the FLM or making decisions solely the responsibility of another. These assumptions have potential to be highly significant in allowing or deterring the causal mechanism that leads to disciplinary disproportionality.

The literature suggests that if the assumption is being made that fail safes against manager inconsistency or incompetency are not needed, this is likely to be ill judged. I refer back to Chapter 4 for reasons that (all) FLMs cannot (always) be assumed to act skilfully, fairly, and consistently. Regarding employees from Black, Asian and minority ethnic groups, both FLM decision-making as a cause of differential workplace outcomes and employee- and HRP-reported perceptions of unfair discrimination by FLMs, feature prominently in the disciplinary disproportionality literature presented in Chapter 2. The institutional racism literature discussed in section 5.1.3 makes a strong case for the need to guard against prejudice or bias. Organisations that assume that managers will always act fairly and consistently, and that do not put in place measures to guard against unfair or inconsistent decisions, risk unfair discrimination against employees, made in the name of the organisation, including differential use of informal action leading to disciplinary disproportionality. I assume that organisations have a responsibility to acknowledge the risks of, and act to prevent, prejudice or bias from being enshrined in written policy and procedure or enacted in relation to it, and that not to do so represents an element of institutional racism.

*c) Different assumptions about the nature of disciplinary and performance or capability issues.*

The findings that LAs use supportive and punitive elements differently in disciplinary documents compared to performance or capability documents suggests that there may be shared assumptions by document type about the nature of misconduct and poor performance or capability. An example of different use of supportive elements is that of the very few documents that consider whether cause should be assigned to organisational factors, for example, whether the misconduct or poor performance occurred because of working conditions, almost all are performance or capability. Similarly, the offer of personal support, which is infrequently stated overall, is again very rarely in disciplinary documents. These examples suggest that shared assumptions about the nature of misconduct and capability may prevent organisations from considering the possibility that organisational or personal factors may contribute to misconduct. If this is the case, organisations may also not consider whether a punitive approach, or one that requires change from the employee

only and not the organisation, is inappropriate. The low numbers overall may also suggest that these factors are not considered as often as they should be, even in performance or capability procedure. This is an important issue in general to ensure fairness of treatment but may especially affect employees from Black, Asian and minority ethnic groups who may be more likely to have their motives perceived negatively by FLMs than white employees (Sehmi, 2015).

I propose that the assumption being made is illustrated by the fact that 39% (88/228) of the documents use the criteria that if an employee “will not” do something, that this is misconduct and thus should be addressed under disciplinary procedure, and if they “cannot” do something, the matter should be addressed under capability or performance procedure. I will refer to this as *can't-do/won't-do logic*. This assumption is notable because it presents misconduct simplistically as no more than a matter of a choice being made by the employee to act or fail to act in a way that represents misconduct. I propose that the same assumptions about the nature of disciplinary and capability issues also cause the *discrete-event* and *processual* approaches suggested by my analysis and introduced above. The fact that investigation of mitigating circumstances and a scheme of support during informal action are not required to be undertaken when a *discrete-event* approach is taken is in keeping with an approach reacting to misconduct that is seen as simply chosen unacceptable behaviour. Conversely, the approach of investigating and providing an, often ongoing, scheme of support when a *processual* approach is taken is in keeping with poor performance or capability seen as beyond the employee's immediate control.

The following citations challenge the simplistic view of misconduct presented by *can't-do/won't-do logic* and of a *discrete-event* approach to misconduct. Acas presents a scenario where misconduct is related to a disability:

*“Eden was disciplined at work, after some outbursts of anger and a drop in their work performance. The employer did not investigate this properly, so they did not know Eden was in severe pain at the time because of the fluctuating symptoms of their disability. Eden had tried asking for support but the manager did not listen. This might have been resolved by regular performance reviews and making reasonable adjustments for Eden” (Acas, date unknown).*



Legal protection for disabled employees in the UK, provided by the Equality Act (2010), requires employers to consider whether issues with employee conduct or performance are disability-related and to make “reasonable adjustments”. There are, however, other non-disability-related situations where misconduct may be related to wellbeing or organisational factors. For example, Parlange et al (2020) find associations between work-related stress and misconduct by academic researchers in Italy, and Rychert and Diesfeld (2019) identify reduced teacher wellbeing as contributing to misconduct in New Zealand. In the latter case, work-related stress dominates as a source of reduced wellbeing that contributes to misconduct. The view of misconduct presented by *can't-do/won't-do logic* as being within the employee's control, and taking a *discrete-event* approach, might not identify contributing factors to misconduct that are out of the employee's control such as the ones above. It is notable that the New Zealand Teachers' Disciplinary Tribunal decisions explored by Rychert and Diesfeld (2019) show use of a *processual approach* to misconduct termed an “impairment process” (p.925) that acknowledges that misconduct has occurred but recognises internal or external contributing factors and takes a rehabilitative rather than punitive approach. Further research is needed to explore how dominant *can't-do/won't-do logic* is, and to test my proposition of its influence on disciplinary practice.

It is also informative to consider the way that *can't-do/won't-do logic* is presented in the documents. Misconduct when presented using *can't-do/won't-do logic* is framed in terms of required action not carried out rather than proscribed or unacceptable action carried out and is used in a much higher proportion of performance or capability documents (60% 64/106) than disciplinary documents (20% 24/120). It seems likely that its use in such a specific way represents a mimetic isomorphic process (DiMaggio and Powell, 1983), but it is unclear what the original source that inspired this usage is. Again, considering the possible influence of Acas, the Acas Guide (2017; 2020), does not use *can't-do/won't-do logic*, and gives the following definitions of conduct and capability in its glossary: “Capability: an employee's ability or qualification to do their job. Conduct: an employee's behaviour in the workplace”. However, a search of archived (Acas, 2017-2020) and current Acas training courses shows that a course titled “Can't Do or Won't Do”, that appears to have run between 2017 and 2020, clearly did make use of *can't-do/won't-do logic*: “It can be difficult to decide whether a person's poor performance should be handled as a conduct (won't) or capability (can't) issue” (Acas, 2020). There is no way of knowing from my data if this is the main isomorphic source of the logic. There is a piece of evidence that the term was in use in the same way elsewhere as early as the year 2000 (CHEMS, 2000). If Acas was an

important source, this would raise the possibility of a scenario where a mimetic isomorphic process remains after the original generator of the source has ceased using it.

It is common (56% 127/228), for documents not to give guidance about how to choose between disciplinary and capability procedure, either at all, or other than by stating that conduct issues should be dealt with by the former and capability by the latter. This is the case in a high proportion of disciplinary documents (72% 86/120), and lower but still notable proportion of performance or capability documents (37% 39/106). This raises the question, unanswerable by this study, of why the authors of these documents assume that guidance is not needed about how to decide whether an issue is conduct or capability related, and whether *can't-do/won't-do logic* is what they assume goes without saying.

Related to assumptions about the nature of misconduct and poor performance or capability, I have further considered the resultant approaches to informal action from the perspective of how to categorise the approaches that organisations are signalling. In the same way that individual management approaches to interaction may be categorised (Maier, 1958; Wright and Taylor, 1994), it seems from my analysis that such a model could equally be used to describe what I will term *organisational interaction-approaches* described by written procedure. As introduced in 5.1.7, Wright and Taylor's (1994) model, that develops Maier's (1958) work on appraisal interview types, classifies manager-employee interaction. It sequences interaction from more autocratic approaches to those that give greater employee involvement and control: "Tell", "Tell and Sell", "Tell and Listen", "Ask and Tell", "Problem Solving", and "Ask and Listen" (Wright and Taylor, 1994, pp.197-225). For the purposes of describing the *organisational interaction-approaches* described by the documents, I also add an *Abdication of Responsibility* approach to Wright and Taylor's (1994, p.197) "approaches to manager-subordinate interaction". This is not the organisation encouraging the FLM to abdicate responsibility for taking informal action, but rather the organisation abdicating responsibility itself by not providing guidance to the FLM. There is, however, also justification for adding this to Wright and Taylor's (1994) model as an additional interaction-approach where FLMs do abdicate responsibility for taking action, by a "strategy of inaction" (Townsend and Hutchinson, 2017, p.144). Table 9-1 below relates the approaches to the features of the documents.

Table 9-1 Organisational interaction-approaches and related features of the documents.

<b>Organisational interaction-approaches<sup>293</sup></b>	<b>Features of documents</b>
<i>Abdication of responsibility</i>	Informal action is not addressed in the document.
Tell	The employee is told what they have done wrong, the organisation's position about this and/or what they need to do to resolve the situation. There is no requirement to ask for the employee's version of events or about any mitigating circumstances, i.e., there is no element of investigation.
Tell and Sell	As Tell but with the threat of formal action if informal action is unsuccessful.
Tell and Listen	As Tell but with an element of investigation.
Ask and Tell	There is an element of investigation before Tell.
Problem Solving	A collaborative approach to exploring the situation and its solution.
Ask and Listen	A separate preliminary investigation is required. This may be followed by an interaction using one of the approaches above.

As well as proposing that different assumptions about the nature of disciplinary and performance or capability issues shape the different approaches seen in the documents, I suggest that awareness of these assumptions and a conscious approach to developing *organisational interaction-approaches* could result in more nuanced approaches to informal action and the transition to formal action in written policy and procedure.

As noted in 5.1.7, Wright and Taylor (1994, p.201) see "Tell and Sell" as the most appropriate approach for disciplinary situations. This is potentially an illustration of *can't-do/won't-do logic*, where the need for investigation, obtaining the employee's opinion, and for collaborative problem solving in relation to an issue is ignored when the issue is related to misconduct.

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<sup>293</sup> The *organisational interaction-approaches* are an adaptation of Wright and Taylor's (1994, p.197) "approaches to manager-subordinate interaction". I add an *Abdication of Responsibility* approach to their "Tell", "Tell and Sell", "Tell and Listen", "Ask and Tell", "Problem Solving", and "Ask and Listen" approaches.

3) LAs may be influenced by tensions between aims related to informal action.

Some differences in approach seen in the documents may be the result of decisions made in the face of conflicting aims related to informal action. From my analysis of the documents, the literature (Saundry et al, 2008; Saundry and Wibberley, 2014; Saundry et al, 2021), and recognising, again, the potential influence of the Acas guidance (Acas, 2015, 2017), I have identified two groups of aims that, depending on the priority given to each, may lead to different approaches to informality in the documents. The first group is: to *Retain advantages of informal action; Not to stray into formal action during informal action; and to Award manager discretion*. The second group is: to *Safeguard against unfair or inconsistent treatment of employees; and the Ability to prove both that procedure has been followed and that a consistent and fair approach has been taken*. There is tension between the two groups because the first group has a tendency towards informality and the second a tendency towards formality. To elaborate, the first group if prioritised may result in an informal process that is more informal and characterised by less administrative burden, less formalised recording, less guidance to FLMs, more discretion, and less *involvement of another*. The second group, if prioritised may result in a more formalised informal process, characterised by more administrative burden, more formalised recording, more guidance, less discretion, and more *involvement of another*. Meeting both groups of aims is desirable, but because of the tensions between aims, different balances will inevitably be struck by the LAs, with potential implications for whether the documents are more or less likely to allow or deter the differential treatment by FLMs that might cause disciplinary disproportionality.

Looking at each of the aims in more detail, the first with a tendency towards informality is, retaining advantages of taking an informal approach. The most commonly stated advantage of, or reason for, using informal action is resolving matters at an early stage (Acas, 2017; Documents: 35% 79/228). This is expressed in terms of one, and often more than one, of the following terms: “early”, “quick”, “timely”, “efficient”, “effective”, or “productive” resolution and/or the avoidance of “repeat”, “escalation”, “worsening” of seriousness and/or the avoidance of formal action. This can be summed up by a term used occasionally in the documents (2% 4/228) and often seen in participant quotations in conflict management literature: to “nip in the bud” (Lopez-Cotarelo, 2011; Saundry et al, 2011a; Jones and Saundry, 2012; Saundry and Wibberley, 2014; Jones and Saundry, 2016; Saundry et al, 2016; Sayers et al, 2018; Saundry et al, 2019; 2021). As well as evoking the aim of changing or stopping unacceptable employee conduct or performance at the earliest

possible time, these terms also evoke a process that minimises the use of organisational resources (Saundry and Wibberley, 2014). If a process that is quick and minimises resource usage is prioritised, it may result in less guidance, less demand for recording, and less *involvement of another*, all of which might be perceived to carry a penalty in terms of time and complexity. It goes without saying that the aim not to stray into formal action from informal action also has a tendency towards informality. This aim addresses the risk of denying the employee statutory rights associated with formal action, such as the right of accompaniment if informal action strays into formal action (Acas, 2017; Documents: 4% 10/228). The aim does not preclude giving guidance about informal action in written policy and procedure. However, given that written procedure seems to be assumed to be for formal processes in some of the documents (22% 50/228), it is possible that in some cases an assumption is made that one way to make a distinction between informal and formal processes is to exclude informal processes from written policy and procedure. If this is the case, when this aim is prioritised, informal action will be less likely to be addressed in written policy and procedure.

The aim to award manager discretion may be related to assumptions that FLMs will act correctly (see above), or to encouraging innovative and creative solutions and those that facilitate quick and early resolution (Saundry and Wibberley, 2014). Discretion may be awarded when an issue is seen as difficult to systematise or to encourage FLM-employee interaction (Lopez-Cotarelo, 2011) and may also be seen as ideologically desirable (Karlsson, 2019). All three of these aims with a tendency towards informality, are likely to result in less safeguards against differential treatment, less *involvement of another*, and more FLM discretion. These features allow more scope for differential use of informal action by FLMs with an accompanying increased risk of disciplinary disproportionality.

The first group of aims are positive in what they set out to achieve but carry risks if not counterbalanced with safeguards. The second group of aims is related to such safeguards and evidencing them. The aim to safeguard against unfair or inconsistent treatment of employees by managers, and to be able to prove both that procedure has been followed and that a consistent and fair approach has been taken, are closely related. The difference between them is that one aims to safeguard whereas the other aims to prove that safeguarding has occurred. Such evidencing could be an aim whether or not safeguarding has in fact occurred. As such, the two aims have slightly different implications. Ensuring a consistent and fair approach is taken is required in the Acas Code (Acas, 2015) and Guide (Acas, 2017) and repeated as a requirement by the vast majority of the documents. As we

saw in the employment tribunal decision chapter (Chapter 7), employment tribunal judges measure organisations against both whether internal procedure has been followed and a consistent and a fair approach has been taken, including in relation to informal action. The Acas Code (2015) and Guide (2017) both refer to reasons to follow the Code, and the Guide states the need for external consultants to follow the organisation's disciplinary policy and procedure (presumably assuming that the organisation's own employees will do this as a matter of course). The documents commonly refer to the need to follow or invoke procedure and to the need for records to be kept at the informal stage. The employment tribunal chapter shows that evidencing that procedure has been followed relies on written records. If the aim to safeguard against unfair or inconsistent treatment is prioritised, this is likely to result in more guidance, less FLM discretion, and potentially greater *involvement of another* (Lopez-Cotarelo, 2011). Clearly, if the aim to be able to prove that procedure has been followed and that a fair and consistent approach has been taken is prioritised, this is likely to result in greater demand for recording. An example of the counterbalancing of aims that are in tension from the literature is in relation to devolution of HRM tasks to FLMs. Devolution might in theory award FLM discretion, but it seems that this is often offset by procedural measures or the involvement of others because of concerns about FLMs ability to act independently (Harris, 2007; Saundry et al, 2015; 2016; 2021).

The practice of a procedure being more formalised for some groups of employees, specifically those who are "vulnerable" or "disabled", may illustrate again conflicting aims in relation to informal action and the consequences of these aims. The tension here may be between a desire to make sure the organisation does not act inappropriately or unlawfully with regard to disability, in this case by ensuring FLMs receive specialist advice or that there is specialist assistance present, and the potential impact on employees of an approach that has elements that are more formalised than for other groups. The, albeit very rare, practice of imposing the requirement for accompaniment, given that it is mandatory and not offered as an option if required by disabled employees, leads me to suggest that there is a delicate balance to be struck between an approach taken more in the interests of the organisation, to protect against litigation (Jones and Saundry, 2012; Hann and Nash, 2020), and one taken that considers the interests of the employee. Where managers are seen as not confident or skilled enough to handle disciplinary or performance situations (Saundry et al, 2021) with disabled employees independently, policy measures put in place to address this to avoid unfair discrimination may create a more formalised and thus a differential experience of informal action for these groups compared to others.

The complexity of the tensions associated with the two groups of aims are illustrated by the employment tribunal appeal discussed above (London Underground Ltd v Ferenc-Batchelor EAT/1039/01/PRW) (9.1.1), where formalisation led to an informal warning being deemed legally formal by a tribunal judge. In tension with this and further illustrating this complexity, the employment tribunal decision chapter (Chapter 7) shows that being able to prove that action has been taken may be necessary for organisations to defend their position.

Whilst it is impossible to tell from this project's data whether these tensions are navigated consciously or unconsciously during the development of written policy and procedure, it seems likely that the tensions both between the aims discussed and between meeting organisational and employee needs can be navigated most effectively if their existence is acknowledged and openly addressed.

### 9.1.3. Summary

The differences of approach to written policy and procedure, I suggest, represent differences in organisational assumptions and attitudes that are signalled to managers through the documents. I argue that differences in procedure are significant because they create or remove opportunities to resolve an issue informally, and award, constrain, or deny, line manager discretion to choose when and whether to use informal approaches. These differences make some documents more likely to allow the differential use of informal action that the literature identifies as a mechanism that contributes to disciplinary disproportionality. I have proposed the implications of these differences and reasons for them. The next section presents a way to conceptualise the processes described in written procedure and identify their potential to allow or deter disciplinary disproportionality.

## 9.2. Action pathways

My development of the concept of *action pathways* is a theoretical contribution of this research. This concept provides a means to consider how HRM-signals in written policy and procedure might allow or deter unfair or inconsistent implementation. It can be used to categorise or analyse existing documents and to support the design of written procedure. I have developed this concept building on Milkman et al's (2015) concept of organisational processes forming pathways. In my case, the pathways of interest are those created by the sections of written disciplinary, performance, and capability processes that address informal action and the transition to formal action. Milkman et al (2015) cite as their influence, Chugh and Brief's (2008) gateway-pathway model. My usage of the term pathway, however, is more specific than "the pathway to success and effectiveness" of their model which is a generalised view of a pathway seen retrospectively as having been created by the combined factors affecting progression within an organisation (Chugh and Brief, 2008, p.318). I use it instead to refer to the specific intended pathways created by written policy and procedure. I suggest that differences in signalling delivered by written policy and procedure, related to procedural approach and manager discretion, result in pathways towards or away from formal action that are sometimes subtly, and sometimes profoundly, different to each other.

In previous sections, I have referred to differences in procedural approach creating or removing opportunities to resolve issues informally. This is significant because it means that informal action may take place as a single stage or multiple stages before formal action is an option or requirement. I have also referred to differences in manager discretion to decide how to handle issues informally, and how discretion is allowed or constrained by the various approaches. This section elaborates on these ideas and presents a way to conceptualise the processes that the documents describe. The terms that I use in this section are listed in the Abbreviations and Glossary section under Glossary of terms specific to this study, Action pathways approach terms. The *action pathways* associated with each document have a number of opportunities to resolve an issue, that I am calling 'steps', and different minimum and maximum numbers of informal steps before formal action may or must be taken. Each pathway also has a number of opportunities to pause, or turn back, from formal action or to accelerate, or turn towards, it. I am calling these 'decision points'. The number of steps followed in practice will be influenced by procedural approaches to informal action and levels of manager discretion. Where there is manager discretion at decision points, this could in practice lead to a pathway towards or away from formal



action. However, I view manager discretion in terms of its potential to create a pathway towards formal action. This is because the focus of this research is the differential use of informal action, and the literature has shown a tendency for managers to use formal action in preference to informal action when working with Black, Asian and minority ethnic employees (Tamkin, 2000; Morris et al, 2004; Archibong and Darr, 2010; Smith et al, 2012; Sehmi, 2015). The terms steps and decision points come from process mapping, a method for modelling organisational processes introduced in 5.1.4 (Anjard, 1996; Savory and Olson, 2001; Siha and Saad, 2008). The difference between process mapping and my concept of action pathways is that action pathways are a way to model and conceptualise intended processes created by HRM-signals delivered by written procedure, rather than to model a process itself. As such, action pathways are conceptualised in terms of HRM-signals in a way that process mapping is not. The action pathways approach uses the concepts of steps and decision points from process mapping, but not the process map diagram itself. Such a diagram may be useful in helping to visualise the steps and decision points in an action pathway but cannot fully represent the signalling that creates it.

I propose two broad *signal-types*: those that create steps and decision points (the components of the pathways), and those that act on these components. I term signals that directly create *pathway-components*, *commands*, and those that act indirectly on *pathway-components*, *primers*. Table 9-2 below, defines and shows examples of *commands*, *primers*, *pathway-components*, and differences of approach related to informal action and the transition to formal action in the dataset documents. These *signal-types* are useful theoretically for considering organisational intention, but there is not always a clear distinction between the two types and some signalling may both act on and create components. Additional signal attributes are needed in order to consider the nature of pathways created by them and whether the pathways potentially allow or deter unfair or inconsistent implementation. I present these attributes as a *written-procedure-signal model* (Table 9-3), that I have developed from my policy and procedure analysis.

Table 9-2 Action pathway-components and signals

Pathway-components and signals	Examples from the documents	Differences of approach in the documents
<p><b>Steps</b></p> <p><i>(Pathway-components that provide an opportunity to resolve an issue)</i></p>	<ul style="list-style-type: none"> <li>• Day-to-day management;</li> <li>• Informal preliminary investigation or fact-finding;</li> <li>• Informal stage.</li> </ul> <p>The documents take different approaches to steps, some setting them out in detail and others giving very little. Where steps are signalled in detail, approaches could be supportive or punitive, more or less help and support may be offered, there may be requirements to record action in specific ways.</p>	<p>No informal steps before formal action:</p> <p style="padding-left: 40px;">If bypassing is allowed there is potential for no informal step being enacted.</p> <p>One informal step:</p> <p style="padding-left: 40px;">Informal action is equivalent to day-to-day management.</p> <p>Two informal steps:</p> <p style="padding-left: 40px;">Two of the steps below.</p> <p>Three informal steps: all three of</p> <p style="padding-left: 40px;">Day-to-day management; Informal preliminary investigation or fact-finding; <b>and</b> An additional Informal stage.</p>

Pathway-components and signals	Examples from the documents	Differences of approach in the documents
<p><b>Decision Points</b></p> <p>(Pathway-components that provide an opportunity to pause, or turn back, from formal action or to accelerate, or turn towards, it)</p>	<ul style="list-style-type: none"> <li>• Whether to use informal action or formal action when an issue first occurs;</li> <li>• Whether and when to move to formal action during or after informal action; and</li> <li>• Whether to move to informal action from formal action.</li> </ul>	<p>The direction to be taken at decision points may be determined by:</p> <ul style="list-style-type: none"> <li>• Manager discretion or</li> <li>• By what the procedure requires.</li> </ul> <p>Any criteria signalled for decision making are part of the decision point component.</p> <p>For example, if <b>bypassing informal stages is not allowed</b> by the written policy or procedure, there should always be an informal stage before formal action is taken, and thus always be an opportunity to resolve an issue informally. If <b>bypassing is allowed</b>, the intended decision will either be determined by specific guidance from the policy about when this is and is not appropriate, or in the absence of such guidance or where the guidance allows it, by manager discretion.</p> <p>Given that we have seen that informal action is almost exclusively the responsibility of the FLM, another significant factor in potentially creating a pathway away from formal action is the <i>involvement of another</i> in decision making. As discussed above, if a FLM is taking an unnecessarily formal approach, then the <i>involvement of another</i> is an opportunity for potentially inconsistent or differential treatment to be highlighted and the direction of travel towards formal action at least scrutinised and at most reversed.</p>

Pathway-components and signals	Examples from the documents	Differences of approach in the documents
<p><b>Commands</b></p> <p>(<i>Signal-type that creates a pathway-component</i>)</p>	<p>Statement that</p> <ul style="list-style-type: none"> <li>• Informal action must occur before formal action / Bypassing is not allowed;</li> <li>• “Notes taken during informal action will be discounted for the purposes of formal action/sanction”.</li> <li>• “The employee has the right to be accompanied [at the informal meeting]”</li> </ul>	<p>Commands may or may not appear in the documents resulting in different levels of guidance and discretion in relation to <i>pathway-components</i>.</p>
<p><b>Primers</b></p> <p>(<i>Signal-type that acts on pathway-components</i>)</p>	<ul style="list-style-type: none"> <li>• Statements about the desirability of informal action;</li> <li>• Components of informal action that are supportive;</li> <li>• Examples of misconduct that is minor or suitable for informal action.</li> </ul>	<p>Primers may or may not appear in the documents resulting in different levels of guidance and discretion in relation to guiding principles.</p>

Table 9-3 Written-procedure-signal model

Signal Attribute	Value	Description
<i>Signal-type</i>	<i>Command</i> or <i>Primer</i>	<i>Command</i> : signal that directly creates a <i>pathway-component</i> - a statement about process.  <i>Primer</i> : signal that indirectly acts on a <i>pathway-component</i> – a statement that might affect how a process is implemented.
<i>Signal-content-type</i>	<i>Intention / Expectation (I/E)</i> or <i>Value / Priority (V/P)</i>	<i>I/E</i> : something that the organisation intends or expects to happen.  <i>V/P</i> : something that the organisation values or prioritises.  Often <i>commands</i> will send <i>I/E</i> and <i>primers</i> <i>V/P</i> , but not always.
<i>Signal-content</i>	[Text]	The message itself
<i>Signal-discretion</i>	Low or High	Signals award or constrain discretion in terms of the component that should be enacted, how it should be carried out or decided, and the <i>involvement of another</i> . Consideration is given to factors such as levels of detail, ambiguity, and necessity (e.g., will, must, should, may, can).
<i>Pathway-component</i>	Step: Informal stage; Step: Consult HR if disability; or Decision point: take informal or formal action?	The specific (as opposed to type of) step or decision point that the signal creates or acts upon.

A method is needed to capture or represent the complexity of *action pathways* including the vital influence of *primers* and *commands*. I have developed an *action pathways approach* to enable this. This approach involves identifying signals and their attributes and analysing them individually, then by *pathway-component*. This process creates two tables, termed part 1 and part 2. Part 1 uses the signal attributes of the *written-procedure-signal model* (Table 9-3) as column headings. Additional column headings are *signal-content-detail* which is a summary of the *signal-content*; *Position of the signal in the document*; and *Position of the pathway-component in the pathway*. The latter two numerically identify the signal and component respectively to allow sorting. This table is used to identify signal attributes and the *pathway-component* that they create or act on. It is initially completed in the order signals appear in the document and then is sorted so that signals are grouped by *pathway-component*. This is necessary because the level of discretion for a component overall (that will be recorded in the second table) will be affected by the interaction between how discretion is shaped by the combination of signals creating or acting upon it. This means that the signals need to be considered as groups.

Part 2, completed with reference to part 1, allows consideration, for each *pathway-component*, of firstly, overall discretion created by the signals related to it, and secondly, an assessment of matters such as whether signals are congruent or incongruent and whether inconsistent or unfair action is allowed or deterred. The column headings for this table are: *Position in pathway of component* (for sorting purposes); *Pathway-component that signal refers to*; *Pathway-component-discretion*; and *Assessment*. It has a row for each *pathway-component* and an overall analysis for the document summarising these factors as a row at the end of the table.

Appendix F below shows example *action pathways approach* tables for a highly simplified hypothetical disciplinary procedure document. I have completed only the signalling, and parts of the pathway related to informal action and the transition to formal action, in line with the focus of this research. The signals delivered by this hypothetical document are designed to illustrate the action pathways approach and should not be interpreted as an example of good practice for HRM-signalling or written procedure. Signals in the part 1 table (Table F-1) are ordered by *pathway-component*. They were initially added to the table in the order that they appear in the document, before being sorted by *pathway-component*. This is because, as stated above, an important part of the process is to enable signals for each component to be considered in relation to each other.

Any signals creating or acting on more than one component appear separately for each component to represent this.

The *action pathways approach* encourages, first, consideration of the signalling delivered by a written policy or procedure and the pathways that this creates, and second, how these might allow or deter unfair or inconsistent implementation. This approach is provided with the intention that it may allow analysis of existing documents for research purposes. It is also provided in the hope that it might be used for evaluation of existing, and design of new, written procedure within organisations. This with the aim of guarding against the risks of prejudice or bias being enacted. An alternative part 1 action pathway table is provided in Appendix G. This places *pathway-components* first in the table to encourage consideration of which component each signal creates or acts on. It aims to be more suitable to assist the process of designing new written policy and procedure than the part 1 table in Appendix F which are more suitable for analysing existing documents. The action pathways approach could be used just as effectively for complete documents, not just sections related to informal action. It should be noted that the *action pathways approach* is time consuming and quite complex to carry out. An understanding of the implications of the signals and resulting action pathway characteristics is necessary to be able to assess them meaningfully.

What makes differences between *action pathways* highly significant to my research, is the way that they create mechanisms that could allow or deter differential use of informal action, premature formal action, and disciplinary disproportionality. Documents that potentially allow these are identified using the action pathways approach by: low numbers of steps providing opportunities to resolve matters informally; lack of encouragement to use informal action or a low threshold for taking formal action; high levels of discretion; and/or low *involvement of another*. High levels of discretion may be identified by wording that awards it, or ambiguity or lack of detail that requires interpretation and thus requires it. Documents that potentially deter are identified by a greater number of steps providing opportunities to resolve issues informally and signalling that encourages informal action or sets a high threshold for taking formal action, gives lower discretion, and/or requires the non-optional *involvement of another*. Low levels of discretion may be identified by wording that restricts it in terms of detailed instructions, clear criteria, low ambiguity, examples of misconduct that is suitable to be addressed by informal action, and statements about who is involved. The assessment of these factors is by nature subjective and also cannot be reduced to a score or measure because of the complexity of the influencing factors. The

presence or absence of other factors should also be taken into account. It will also be useful to consider the *direction of travel* of signals and pathways; and whether pathways represent approaches that are supportive or punitive; *processual or discrete-event* (as described in section 9.1.1); whether *can't-do/won't-do logic* (9.1.2) is being used; the *organisational interaction-approach* (9.1.2) being taken; and how the benefits of informality and its formalisation are balanced with each other (9.1.2). I propose that the acknowledgement of the risk of bias or prejudice is a necessary *primer* (signal delivering a value / priority), as part of a broader organisational acknowledgment of potential for and guarding against institutional racism, as discussed in 5.1.3.

The final sections of this chapter revisit my research questions.

### 9.3. Summary of answers to research questions

My research questions are answered across the this and the two preceding chapters. The sections below summarise each in turn.

9.3.1. RQ 1: What HRM-signals about informal action are sent by written policy and procedure?

Research question 1 is answered in detail by Chapter 8. A summary is provided as a list in 8.5.1. These sections demonstrate the wide range of signals that are both sent and not sent by the documents in relation to informal action and the transition to formal action.

9.3.2. RQ 2: What procedural approaches to informal action do these signals represent?

Research question 2 is answered by Chapter 8, and summary sections 8.5.2 and 8.5.3. The answer has been further elaborated in Chapter 9 above. Chapter 8, and summary sections 8.5.2 and 8.5.3 demonstrate the lack of consistency or standardisation in relation to informal action and the transition to formal action, and detail the different approaches taken in relation to the range of factors considered. 9.1.2 proposes that approaches may result from different assumptions about situations that should be dealt with informally, about FLMs' abilities to act fairly and consistently, and the nature of disciplinary and performance or capability issues, and tensions between aims. Also, that approaches may be seen both in terms of being *processual or discrete-event*, and as different *organisational interaction-approaches*.



9.3.3. RQ 3: How does written policy and procedure potentially allow or deter the differential use of informal action and other factors leading to disciplinary disproportionality?

Research question 3 is answered by the previous sections of this chapter. 9.1.1 introduces implications of differences of approach related to the number of opportunities to resolve an issue using informal action, differences in FLM discretion, the *direction of travel* of HRM-signalling, formalisation of informal action, impacts related to different signalling and approaches by document type, and the implication that some approaches are proposed to allow and some to deter differential use of informal action. To summarise, the procedures described by disciplinary, performance and capability policy and procedure create *action pathways*. Characteristics of such documents and the *action pathways* they create can be shown to potentially allow or deter differential use of informal action in terms of more or less opportunities to resolve issues informally; FLM discretion; and safeguards against unfair or inconsistent action. This is elaborated in the table below.

*Table 9-4 Features that allow and deter differential use of informal action, premature formal action, and disciplinary disproportionality.*

Features that allow	Features that deter
Low numbers of steps providing opportunities to resolve matters informally.	A greater number of steps providing opportunities to resolve issues informally.
Lack of encouragement to use informal action or a low threshold for taking formal action.	Signalling that encourages informal action or sets a high threshold for taking formal action.
High levels of discretion and/or low <i>involvement of another</i> . (High levels of discretion may be identified by wording that awards it, or ambiguity or lack of detail that requires interpretation and thus requires it.)	Lower discretion, and/or requires the non-optional <i>involvement of another</i> . (Low levels of discretion may be identified by wording that restricts it in terms of detailed instructions, clear criteria, low ambiguity, examples of misconduct that is suitable to be addressed by informal action, and statements about who is involved.)

## Chapter 10. Conclusion

This chapter concludes my thesis by considering the contributions of my research, its limitations, further research, and finally, providing a summary for practitioners.

### 10.1. Contributions

This section describes the empirical, methodological, and theoretical contributions of my research.

#### 10.1.1. Empirical contributions

The empirical contributions are the identification and exploration of HRM-signals sent and approaches taken in relation to informal action and the transition to formal action, by English local authority (LA) disciplinary, performance and capability policy and procedure documents. Contributions related to elements of the approaches that may allow or deter differential treatment of employees and disciplinary disproportionality are introduced in this section and elaborated further in relation to theoretical contributions. The value of these contributions is enhanced by the large size and representative nature of the sample and the forensic detail of the analysis. In terms of size and representation, the dataset comprises 235 documents from 125 English LAs, that is 38% of English district and unitary authorities. It is representative by region, broad rural-urban characteristic, and proportion of the local populations identifying as white, classified as low, medium, and high.

I believe that this is the first time that a study has explored in such detail either HRM-signalling or approaches taken regarding informal action and the transition to formal action in written policy and procedure. The signalling sent by written policy and procedure in general is an area with little research, and as far as I am aware, signalling regarding informal processes by written policy and procedure has not been previously explored. There is also little research exploring mechanisms within written policy and procedure that might allow unfair discrimination. My empirical contribution in terms of HRM-signals adds to the signalling identified by Williams et al (2017; 2021) and in terms of mechanisms of unfair discrimination builds on the research of McCamish (2012), again Williams et al (2017), and Afzal (2022). To elaborate, Williams et al's (2017; 2021) case studies of a single organisation, explore signalling regarding flexible work arrangements (FWAs), largely by senior managers, but also including signalling by written policy and procedure. The earlier study (Williams et al, 2017) explores HRM-signalling by written policy and procedure and the potential for it to allow unfair discrimination. The absence of signalling of examples of

criteria for eligibility for flexible work arrangements is identified as a form of ambiguity requiring implementor discretion and causing managers to develop their own consistent but potentially unfair informal criteria for making this decision (ibid). The later study (Williams et al, 2021) explores signalling by policy and procedure in more detail. This includes identifying supportive and unsupportive signalling regarding FWAs. McCamish's (2012) study exploring causes of disciplinary disproportionality in a US high school, identifies a lack of clarity and examples in written policy and procedure, regarding types of misconduct. McCamish (2012) shows that resulting implementor discretion in interpreting these ambiguous categories of misconduct, causes disciplinary disproportionality via biased decisions made in relation to the conduct of Black students. A small section of Afzal's (2022) review of organisational culture at London Fire Service identifies lack of procedural provision for identifying the root causes of disciplinary and grievance matters as potentially allowing unfair discrimination. My research builds on the contributions of these studies that explore single organisations, by presenting a landscape of signalling regarding informal action and the transition to formal action in multiple organisations across a sector. I also contribute the associated procedural approaches and potential mechanisms that could allow or deter unfair discrimination. My large and representative sample has allowed more generalisable patterns to be identified.

My contributions are also relevant to a body of work that has explored conflict management with a key focus on what impedes and facilitates informal and early resolution. This body of extant research has not explored informal processes and the transition to formal processes described in written policy and procedure in detail, although the presence of procedural provision for informal action is identified (Saundry et al, 2008; 2011a; Jones and Saundry, 2012; Saundry, 2012; Saundry and Wibberley, 2014). Two exceptions are Latreille and Saundry (2015) who identify statements about informal resolution being seen as preferable to grievance procedure, and about mediation, in grievance and dignity at work policies, and Saundry et al (2023) who explore an early resolution policy. The research as a body also does not address unfair discrimination in relation to conflict management. In contrast, my study has explored informal processes and the transition to formal processes described in written policy and procedure in detail. My study's empirical contribution is related to organisational intentions regarding informal action and the transition to formal action as described in written policy and procedure and their lack of consistency and standardisation. These complement the contributions of the conflict management literature cited here and in the following section that are related to

the processes, barriers, and facilitators to informal action and early resolution, as seen by organisational stakeholders. I contribute a comprehensive, forensic analysis of informality as described within the large dataset described above. The analysis of the dataset was a huge empirical task. The number of findings tables (89) in Appendix D give a sense of the scale of this. The study finds that there are notable differences of approach to informal action and the transition to formal action taken across the sample and presents the dimensions of these differences in detail. This has been facilitated by the way that the analysis has considered informal action and the transition to formal action from a variety of angles. It has explored the 'what', 'when', 'why' and 'how' of the organisational procedural intentions and values that are signalled; what is stated and what is implied. The iterative nature of analysis essentially compared each document's content in relation to the others, allowing the absence as well as presence of signalling to be identified and considered when identifying approaches.

#### 10.1.2. Methodological contributions

The methodological contributions of the study relate to the utility of policy documents as a data source, of HRM-signalling as a theoretical framework, and to the forensic level of analysis. My study has shown that policy and procedure documents are a rich source of data, and in terms of the theoretical framework of the study, a rich source of HRM-signals. They therefore provide a useful empirical context for the study of HRM-signals. An indication of this richness is given by the large number of themes and codes resulting from the analysis, the breadth and depth of signalling identified, and again the number of tables of findings in Appendix D. It is illustrated by the way that my methodology has allowed identification of themes that less detailed analysis would not have. Chapter 8 details the wide range of ways that LAs take different approaches to informal action and the transition to formal action in written policy and procedure and the notable lack of consistency or standardisation. This includes differences in statements about what action should occur and when, how much of this is at the discretion of front-line managers (FLMs), and whether others are involved. It also reveals differences of approach by document type that allow the presence of different assumptions about conduct and capability to be proposed. The approach taken has enabled the documents to provide an insight into the intentions and values of the LAs regarding informal action in relation to disciplinary, performance, and capability matters. Most importantly, it has been possible to see signalling as creating *action pathways* and, for potential causal mechanisms of unfair discrimination to be identified. My study has taken a different methodological approach to the research that I

have related my empirical contributions to in the previous section. Williams et al (2017), McCamish (2012) and Afzal (2022) are all single organisation case studies, with the advantage of exploring factors in addition to written policy and procedure including the opinions of organisational stakeholders and wider influences. My methodology has been able to complement these approaches by allowing the comparison and contrasting of procedural approaches and potential for written policy and procedure to allow or deter unfair discrimination across a large and representative sample of LAs. My methodology's forensic approach also provides a more detailed analysis of written policy and procedure for signals, approaches, and mechanisms of unfair discrimination.

The conflict management research, cited in the previous section, has taken methodological approaches involving case studies with data collection by:

- interviewing (Saundry et al, 2008; 2011a; 2015; 2016; 2017; 2019; 2021; 2023; Rahim et al, 2011; Jones and Saundry, 2012; 2016; Saundry, 2012; Saundry and Wibberley, 2014; Latreille and Saundry, 2015; Teague et al, 2020), and
- focus groups with key organisational stakeholders such as HRPs, union representatives, operational managers and/or employment lawyers (Saundry et al, 2016; 2021; Teague et al, 2020).
- Conflict case data is sometimes explored (Saundry et al, 2011a; 2023; Latreille and Saundry, 2015; Jones and Saundry, 2016), as is
- written policy and procedure (Saundry et al, 2008; 2011a; 2015; 2023; Jones and Saundry, 2012; 2016; Saundry, 2012; Saundry and Wibberley, 2014; Latreille and Saundry, 2015).

Where written policy and procedure is examined, this is usually in terms of broad stages, such as the presence of provision for informal action (Saundry et al, 2008; 2011a; 2015; Jones and Saundry, 2012; 2016; Saundry, 2012; Saundry and Wibberley, 2014; Latreille and Saundry, 2015;). Exceptions are Latreille and Saundry (2015) and Saundry et al (2023) as above.

Another body of conflict management research has explored conflict management using large scale surveys with between 150 and 400 respondents (Roche and Teague, 2012; Teague and Roche, 2012; Hann et al, 2019; Roche et al, 2019; Hann and Nash, 2020). These studies have the advantage of exploring a broad range of organisations (ibid). The studies largely focus on ADR, so address informal conflict management measures, but there is less focus on the traditional informal processes described in written policy and procedure.

Other than Roche et al (2019) as part of associated case studies, the survey studies do not directly examine written policy and procedure and focus almost exclusively on employee-instigated conflict rather than employer-instigated individual conflict. An exception is Hann and Nash (2020) who ask about policy content and employer-instigated conflict. Their sample does not include public sector organisations (ibid). My study offers detailed documentary analysis of a large dataset as an addition to this methodological toolkit, with the advantage of allowing detailed examination of organisational intentions regarding procedure for a large sample of organisations.

It is also worth noting the exceptionally high 98% response rate for this study. This highlights an unparalleled advantage of obtaining access to such documents by the method of freedom of information request: the statutory requirement (Freedom of Information Act, 2000) to fulfil reasonable requests, the resultant accessibility of public sector data covered by the Act (ibid), and associated ability to create large and highly representative datasets relatively easily. This may be as additional or background data, or in the case of a study such as mine, data that is the main focus. Many issues of access are removed because of the statutory nature of requests. Despite these advantages, this method of obtaining data is not without problems and limitations. Data may be provided in a range of formats, not necessarily machine readable, so conversion or optical character recognition may be necessary. Despite their statutory responsibilities, organisations may refuse requests for reasons that are debatably not valid, ignore them, or fulfil them outside the time scale defined by the Act (ibid). Although inappropriate responses can be challenged, to do so is time consuming, although potentially of value where the attempt to avoid providing data is potentially significant to the study. A limitation to this way of obtaining data is that not all data is covered by the Act (ibid) depending on what it relates to, for example data about individuals, or the cost of providing it, although policy and procedure documents would generally not be excluded. Also, the private sector is not covered by the Act (ibid), unless providing services for the public sector.

Returning to the literature regarding documents as a data source, my study has shown, that policy documents allow official organisational intentions to be identified regarding procedure, and for potential assumptions behind approaches taken and mechanisms of unfair discrimination to be proposed. This is in line with authors who see such documents as influencing and guiding action or values (Watson, 1995; Townley, 1993a; 1993b; Putnam, 1999, cited by Hamilton, 2001; Hamilton, 2001) and as a primary source of data (Atkinson and Coffey, 2004). My study does not challenge authors who advise caution regarding

seeing policy documents as evidence of what occurs in practice (Atkinson and Coffey, 2004; Mutch, 2014), but I do argue that researchers should not be discouraged from seeing policy and procedure documents as a valuable source of data regarding organisational intention, stated values, and the presence or absence of fail safes against unfair discrimination. It is important to recognise that there are ways to valuably use policy documents as a data source. I found high levels of FLM discretion and unclear or absent examples in relation to misconduct in written policy and procedure that in line with both McCamish (2012) and Williams et al (2017) leave scope for inconsistent or unfair implementation of disciplinary policy.

The study has also demonstrated that HRM-signalling provides an effective theoretical framework for documentary analysis. It can encompass the wide range of intentional and unintentional messaging that can be identified within the documents, and the analysis based on the signals can be both in-depth and broad. For example, I have identified signals in relation to action to be taken or not taken and in what circumstances; whether this is at the discretion of the FLM and whether others should be involved; terms used and the positioning of informal and formal action; requirements for recording; rights and the withholding of rights. I have also shown the absence of signalling by comparing approaches taken by LAs. HRM-signalling has previously been used as evidence of a strong or weak-HRM situation in research using HR process theory as a theoretical framework, rather than as a theoretical framework in its own right. Few studies have explored written policy and procedure as a source of signals. My study, in line with Williams et al, identifies a range of signals (2021) and high levels of FLM discretion and sometimes ambiguity signalled by written policy and procedure (2017; 2021). Significantly, as a theoretical framework, HRM-signalling in combination with policy documents as a source of data, offers direct access to HRM-signals representing “official” versions (Atkinson and Coffey, 2004, p.69) of organisational intention and expectation.

### 10.1.3. Theoretical contributions

The study's main theoretical contributions are related to proposing the concept of policy documents creating pathways that may allow or deter differential action. These contributions are relevant to areas of research, and related practice, that concern management, fairness, and employee experience, such as organisational and management studies, conflict management, HRM, equality, diversity and inclusion, and disciplinary disproportionality. By taking an *action pathways approach* to policy and procedure analysis, documents can be analysed for their potential to allow or deter unfair or inconsistent implementation. Similarly, by taking an *action pathways approach* to policy and procedure development, managers, human resource practitioners (HRPs), and equality, diversity, and inclusion (EDI) practitioners can create fail safes in procedure to deter differential action, and to maximise opportunities to resolve issues informally. In this way, unfair and inconsistent implementation of policy and procedure can be deterred in a more systematic and informed way than simply by stating that procedure must be implemented fairly and consistently. This extends more general conceptions of organisational pathways (Chugh and Brief, 2008; Milkman et al, 2015) by contributing both a more specific use of the term and approach to exploring pathways.

The contributions relate to classification of HRM-signals and their use for modelling *action pathways*. Again, this extends previous work identifying signals sent by written policy and procedure (Williams et al, 2017; 2021) by proposing new ways to categorise and refer to such signals. This study contributes a classification of signal attributes: the *written-procedure-signal model*. Signal attributes modelled are: *signal-type*; *signal-content-type*, *signal-content*, *signal-discretion*, and *pathway-component* created or acted on by the signal. As part of this model, I offer: two *signal-types*, *commands* and *primers*, that create *pathway-components* and act on them, respectively; two *signal-content-types* *intention/expectation* and *value/priority*; and a discretion attribute identifying low or high levels of discretion in relation to factors such as *what* should be done, *how* it should be done, and the *involvement of another*. *Action pathways* are a way to conceptualise the processes created by the command signals sent by written policy and procedure and how primer signals might act on the components of these processes. My action pathways approach allows the pathways that *written procedure signals* create to be conceptualised, and assessment of whether the signals create pathways that allow or deter differential use of informal action and more broadly disciplinary disproportionality.



I also propose that, as the conflict management literature shows that managers prefer to follow procedure in relation to conflict management in general (Saundry et al, 2015; 2023), and particularly when handling difficult situations involving Black Asian and minority ethnic employees (Tamkin, 2000; Archibong and Darr, 2010; Sehmi, 2015), that changing the status of informal processes may reduce their differential use. If use of informal processes is described in as much detail as formal processes and is always required, even if just as a preliminary fact-finding process, then managers may feel more able to proceed informally where this is appropriate. Indeed, the concept of informality is perhaps not helpful here. The term “non-statutory” would lower potential employee expectations of a truly informal experience and make clearer to managers that this is a process that is codified by the organisation with expectations that need to be met. This is a different assumption to that which equates the avoidance of written policy and procedure with increasing the likelihood of informal action and early resolution (Saundry and Wibberley, 2014; Jones and Saundry, 2016). It supports the suggestion that different approaches to informal action in written policy and procedure are needed (Saundry, 2019), and responds to the acknowledgement that written policy and procedure have a positive role in terms of consistency, equality and fairness, whilst identifying that it can act as a barrier to informality or be associated with its avoidance (Saundry, 2012; Saundry and Wibberley, 2014; Jones and Saundry, 2016; Saundry 2019), especially where it is equated with formality (Rahim et al, 2011).

A contribution is also made to research and literature related to institutional racism. This is to demonstrate in detail theoretically, mechanisms by which written policy and procedure might allow or deter differential use of informal action and disciplinary disproportionality. This is important because written policy and procedure is often identified in the literature as a potential site of institutional racism, but either the nature of this is not given in detail or is seen in terms of policy content that causes racist outcomes by requiring action that directly or indirectly unfairly discriminates (e.g., Carmichael and Hamilton, 1967; Macpherson, 1999; Bourne, 2001; Wight, 2003; Phillips, 2011; Patel, 2022). In the small number of studies where the potential for policy design to allow discrimination is identified or implied, these studies do not explore in detail components of the procedure that might allow or deter unfair or inconsistent implementation (e.g., Macpherson, 1999; Afzal, 2022; Casey, 2023). Exceptions are a key study that does address more specifically how ambiguity or discretion in written policy and procedure can allow unfair or inconsistent implementation in terms of wording that is open to interpretation allowing bias to influence decisions (McCamish, 2012), and another relevant study where ambiguity is found to cause

unfair criteria to be used during implementation (Williams et al, 2017<sup>294</sup>). No such previous studies have explored informal action and the transition to formal action in written policy and procedure specifically. My approach considers written policy and procedure as a site of institutional racism when it does not acknowledge the risk of prejudice or bias and its design does not deter their effects. I also suggest that by reducing the argument for guarding against institutional racism to two basic assumptions, the risk of prejudice or bias, and the need to acknowledge and guard against this risk, that however academics or organisational leaders formulate prejudice and bias, that this approach to written policy and procedure provides a safeguard that is conceptually and practically straightforward to justify and implement.

## 10.2. Limitations and further research

This section examines the limitations of my research and proposes further research. The first and most significant limitation is that there is no way of knowing what written policy, procedure or other guidance might exist but not have been sent in answer to my freedom of information request. The existence of a document not supplied sometimes became apparent when it was referred to in a provided document. This is a limitation that could not be avoided given the size of the dataset, because the amount of checking and following up with more freedom of information requests would have been prohibitive within the timescale of the research. This limitation is significant because it means that for some of the LAs the signalling observed in the documents in the dataset will be less complete as a representation of signals sent by written policy and procedure about intended disciplinary, performance and capability policy and procedure. Future case study research using the *action pathways approach* would allow exploration of the full range of relevant written policy, procedure, and guidance used within individual LAs, their combined signalling, and how these might combine to create pathways. To outline such a study, a small sample size would allow time to be spent identifying and obtaining documents. Obtaining data by freedom of information requests, asking for a wider range of documents, or perhaps initially a list of policy, procedure, and related guidance documents, and with time allocated for re-requesting any document identified as not sent, would have the advantage of being fairly quick and simple in terms of obtaining data. There would, however, be advantages to negotiating organisational access and surveying organisational stakeholders such as HRPs, FLMs, and senior managers to explore policy, procedure, and guidance that they feel is

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<sup>294</sup> In relation to HRM-process, not in relation to institutional racism.

relevant rather than leaving this to the person tasked with responding to a freedom of information request. Also, this would open the opportunity to later discover stakeholder opinions about the action pathways identified.

Three further limitations are related to relationships between different LAs and document types. First, LAs clearly use shared documents or adaptations of each other's documents in some cases. Despite awareness of this as a phenomenon in the dataset, the decision was made not to explore it because the data that would be gained was seen to be not directly relevant enough to the study to justify the amount of time that the analysis would take. A future study to explore this would provide data about how policy and procedural approaches might propagate through the sharing of written policy and procedure. This is something that could be explored using the dataset for this study, including whether sharing of written policy and procedure is related to geographical proximity as my knowledge of the dataset has led me to suspect. Software techniques involving automated searching for matching sections of text would allow the overall similarity or difference of documents to be identified. As stated in a previous chapter, it would also be valuable to analyse in detail how consistent the LAs are in the current dataset documents in their categorisation of different examples of misconduct as minor, simply misconduct, serious, or gross.

Second, the relationships between LAs were not explored. A number of LAs merged within the timescale of the project or it emerged were essentially the same organisation despite presenting separate identities. This means that there are a small number of LAs recorded as two LAs and two sets of documents, that are in fact either one merged LA with one set of shared documents or two partner LAs using the same document, resulting in data appearing to come from two LAs when it comes from one, or two related, LAs. It was decided that the implications of this on the data were likely to be too small to justify the cost in time of identifying these cases. Identifying such cases could, however, be carried out as part of the study outlined to identify document sharing above.

Third, similarities and differences were not identified between documents of different types from the same LA. Comparing and contrasting different document types from the same LA, would have provided important data in relation to whether LAs take the same approach to informal action in, for example, both disciplinary and capability documents. This would have been valuable to the project in that it would have allowed exploration of whether there is inconsistency of approach within as well as across LAs. The analysis would

have been highly time consuming, so an approach that compared disciplinary and performance or capability documents across the whole sample rather than for each LA was taken instead. Exploring this could beneficially be incorporated into the case study research outlined above.

There is also a small limitation related to the fact that although the sample of LAs approached by freedom of information request was representative, a small number of LAs did not reply or refused the request. This is unlikely to have a significant effect on the sample because only 3 LAs did not provide documents.

The limitations of my study have prompted me to propose above the case study research exploring the range of documents signalling in relation to discipline, poor performance, and capability, and the document-similarity research exploring document sharing. The contributions of this study also suggest areas for further research. There is a piece of research that I would like to carry out first following on directly from this study. This is to explore relationships between signalling in the documents and the occurrence or absence of disproportionality of Black, Asian and minority ethnic employees in the records of disciplinary, performance or capability management at the LAs. This would involve analysis of a second dataset obtained by freedom of information request to the sample of LAs that provided documents, requesting disciplinary, performance and/or capability data by ethnicity. The first task would be to explore which LAs hold this data, and to see not recording such data by ethnicity as data in its own right. Then, the new dataset, would be explored in relation to different types of signalling from this study. The approach taken to analysis would depend on the quality and quantity of the data. If data is detailed, it might be possible to explore disproportionality by ethnic group and/or by level of disproportionality. If numbers are small or data is not often held, it would be explored, data allowing, in terms simply of a crude Black, Asian or minority ethnic/white/not recorded and disproportionality/no disproportionality categorisation.

I also propose additional further research. It would be valuable to compare the intended action pathways created by written policy and procedure and enacted pathways created by FLM actions in practice. This could be done by comparing *action pathways approach* tables created for written policy and procedure with an equivalent table of FLM actions, and potentially stated motivations for actions.

Further research is also needed to explore how dominant *can't-do/won't-do logic* is, and to test my proposition of its influence on disciplinary practice. It would be informative to

survey or interview stakeholders such as senior managers, HRPs and FLMs to explore their perceptions of the differences between conduct and capability issues, and for those involved in relevant policy and procedure development, how this affects their approach.

I hope that my study and the introduction of action pathways as an approach for identifying the potential for written policy and procedure to allow or deter inequitable practices both in existing written policy and procedure and during its development, will lead to new research. This approach could also equally be applied to other mechanisms for disproportionality, for example in relation to promotion or recruitment, such as returning to explore in detail the pathways into organisations that Milkman et al (2015) introduced in more general terms.

Given the widely different approaches taken in the dataset documents, it would also be valuable to research how written policy and procedure is developed within LAs. This would be best explored by interviewing multiple stakeholders to explore who is involved and what the responsibilities are in commissioning, designing, writing, feedback, checking, and signing off policy and procedure, and whether they are developed in isolation from each other. For those directly involved, motivations for statements made in written policy and procedure, and the sources of advice and information used to inform the process and content could also be explored. Opinions from stakeholders who are both currently involved, and not, about whether anyone not currently involved should be and why, and vice versa, would also be valuable.

Another potential area for further research is qualitative word-level analysis of language-use in written policy and procedure for its potential to award, allow, or constrain FLM discretion. This could be done by exploring, for example, modal-verb use and associated deontic necessity, such as whether an action 'may', 'should', or 'must' be carried out. In addition, it would be necessary to explore how such terms are modified, by the addition of terms such as 'always', 'normally' or 'occasionally', or longer sections of text addressing when an action should or should not occur, and the implications of these for discretion. A limitation of Nvivo, that is relevant to this potential research, is that some types of documentary analysis are not possible without exporting and processing coded data in other software. Nvivo does not associate a unique identifier with sections of text that are coded. This means that exploring combinations of codes applied to sections of text would need careful coding and significant processing outside of Nvivo to identify the combinations of codes that sections of text are coded to, and then analyse this data, if this is not to be

done by eye, which is not practical for large datasets. This may mean that Nvivo is not the best software to use for coding and further analysis of such data.

Research about HRM-signalling by written policy and procedure and *action pathways* is also needed for other parts of the public sector, other sectors, and national contexts.

### 10.3. Summary for practitioners

#### 10.3.1. What is currently known:

- Disciplinary disproportionality, the over representation of employees from Black, Asian and minority ethnic groups in records of formal workplace disciplinary processes, is evidenced in the English public sector.
- Differential use and avoidance of informal action by FLMs is identified as a causal mechanism leading to disciplinary disproportionality.
- The Acas Code of Practice is influential in the design of written disciplinary policy and procedure.
- HRM can be seen as delivered by HRM-signals, messages about organisational expectations, requirements, assumptions, or values. One source of signals is written policy and procedure.

#### 10.3.2. What this research adds:

- English LAs take a wide range of approaches to informal action and the transition to formal action in written disciplinary, performance and capability policy and procedure. There is an absence of consistency and standardisation.
- *Organisational interaction-approaches* can be identified in relation to informal action as described by written procedure: *Abdication of responsibility*, Tell, Tell and Sell, Tell and Listen, Ask and Tell, Problem Solving, and Ask and Listen.
- A suggestion that informal action is non-statutory rather than truly informal.
- The procedures described by disciplinary, performance and capability policy and procedure create *action pathways*.
- The processes that the documents describe and the *action pathways* they create, can be seen in terms of steps, decision points, *primers*, and *commands*.
- Characteristics of such documents and the *action pathways* they create can be shown to potentially allow or deter differential use of informal action.
- I propose a *written-procedure-signal model* and an *action pathways approach* to conceptualise and assess these.

- The processes described by written procedure can be categorised as *processual* or *discrete-event* in approach.
- A proportion of the documents use *can't-do/won't-do logic* that may influence the approach taken to conduct and capability.
- There is tension between aims in relation to informal action.
- The characteristics of the documents and ways tensions are navigated may lead to more or less: opportunities to resolve issues informally, FLM discretion, and safeguards against unfair or inconsistent action.

#### 10.3.3. Implications for practitioners:

- Awareness and consideration of the issues raised by this study can inform design of written policy and procedure to deter differential treatment of employees and the causal mechanism that results in disciplinary disproportionality.

## Appendix A. Coding scheme for LA document names

The coding of local authority (LA) policy and procedure documents was in the following format

LAD\_R-<region number>\_BRUC11-<BRUC11 number>\_H|M|L-1|2|3\_<LAD name>\_DISCI|PERF|CAPA|BOTH\_<optionally>INFDOC. <docx|pdf>

The elements of the naming coding scheme are:

LAD\_: identifies the organisation as a local authority district. This was included in anticipation of possible future work involving different organisation types.

R-<region number>\_: identifies the region of England the LA is within, where 1=NORTH EAST, 2=NORTH WEST, 3=YORKSHIRE AND THE HUMBER, 4=EAST MIDLANDS, 5=WEST MIDLANDS, 6=EAST, 7=LONDON, 8=SOUTH EAST, and 9=SOUTH WEST.

BRUC11-<BRUC11 number>\_ identifies the Broad Rural Urban Characteristic of the LA, where 1=Predominantly Rural, 2=Urban with Significant Rural, 3=Predominantly Urban.

<H|M|L>-<1|2|3>\_ identifies the LA as being in a low, medium or high percentage white population. Note low, medium and high are defined as being within the lower quartile, interquartile range and upper quartile respectively of populations for English LAs. H1=LA within high group with highest % of people identifying as white within the population, H2 is second highest, H3 is third highest. L1= LA within low group with lowest %white, L2 = second lowest, L3=third lowest. M1 = LA in medium group with %white closest to median of %white for England, M2 is second closest to median, M3 is third closest to median.

<LA name>\_ is the name of the LA. This element was included during analysis for ease of identification, then removed for reporting to avoid unnecessarily identifying the organisations within the sample.

<DISCI|PERF|CAPABILITY|BOTH>\_ identifies whether the document is related to disciplinary, performance or capability policy or procedure. <original filename> was initially retained at the end of the coded filename, then removed for reporting.

<optionally INFDOC>\_ identifies documents only relating to informal action.



## Appendix B. Categorized ETD filenames

Filenames were coded in the following format:

<respondent type>\_\_<case ID>-<#\_merged if files merged>.pdf.

Respondent type was:

- Priva for a title including “Ltd” or “Plc”,
- PSNHS for a title including NHS-related terms,
- PSLoA for a title including local authority related terms,
- PSPol for a title including police-force-related terms, and
- PSPos for any other title.

PSPos could be cases involving private companies or the public sector, but that status could not be identified by the automated renaming and coding process.

Details of search terms used are included below.

- Private companies: “Ltd” OR “plc”;
- Public Sector – NHS: “NHS” OR “NHS Trust” OR “NHS foundation trust” OR “hospital trust” OR “hospital foundation trust” OR “hospital”;
- Public Sector – Local Authorities: “county council” OR “town council” OR “city council” OR “borough council” OR “London borough” OR “district council” OR “borough of” OR “council”;
- Public sector – Police: “chief constable” OR “constabulary” OR “commissioner of police” OR “police”;
- Possibly public sector - not identified automatically: Titles not included in one of the above.

## Appendix C. ETD Queries

*Table C-1 “Trigger-queries” used to identify ETD cases of interest.*

#	Query Description	Search term, or if compound, subquery 1	Compound relationship	If compound, subquery 2	Applied to
1	Compound query to identify “specific policy”: cases referring to organisational disciplinary, performance or capability policy or procedure	(disciplinary OR capability OR performance)	Preceding (within 5 words)	(policy OR policies OR procedure OR procedures OR code OR codes OR rule OR rules OR practice OR practices)	All cases
2	Query to identify case referring to informal action	("Informal stage" OR "informal stages" OR "informal procedure" OR "informal procedures" OR "informal disciplinary" OR "informal performance" OR "informal capability" OR "informal policy" OR "informal policies" OR "informal action" OR "informal actions" OR "counselling" OR "management guidance")	N/A	N/A	Results of query 1: “Specific Policy”
3	As query 2	As query 2	As query 2	As query 2	All cases
4	Query to find use of informal and informally in any context	(informal OR informally)	N/A	N/A	All cases
5	Query to allow to manually find informality expressed in terms of formality (where terms informal not used)	(formal OR formally) NOT (informal OR informally)	N/A	N/A	All cases

Table C-2 Queries used to explore ETD cases of interest.

#	Query Description	Search term, or if compound, subquery 1	Compound relationship	If compound, subquery 2	Applied to
6	Day to day	("day to day management" OR "day to day supervision" OR "routine management" OR "routine supervision" OR "ordinary management" OR "ordinary supervision" OR "informal management" OR "informal supervision")	N/A	N/A	All cases
7	Vague policy references	(respondent's OR respondents')	Preceding (within 3 words)	(policy OR policies OR procedure OR procedures OR code OR codes OR rule OR rules OR practice OR practices)	Results of query 1: "Specific Policy"
8	Acas	(Acas OR A.C.A.S. OR "Advisory, Conciliation and Arbitration Service" OR "Advisory, Conciliation & Arbitration Service")	Preceding (within 2 words)	(code OR guidance OR guidelines OR advice OR "advisory booklet" OR defines OR "has issued a code")	Results of query 1: "Specific Policy"

## Appendix D. Tables of findings by document type

This appendix presents the findings from Chapter 8 as tables, with detail by document type. (IA = informal action. FA = formal action. IoA = involvement of another).

*Table D-1 Whether clear provision is made for informal action.*

<b>Clear provision made for IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Made	98% (228/232)	53% (120/228)	46% (106/228)	1% (2/228)
Not made	2% (4/232)	2/4	2/4	0/4

*Table D-2 Positioning in document and terms used in relation to informal and formal action.*

<b>Position in document and terms used</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Same term to refer to, and lay out requirements for, informal and formal action within the same policy or procedure	39% (89/228)	43% (38/89)	57% (51/89)	0% (0/89)
Different terms within the same document	36% (82/228)	54% (44/82)	44% (36/82)	2% (2/82)
Informal action positioned outside the document	22% (50/228)	70% (35/50)	30% (15/50)	0% (0/50)
Inconsistency	3% (7/228)	3/7	4/7	0/7

Table D-3 Terms used when the same term used to refer to informal and formal action.

Terms used when the same term used to refer to IA and FA	% docs	% Disci	% Perf/Capa	% Both
"Stage" <sup>295</sup>	36% (32/89)	22% (7/32)	78% (25/32)	0% (0/32)
"Action" <sup>296</sup>	27% (24/89)	75% (18/24)	25% (6/24)	0% (0/24)
"Procedure" <sup>297</sup>	26% (23/89)	52% (12/23)	48% (11/23)	0% (0/23)
"Process" <sup>298</sup>	3% (3/89)	0/3	3/3	0/3
"Management of f" <sup>299</sup>	2% (2/89)	1/2	1/2	0/2
"Dealing with" <sup>300</sup>	1% (1/89)	0/1	1/1	0/1
"Stage" and "procedure" together <sup>301</sup>	1% (1/89)	0/1	1/1	0/1
"Stage" and "process" used together <sup>302</sup>	1% (1/89)	0/1	1/1	0/1
"Step" <sup>303</sup>	1% (1/89)	0/1	1/1	0/1
"Procedure" heading with subheadings "Informal" and "formal"	1% (1/89)	0/1	1/1	0/1

<sup>295</sup> Either an informal and formal stage or stages (where informal and formal stages are potentially numbered separately), or numbered stages that are identified as either informal or formal, or in one case a "counselling and support stage" and "formal stage".

<sup>296</sup> Action is mostly termed "Informal action" and "formal action" or in two cases (from the same LA) and one case respectively "informal management action" and "formal management action" and "Initial and corrective action" and "formal action".

<sup>297</sup> Procedure is termed "(the) informal procedure" and "(the) formal procedure" (including informal or formal "disciplinary" or "capability" procedure).

<sup>298</sup> "Informal / Formal (disciplinary) Process".

<sup>299</sup> "Informal / Formal management of disciplinary issues / poor performance".

<sup>300</sup> "Dealing with poor performance informally / formally".

<sup>301</sup> "Stage 1 / 2 - Informal / Formal Procedure".

<sup>302</sup> "Stage One/ Two – The Informal / Formal Process".

<sup>303</sup> "Step One – Confirmation of concerns about performance", "Step Two – Capability Meeting". The terms informal and formal are not used in headings, but the text refers to meeting "more formally" at stage 2.

Table D-4 Terms used when different terms used to refer to informal and formal action.

<b>Different terms used to refer to IA and FA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Heading referring to informal action not using the term "procedure" and term referring to formal action using term "procedure"	45% (37/82)	57% (21/37)	41% (15/37)	3% (1/37)
Term referring to informal action followed by sections assuming rest of document refers to formal action without stating this explicitly	34% (28/82)	64% (18/28)	36% (10/28)	0% (0/28)
Other occasional combinations of different terms used to refer to informal and formal action	21% (17/82)	29% (5/17)	65% (11/17)	6% (1/17)

Table D-5 Terms used for informal action alongside the term "formal procedure".

<b>Terms for IA used alongside "formal (disciplinary / capability) procedure"</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
"Informal (disciplinary / [in one case] and preventative) action"	32% (12/37)	58% (7/12)	33% (4/12)	8% (1/12)
"Informal Stage"	14% (5/37)	2/5	3/5	0/5
"(Informal) Counselling"	11% (4/37)	1/4	3/4	0/4
"Informal Discussion"	8% (3/37)	3/3	0/3	0/3

<b>Terms for IA used alongside “formal (disciplinary / capability) procedure”</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
“Management advice and guidance”	8% (3/37)	3/3	0/3	0/3
“Early intervention”	5% (2/37) <sup>304</sup>	1/2	1/2	0/2
“Informal Assistance”	5% (2/37)	0/2	2/2	0/2
“Informal Resolution”	5% (2/37)	1/2	1/2	0/2
“Informal (capability) Process”	3% (1/37)	0/1	1/1	0/1
“Informal Management review”	3% (1/37)	1/1	0/1	0/1
“Informal Management”	3% (1/37)	1/1	0/1	0/1
“Informal Misconduct issues”	3% (1/37)	1/1	0/1	0/1
“Initial discussion”	3% (1/37)	1/1	0/1	0/1

Table D-6 Terms used for informal action where rest of document assumes formality.

<b>Terms for IA where rest of document assumes formality”</b>	<b>% docs</b>	<b># Disci</b>	<b># Perf/Capa</b>	<b># Both</b>
“Informal stage”	21% (6/28)	3/6	3/6	0/6
“Informal discussion or Conversation”	18% (5/28)	3/5	2/5	0/5
“Deal with ... informally”	7% (2/28)	2/2	0/2	0/2
“Informal action”	7% (2/28)	2/2	0/2	0/2
“Informal procedure”	7% (2/28)	2/2	0/2	0/2
“Informal resolution”	7% (2/28) <sup>305</sup>	1/2	1/2	0/2
“One to One / Supervision Meetings”	7% (2/28)	0/2	2/2	0/2
“Capability Procedure Stage 1 – Capability Meeting”	4% (1/28)	0/1	1/1	0/1
“First meeting”	4% (1/28)	0/1	1/1	0/1

<sup>304</sup> From the same LA

<sup>305</sup> From the same LA

<b>Terms for IA where rest of document assumes formality</b>	<b>% docs</b>	<b># Disci</b>	<b># Perf/Capa</b>	<b># Both</b>
"Informal Counselling"	4% (1/28)	1/1	0/1	0/1
"Informal Process / Management Guidance and Support / Management Instructions"	4% (1/28)	1/1	0/1	0/1
"Informal process"	4% (1/28)	1/1	0/1	0/1
"No subheading just paragraph"	4% (1/28)	1/1	0/1	0/1
"Resolve discipline issues informally"	4% (1/28)	1/1	0/1	0/1

Table D-7 Other combinations of different terms used to refer to informal and formal action.

<b>Other combinations of different terms used to refer to IA and FA</b>	<b># docs</b>	<b># Disci</b>	<b># Perf/Capa</b>	<b># Both</b>
"Informal Action" and "Formal ... Stages"	2	0	2	0
"Informal Discussion" and "Stage 1 - first formal meeting etc"	2	1	1	0
"Initial meeting" and "Formal performance management"	2	0	2	0
"Coaching and Support Performance improvement planning" then "Formal warning"	1	0	1	0
"Dealing with issues informally" and "Addressing / resolving issues formally"	1	0	1	0
"Dealing With Problems Informally" and "Formal Disciplinary Process"	1	1	0	0
"Identifying Performance Problems - Addressing Informally" and "Formal Stages"	1	0	1	0
"Informal action" and "Formal discipline"	1	1	0	0
"Informal Action" and "Formal Processes"	1	0	0	1
"Informal Approach" and "Formal Stages"	1	1	0	0
"Informal performance meeting" and "Formal action"	1	0	1	0
"Informal resolution" and "Formal stage"	1	0	1	0
"Informal Stage" and "Formal Approach stage 1"	1	0	1	0
"Informal Stage" and "Formal process"	1	1	0	0
<b>Total numbers</b>	<b>17</b>	<b>5</b>	<b>11</b>	<b>1</b>



Table D-8 Inconsistent terminology used to refer to informal and formal action.

Inconsistent terminology used to refer to IA and FA		# docs	# Disci	# Perf/Capa	# Both
"Informal Procedure" & "Formal Procedure"	"Informal Process" & "Formal Disciplinary Procedure"	1	1	0	0
"Informal Performance Management" & "Formal Performance Management"	"Informal Performance Management" & "Formal - Performance Procedure"	1	0	1	0
"stages: Informal Formal"	"Informal Stage" & "Formal Disciplinary Procedure Stage 1"	1	1	0	0
"informal stage" & "formal stage"	"Informal Action – procedure" & "Stage 1 – Formal Capability procedures"	1	0	1	0
"Informal Disciplinary Process" & "Formal Disciplinary Process"	"Formal Disciplinary Procedure"	1	1	0	0
"Informal Stage" & "Formal Process"	"Informal Procedure" & "Formal Procedure"	1	0	1	0
"Informal stage" & "Formal stage"	"Informal procedure" & "formal procedure"	1	0	1	0
<b>Total numbers</b>		<b>7</b>	<b>3</b>	<b>4</b>	<b>0</b>

Table D-9 Relationship of informal action to day-to-day management.

<b>Relationship of IA to day-to-day management</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
Unstated or unclear	43% (97/228)	68% (66/97)	30% (29/97)	2% (2/97)
Explicitly stated or implied to be equivalent	42% (96/228)	48% (46/96)	52% (50/96)	0% (0/96)
Informal action in addition to day-to-day management	14% (32/228)	22% (7/32)	78% (25/32)	0% (0/32)
Informal action instead of day-to-day management	1% (2/228)	0/2	2/2	0/2
A choice between informal action and day-to-day management	<1% (1/228)	1/1	0/1	0/1

Table D-10 Status of preliminary investigation.

<b>Status of preliminary investigation</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Informal (not formal)	52% (118/228)	53% (63/118)	46% (54/118)	1% (1/118)
No reference made	41% (93/228)	43% (40/93)	56% (52/93)	1% (1/93)
Informal and/or Formal	4% (8/228)	8/8	0/8	0/8
Formal (not informal)	3% (6/228)	6/6	0/6	0/6
Status unclear	1% (3/228)	3/3	0/3	0/3

Table D-11 Status of main investigation.

Status of main investigation <sup>306</sup>	% docs	% Disci	% Perf/Capa	% Both
Formal	84% (191/228)	59% (113/191)	40% (76/191)	1% (2/191)
Informal	12% (28/228)	4% (1/28)	96% (27/28)	0% (0/28)
Unclear status	4% (8/228)	7/8	1/8	0/8
No reference made	3% (6/228)	0/6	6/6	0/6

Table D-12 Signals about desirability of informal action.

Signals about desirability of IA	% docs	% Disci	% Perf/ Capa	% Both
Documents that signal that informal action is desirable:	96% (218/228)	51% (111/218)	49% (106/218)	<1% (1/218)
Documents that do not signal that informal action is desirable	4% (10/228)	9/10	0/10	1/10

Table D-13 How documents signal that informal action is desirable.

How documents signal that that IA is desirable	% docs	% Disci	% Perf/ Capa	% Both
By instructing its use <sup>307</sup>	90% (196/218)	47% (92/196)	53% (103/196)	1% (1/196)
(And/or) By making positive statements about informal action.	22% (48/218)	79% (38/48)	21% (10/48)	0% (0/48)

<sup>306</sup> Note: one disciplinary document is contradictory. It is thus counted in both the informal and formal rows above. Four documents (all capability or performance) have main investigations coded as informal, but the formal stage includes elements of investigation so are also coded as formal. Therefore, percentages do not add to 100.

<sup>307</sup> By encouraging use of informal action, stating that informal action will be used, or by not making explicit provision for bypassing informal action.

Table D-14 Reasons for, or advantages of, informal action.

Reasons for, or advantages of, IA	% docs	% Disci	% Perf/ Capa	% Both
Not stated	49% (112/228)	45% (50/112)	54% (61/112)	1% (1/112)
<i>Halting-at-an-early-stage</i> <sup>308</sup>	35% (79/228)	63% (50/79)	37% (29/79)	0% (0/79)
<i>Taking-a-supportive approach</i> <sup>309</sup>	8% (19/228)	32% (6/19)	68% (13/19)	0% (0/19)
<i>Informal-action-as sufficient</i> <sup>310</sup>	7% (16/228)	75% (12/16)	25% (4/16)	0% (0/16)
<i>Effects-on-team</i> <sup>311</sup>	2% (5/228)	3/5	2/5	0/5
<i>Maintaining-good-relationships</i>	2% (5/228)	4/5	1/5	0/5
<i>Improvement-of-standards</i>	1% (2/228)	2/2	0/2	0/2
<i>Avoiding-anxiety</i> <sup>312</sup>	<1% (1/228)	1/1	0/1	0/1
<i>Best-chance-of-enabling-correct-performance</i>	<1% (1/228)	0/1	1/1	0/1
<i>Confidentially</i>	<1% (1/228)	1/1	0/1	0/1

<sup>308</sup> One or often more of the following terms “nipping in the bud” or “early”, “quick”, or “timely” resolution and/or “efficient”, “effective”, “productive” resolution and/or the avoidance of “repeat”, “escalation”, “worsening of seriousness” and/or the “avoidance of formal action”.

<sup>309</sup> Terms used were: “Supportive”, “Not punitive”, “Positive”, “Constructive”, or “Encouraging”.

<sup>310</sup> Terms used were “all that is needed”, “all that is required” or “sufficient”.

<sup>311</sup> Expressed in terms of maintaining team morale or avoiding or minimising disruption to the team.

<sup>312</sup> Not clear whether for employee or manager.

Table D-15 Use of Seriousness terms in relation to informal and/or formal action.

<b>Use of Seriousness terms in relation to:</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
Either informal or formal action or both	66% (151/228)	73% (110/151)	26% (39/151)	1% (2/151)
Formal action (both or just)	50% (115/228)	66% (76/115)	32% (37/115)	2% (2/115)
Informal action (both or just)	47% (108/228)	90% (97/108)	8% (9/108)	2% (2/108)
Both informal and formal action	32% (72/228)	88% (63/72)	10% (7/72)	3% (2/72)
Just formal action	19% (43/228)	30% (13/43)	70% (30/43)	0% (0/43)
Just informal action	16% (36/228)	94% (34/36)	6% (2/36)	0% (0/36)

Table D-16 Seriousness terms regarding informal action as minor or less serious.

<b>Seriousness terms regarding IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
"Minor"	94% (101/108)	89% (90/101)	9% (9/101)	2% (2/101)
Lower level of "seriousness"	10% (11/108)	11/11	0/11	0/11

Table D-17 Seriousness terms used regarding formal action.

Seriousness terms regarding FA	% docs	% Disci	% Perf/ Capa	% Both
"More Serious"	43% (50/115)	86% (43/50)	14% (7/50)	0% (0/50)
"Serious" / "seriousness" <sup>313</sup>	34% (39/115)	54% (21/39)	44% (17/39)	3% (1/39)
"[a word] serious" or "serious [a word]" <sup>314</sup>	28% (32/115)	66% (21/32)	31% (10/32)	3% (1/32)
"Gross"	14% (16/115)	38% (6/16)	63% (10/16)	0% (0/16)
"Extreme", "Poor", Significant, "Severe(ity)"	7% (8/115)	2/8	6/8	0/8
"More than minor"	2% (2/115)	2/2	0/2	0/2

Table D-18 Considerations other than seriousness in deciding between informal and formal action.

Other considerations <sup>315</sup>	% docs	% Disci	% Perf/ Capa	% Both
Any consideration other than seriousness	53% (120/228)	60% (72/120)	40% (48/120)	0% (0/120)
Manager discretion awarded (Formal) <sup>316</sup>	31% (70/228)	67% (47/70)	33% (23/70)	0% (0/70)
When day-to-day management cannot or has failed (Informal).	11% (24/228)	17% (4/24)	83% (20/24)	0% (0/24)
Impact (Informal / Formal) <sup>317</sup>	7% (15/228)	27% (4/15)	73% (11/15)	0% (0/15)

<sup>313</sup> Not as part of other terms using these words.

<sup>314</sup> Terms were "sufficiently", "so", "too", "very" or "particularly" serious or "serious enough".

<sup>315</sup> Whether these considerations are applied to informal action, formal action or both in the documents is noted in brackets in the table below. Where appropriate, the terms used to construct these categories are also listed in brackets.

<sup>316</sup> A range of terms awarding and requiring manager discretion, such as "concerns being such" or action being deemed "appropriate", "necessary", "reasonable" or "warranted".

<sup>317</sup> The impact on the council or others, or risks associated with the misconduct or poor performance, or when the council "cannot sustain" the situation.

<b>Other considerations<sup>315</sup></b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
<b>Repetition (Formal)<sup>318</sup></b>	4% (9/228)	9/9	0/9	0/9
If the act is <b>seen as misconduct (Formal)</b>	4% (8/228)	8/8	0/8	0/8
<b>First occurrence (Informal / NOT Formal)<sup>319</sup></b>	2% (5/228)	5/5	0/5	0/5
<b>Appropriate management action (Informal / NOT Formal)<sup>320</sup></b>	1% (2/228)	1/2	1/2	0/2
Employee has been <b>redeployed or suspended (Formal)</b>	1% (2/228)	0/2	2/2	0/2
<b>Lack of Employee cooperation (Formal)<sup>321</sup></b>	1% (2/228)	1/2	1/2	0/2
<b>Deliberate &amp; Wilful (Formal)</b>	<1% (1/228)	1/1	0/1	0/1
If <b>Clarity</b> needed (Informal)	<1% (1/228)	1/1	0/1	0/1
<b>Informal and formal action are not substitutes for each other (Informal / Formal).</b>	<1% (1/228)	1/1	0/1	0/1
<b>No satisfactory explanation (Formal)</b>	<1% (1/228)	1/1	0/1	0/1

<sup>318</sup> Whether the misconduct or poor performance has been continual, repeated or there have been several minor issues.

<sup>319</sup> First occurrence of a particular issue or issues in general or an isolated incident.

<sup>320</sup> That informal action should be taken / formal action not taken if manager has not acted appropriately.

<sup>321</sup> Such as acceptance of an informal reprimand, refusal to cooperate, or to accept that there is an issue.

<b>Other considerations<sup>315</sup></b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
<b>Out of character</b> (Informal / Formal).	<1% (1/228)	1/1	0/1	0/1
<b>Poor score in performance appraisal</b> (Formal)	<1% (1/228)	0/1	1/1	0/1
<b>Sudden and acute</b> (Formal).	<1% (1/228)	0/1	1/1	0/1

*Table D-19 Provision for bypassing informal action.*

<b>Bypassing of IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
Clear provision made for bypassing	60% (136/228)	82% (111/136)	17% (23/136)	1% (2/136)
Bypassing is exceptional	19% (43/228)	14% (6/43)	86% (37/43)	0% (0/43)
Do not refer to or imply option to bypass	16% (36/228)	8% (3/36)	92% (33/36)	0% (0/36)
State informal action cannot be bypassed	6% (13/228)	0/13	13/13	0/13

*Table D-20 Criteria for choosing between informal and formal action.*

<b>When to take or not take IA or FA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
Seriousness	66% (151/228)	73% (110/151)	26% (39/151)	1% (2/151)
Other considerations	53% (120/228)	60% (72/120)	40% (48/120)	0% (0/120)
No guidance given	19% (43/228)	2% (1/43)	98% (42/43)	0% (0/43)
Mixed messages	6% (14/228)	2/14	12/14	0/14



Table D-21 Examples of categories of misconduct.

<b>Documents that give examples of:</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/ Capa</b>	<b>% Both</b>
Misconduct that is minor or suitable for informal action	12% (28/228)	86% (24/28)	14% (4/28)	0% (0/28)
No examples of minor misconduct or misconduct suitable for informal action, but examples of misconduct are given	35% (79/228)	84% (66/79)	16% (13/79)	0% (0/79)
No examples of minor / suitable for inf or general misconduct	53% (120/228)	24% (29/120)	74% (89/120)	2% (2/120)
Serious misconduct	7% (17/228)	88% (15/17)	12% (2/17)	0% (0/17)
Gross misconduct	54% (122/228)	93% (113/122)	7% (8/122)	1% (1/122)
No examples of gross misconduct	46% (106/228)	7% (7/106)	92% (98/106)	1% (1/106)
Example of any type of misconduct	62% (141/228)	81% (114/141)	18% (26/141)	1% (1/141)
Example of any type of misconduct and caveat states list not exhaustive	50% (113/228)	94% (106/113)	6% (7/113)	0% (0/113)
Example of any type of misconduct and caveat states may be judged to be more or less serious	15% (35/228)	100% (35/35)	0% (0/35)	0% (0/35)

Table D-22 Examples of misconduct identified as minor or suitable for informal action in full.

*“(for example, issues regarding timekeeping, attitude causing minor concern, etc.)”<sup>322</sup>*

*“may arise due to lack of understanding or from personal problems”<sup>323</sup>*

*“(i) Lateness for work (ii) Extended lunch break (iii) Leaving work early (iv) Bad workman[sic]ship”<sup>324</sup>*

*“Many employees go through short periods of low motivation or general lack of interest in their job. When the problem is a short term one, this is not an issue to be dealt with through the Improving Performance Policy and the Line Manager should ensure that their concerns are raised with the employee”<sup>325</sup>*

*“Example: An employee is late for work on a number of occasions .... You talk to the employee who reveals that he has recently split up from his wife and he now has to take the children to school on the way to work. You agree a temporary adjustment to his start and finish times and he undertakes to make alternative arrangement to cover the school run. No formal disciplinary action is required;”<sup>326</sup>[Note, this is an example from Acas]*

*“Poor timekeeping; Minor conduct issues”<sup>327</sup>*

*“persistent lateness but not over a prolonged period, minor breaches of Council policies but each issue will be taken on its own merits ... need to improve a particular skill, e.g. communication ... e.g. an issue that could be resolved through improved self awareness.”<sup>328</sup>*

*“due to lack of care”<sup>329</sup>*

<sup>322</sup> LAD\_R-1\_BRUC11-2\_H-1\_DISCI\_

<sup>323</sup> LAD\_R-2\_BRUC11-3\_H-2\_DISCI\_

<sup>324</sup> LAD\_R-3\_BRUC11-1\_H-1\_DISCI\_

<sup>325</sup> LAD\_R-6\_BRUC11-3\_M-3-ALT\_PERF\_

<sup>326</sup> LAD\_R-9\_BRUC11-1\_M-1\_DISCI\_; LAD\_R-9\_BRUC11-1\_M-1\_PERF\_

<sup>327</sup> LAD\_R-4\_BRUC11-1\_H-2\_DISCI\_

<sup>328</sup> LAD\_R-4\_BRUC11-2\_M-2\_DISCI\_

<sup>329</sup> LAD\_R-4\_BRUC11-3\_H-1\_DISCI\_

*“may include (but are not limited to): a) isolated incidents of lateness, unless persistent b) poor timekeeping, unless persistent c) isolated incidents of a failure to wear a corporate ID badge during the course of employment or whilst on official Council business, unless persistent”<sup>330</sup>*

*“Examples may include alleged poor time keeping, one off short period of unauthorised absence during the working day, minor inaccuracies in time recording etc.”<sup>331</sup>*

*“Informal action Mediation maybe deemed appropriate For conflict involving colleagues of a similar job or grade, or between a line manager and their team To rebuild relationships To address issues such as relationship breakdown, personality clashes, communication problems, bullying and harassment.”<sup>332</sup>*

*[Note, this is unusual because of the use of informal action to deal with bullying and harassment; matters seen as gross misconduct in this source and others]*

*“(for example, poor timekeeping)...”<sup>333</sup>*

*“first occasion of a missed deadline; fluctuation in performance or inability to prioritise workload”<sup>334</sup>*

*“Eg: behaviour/attitude, time keeping, failure to follow procedures, inappropriate use of telephone/internet, smoking on Council premises etc.”<sup>335</sup>*

*“for example a pattern of late arrival for work/issues with punctuality ...”<sup>336</sup>*

*“(e.g. lateness for work, careless mistakes, lack of attention to detail/instructions/procedures), ...”<sup>337</sup>*

*“may include (but are not limited to): a) poor timekeeping/frequent lateness; b) unintentional leakage of information; c) improper use of work facilities.”<sup>338</sup>*

<sup>330</sup> LAD\_R-4\_BRUC11-3\_L-3\_DISCI\_

<sup>331</sup> LAD\_R-5\_BRUC11-2\_M-2\_DISCI\_

<sup>332</sup> LAD\_R-6\_BRUC11-1\_H-1\_DISCI\_

<sup>333</sup> LAD\_R-6\_BRUC11-3\_L-2\_DISCI\_

<sup>334</sup> LAD\_R-6\_BRUC11-3\_L-3\_CAPA\_

<sup>335</sup> LAD\_R-6\_BRUC11-3\_M-1\_DISCI\_

<sup>336</sup> LAD\_R-8\_BRUC11-3\_L-1\_DISCI\_

<sup>337</sup> LAD\_R-8\_BRUC11-3\_L-2\_DISCI\_

<sup>338</sup> LAD\_R-8\_BRUC11-3\_M-1\_DISCI\_

“(such as repeated lateness to work)”<sup>339</sup>

“... such as timekeeping ...”<sup>340</sup>

Table D-23 Whether informal action has supportive and/or punitive elements.

<b>Documents where IA is coded as:</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Just Supportive	61% (138/228)	36% (50/138)	63% (87/138)	1% (1/138)
Both Supportive & Punitive	24% (55/228)	75% (41/55)	24% (13/55)	2% (1/55)
Not stated	9% (21/228)	71% (15/21)	29% (6/21)	0% (0/21)
Just Punitive	6% (14/228)	14/14	0/14	0/14

Table D-24 Supportive elements of informal action.

<b>Elements of IA classified as supportive:</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
<b>Any Supportive element(s)</b>	<b>85% (193/228)</b>	<b>47% (91/193)</b>	<b>52% (100/193)</b>	<b>1% (2/193)</b>
Help and Review	77% (175/228)	42% (74/175)	57% (99/175)	1% (2/175)
Make aware of required standard	47% (108/228)	47% (51/108)	53% (57/108)	0% (0/108)
Mediation	17% (40/228)	80% (32/40)	20% (8/40)	0% (0/40)
Considering organisational changes	18% (40/228)	8% (3/40)	93% (37/40)	0% (0/40)
Personal support	14% (32/228)	16% (5/32)	84% (27/32)	0% (0/32)
Quiet word	8% (19/228)	68% (13/19)	32% (6/19)	0% (0/19)

<sup>339</sup> LAD\_R-8\_BRUC11-3\_M-2\_DISCI\_

<sup>340</sup> LAD\_R-9\_BRUC11-3\_M-2\_DISCI\_

Table D-25 Punitive elements of informal action.

<b>Elements of IA classified as punitive:</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
<b>Any Punitive elements</b>	<b>30% (69/228)</b>	<b>80% (55/69)</b>	<b>19% (13/69)</b>	<b>1% (1/69)</b>
Informal warning or instruction	24% (55/228)	85% (47/55)	13% (7/55)	2% (1/55)
Admonishment or Reprimand	7% (15/228)	100% (15/15)	0% (0/15)	0% (0/15)
Just review i.e., no help	3% (7/228)	6/7	1/7	0/7
Redeployment or demotion	3% (6/228)	0/6	6/6	0/6
Informal action as a sanction	<1% (1/228)	1/1	0/1	0/1

Table D-26 Whether accompaniment is allowed during informal action.

<b>Accompaniment during IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Accompaniment not referred to	60% (137/228)	53% (73/137)	46% (63/137)	1% (1/137)
Accompaniment allowed in some or all situations	24% (54/228)	54% (29/54)	44% (24/54)	2% (1/54)
No right to accompaniment	16% (37/228)	49% (18/37)	51% (19/37)	0% (0/37)

Table D-27 When accompaniment is allowed during informal action.

<b>When accompaniment is allowed during IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Accompaniment allowed in some or all situations	24% (54/228)	54% (29/54)	44% (24/54)	2% (1/54)
Allowed with no caveats	46% (25/54)	44% (11/25)	56% (14/25)	0% (0/25)
Allowed in some situations	44% (24/54)	58% (14/24)	38% (9/24)	4% (1/24)
As a reasonable adjustment or requirement for some groups	9% (5/54)	4/5	1/5	0/5

Table D-28 Situations where accompaniment is allowed during informal action.

<b>When accompaniment is allowed in some situations during IA, the situations are:</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Allowed in some situations	44% (24/54)	58% (14/24)	38% (9/24)	4% (1/24)
Statement that this is not a statutory right	75% (18/24)	56% (10/18)	39% (7/18)	6% (1/18)
If reasonable	67% (16/24)	63% (10/16)	31% (5/16)	6% (1/16)
If will not cause delay	25% (6/24)	4/6	2/6	0/6
As a reasonable adjustment or required for some groups	21% (5/24)	4/5	1/5	0/5
If helpful	8% (2/24) <sup>341</sup>	1/2	1/2	0/2
If any chance of moving to formal action	8% (2/24)	1/2	1/2	0/2
If issue is serious	8% (2/24)	2/2	0/2	0/2
Exceptionally	4% (1/24)	0/1	1/1	0/1

<sup>341</sup> From the same LA

*Table D-29 Effect of the assumption that no reference to accompaniment during informal action is equivalent to accompaniment not being allowed.*

<b>Assuming that no reference to is equivalent to not allowed</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Accompaniment not referred to or stated as not allowed	76% (174/228)	52% (91/174)	47% (82/174)	1% (1/174)

*Table D-30 The right to appeal informal sanctions.*

<b>Right to appeal informal sanctions</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Right granted	0% (0/228)	0/0	0/0	0/0
Statement of no right	9% (20/228)	70% (14/20)	30% (6/20)	0% (0/20)
Right not referred to	91% (207/228)	51% (106/207)	48% (99/207)	1% (2/207)
Only formal appeal referred to	98% (203/207)	52% (106/203)	47% (95/203)	1% (2/203)
No appeal referred to	2% (4/207)	0/4	4/4	0/4

*Table D-31 Requirement to record informal action.*

<b>Recording of IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Recording required	77% (175/228)	45% (78/175)	54% (95/175)	1% (2/175)
Recording optional	10% (22/228)	86% (19/22)	14% (3/22)	0% (0/22)
Recording not stated	14% (31/228)	74% (23/31)	26% (8/31)	0% (0/31)

Table D-32 Types of written record where recording of informal action is required or optional.

Types of written recording of IA <sup>342</sup>	% docs <sup>343</sup>	% Disci	% Perf/Capa	% Both
Note	48% (95/197)	56% (53/95)	43% (41/95)	1% (1/95)
Record, account, or documentation	45% (88/197)	42% (37/88)	56% (49/88)	2% (2/88)
Letter, written instruction, register of concern	31% (61/197)	61% (37/61)	39% (24/61)	0% (0/61)
Plan, programme, or agreement	20% (40/197)	8% (3/40)	93% (37/40)	0% (0/40)
Report	1% (1/197)	1/1	0/1	0/1

Table D-33 Proforma types for performance or capability documents.

Proforma types:	# docs
<b>Performance or capability documents:</b>	<b>35</b>
(Performance) (enhancement   (&) improvement) plan   agreement	20
(Stage 1) Letter (to employee after informal meeting)	5
Informal support   supportive (action) plan	3
Record of (supportive   informal) discussion	3
Capability programme and CP feedback form	2
Counselling form	2
Meeting (notes) form   record	2
Agreed programme of support	1
Feedback file note	1
Identification of Issues of Concern	1
Invitation to counselling session	1
Outcomes of one-to-one meeting	1

<sup>342</sup> One or more type of recording may be required or an option.

<sup>343</sup> The percentages are given of the 86% (197/228) of documents where recording of informal action was required or optional.



Table D-34 Proforma types for disciplinary documents.

<b>Proforma types:</b>	<b># docs</b>
<b>Disciplinary documents:</b>	<b>15</b>
Record of (supportive   informal) discussion	4
Record of Action ROA template or form	2
(Performance) (enhancement   (&) improvement) plan   agreement	1
Development Letter	1
Employee objectives table	1
Improvement notice	1
Letter of management advice	1
Meeting (notes) form   record	1
Preliminary report and evidence	1
Register of concern	1
Standard setting letter	1
Summary of informal warning	1

Table D-35 Proforma types for Both documents.

<b>Proforma types:</b>	<b># docs</b>
Both documents:	1
Action plan	1

Table D-36 Requirement to sign record, add note, or confirm in writing to employee.

<b>Signing commenting adding note confirming to employee in writing</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Confirm in writing to employee	68% (134/197)	48% (64/134)	51% (68/134)	1% (2/134)
Requirement for employee to sign	13% (25/197)	44% (11/25)	56% (14/25)	0% (0/25)
Add note, comment, or disagreement	7% (13/197)	9/13	4/13	0/13

Table D-37 Who keeps the record of informal action.

<b>Who keeps records of IA<sup>344</sup></b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Not clear	48% (95/197)	37% (37/95)	60% (57/95)	1% (1/95)
FLM <sup>345</sup> not employee file	21% (42/197)	55% (23/42)	43% (18/42)	2% (1/42)
Employee file – location unclear	18% (36/197)	69% (25/36)	31% (11/36)	0% (0/36)
HRP <sup>346</sup>	16% (31/197)	48% (15/31)	52% (16/31)	0% (0/31)

Table D-38 Other formalised elements of informal action.

<b>Other formalised elements of IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Warn of formal	46% (104/228)	56% (58/104)	44% (46/104)	0% (0/104)
Give copy of procedure	5% (11/228)	3/11	8/11	0/11
More formal for some groups	4% (9/228)	4/9	5/9	0/9

Table D-39 When informal action is used to invoke formal action.

<b>Invoking of FA from or after IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
As progression when informal action has failed	89% (204/228)	48% (97/204)	51% (105/204)	1% (2/204)
Progression not referred to	11% (24/228)	96% (23/24)	4% (1/24)	0% (0/24)
When another event occurs after informal action	31% (70/228)	63% (44/70)	37% (26/70)	0% (0/70)

<sup>344</sup> The percentages in the percentage of documents column add up to more than 100% because where more than one form of recording is used within a document they may be held differently.

<sup>345</sup> Front-line manager

<sup>346</sup> Human resource practitioner

<b>Invoking of FA from or after IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Future events not referred to	69% (158/228)	48% (76/158)	51% (80/158)	1% (2/158)
When informal action is frustrated or becomes inappropriate	10% (23/228)	78% (18/23)	22% (5/23)	0% (0/23)
Frustration not referred to	90% (205/228)	50% (102/205)	49% (101/205)	1% (2/205)

*Table D-40 When informal action is frustrated and used to invoke formal action.*

<b>When IA is frustrated or becomes inappropriate</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Admission by employee or realisation by manager that issue more serious leads to formal action	65% (15/23)	100% (15/15)	0% (0/15)	0% (0/15)
Non-agreement, -admission or -cooperation by employee	13% (3/23)	1/3	2/3	0/3
No explanation from employee	9% (2/23)	2/2	0/2	0/2
Decline offer of redeployment or no suitable post	9% (2/23)	0/2	2/2	0/2
Council can "no longer sustain"	4% (1/23)	0/1	1/1	0/1

Table D-41 When future events after informal action are used to invoke formal action.

<b>Future events or issues</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Same issue as dealt with informally previously	44% (31/70)	74% (23/31)	26% (8/31)	0% (0/31)
If any previous informal action	34% (24/70)	63% (15/24)	38% (9/24)	0% (0/24)
Timescale related	20% (14/70)	3/14	11/14	0/14
If becomes regular or repeated	14% (10/70)	6/10	4/10	0/10
Number of different transgressions	10% (7/70)	7/7	0/7	0/7

Table D-42 When records of informal action are used to evidence or justify formal action.

	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Records of informal action are used to evidence or justify formal action	44% (100/228)	34% (34/100)	66% (66/100)	0% (0/100)

Table D-43 Time limit for records of informal action to be held or referred to.

<b>Time limit for records of IA to be held or referred to</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Time limit not referred to	89% (204/228)	49% (100/204)	50% (103/204)	<1% (1/204)
Time limit stated	8% (19/228)	89% (17/19)	11% (2/19)	0% (0/19)
Of these, discretion “normally”/“usually”	26% (5/19)	4/5	1/5	0/5
Time limit not set – reasonable or no set limit	2% (5/228)	3/5	1/5	1/5

Table D-44 Duration of time limits.

Where set time limits are stated, these are	# docs	# Disci	# Perf/Capa	# Both
6 months	13	12/13	1/13	0/13
12 months	4	4/4	0/4	0/4
3-6 months	1	0/1	1/1	0/1
6-12 months	1	1/1	0/1	0/1

Table D-45 Further limits on the implications of informal action.

Further limits on the implications of IA	% docs	% Disci	% Perf/Capa	% Both
Records from informal action are not used regarding formal action	2% (5/228)	4/5	1/5	0/5
Discard if not needed for formal process	2% (5/228)	2/5	3/5	0/5
Only refer to during formal action if reasonable to do so	1% (2/228)	1/2	1/2	0/2

Table D-46 Provision for informal action to be extended.

Provision for IA to be extended	% docs	% Disci	% Perf/Capa	% Both
Across all criteria	29% (67/228)	19% (13/67)	81% (54/67)	0% (0/67)
Ensure sufficient informal action / support has occurred	40% (27/67)	11% (3/27)	89% (24/27)	0% (0/27)
If the employee has almost met expectations	27% (18/67)	6% (1/18)	94% (17/18)	0% (0/18)
If reasonable	15% (10/67)	1/10	9/10	0/10
If employee has not met expectation	10% (7/67)	0/7	7/7	0/7

<b>Provision for IA to be extended</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
If not enough evidence	10% (7/67)	2/7	5/7	0/7
If more time needed to carry out agreed actions or by mutual agreement	10% (7/67)	3/7	4/7	0/7
Stated at Manager discretion	7% (5/67)	2/5	3/5	0/5
It may be necessary	3% (2/67)	0/2	2/2	0/2
For reasons of Consistency	3% (2/67)	1/2	1/2	0/2
Because of a period of sick leave	1% (1/67)	0/1	1/1	0/1
At a senior manager's discretion	1% (1/67)	1/1	0/1	0/1
Stated no limit on number of informal meetings	1% (1/67)	1/1	0/1	0/1

Table D-47 The option to have an informal outcome of formal parts of the procedure.

<b>The option to have an informal outcome of formal parts of the procedure</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
From one or more formal stage	35% (80/228)	75% (60/80)	23% (18/80)	3% (2/80)
Formal investigation	54% (43/80)	95% (41/43)	2% (1/43)	2% (1/43)
Formal hearing or meeting	58% (46/80)	70% (32/46)	28% (13/46)	2% (1/46)
After successful formal action (either a return to informal monitoring and/or a return to informal action if another issue)	5% (4/80)	0/4	4/4	0/4

<b>The option to have an informal outcome of formal parts of the procedure</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Formal appeal	3% (2/80)	2/2	0/2	0/2
From any formal stage (Informal action is specifically an informal verbal warning)	1% (1/80)	1/1	0/1	0/1

*Table D-48 Non-optional involvement of another in the transition to informal action.*

<b>Non-optional IoA in the transition to IA</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
None	87% (199/228)	54% (108/199)	45% (89/199)	1% (2/199)
HRP	12% (27/228)	44% (12/27)	56% (15/27)	0% (0/27)
Senior manager	1% (2/228)	0/2	2/2	0/2

*Table D-49 When non-optional HRP involvement is required in the transition to informal action.*

<b>When non-optional HRP involvement in transition to IA</b>	<b>% docs where HRP involvement<sup>347</sup></b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Stated Before	67% (18/27)	8% (18/228)	50% (9/18)	50% (9/18)	0% (0/18)
Early	22% (6/27)	3% (6/228)	2/6	4/6	0/6
Particular issue: When spans policies	15% (4/27)	2% (4/228)	1/4	3/4	0/4

<sup>347</sup> Adds to 28 – because particular situation and general in one source.

Table D-50 Nature of non-optional HRP involvement in transition to informal action.

Nature of non-optional HRP involvement in transition to IA	% docs where HRP involvement <sup>348</sup>	% all docs	% Disci	% Perf/Capa	% Both
Advice or Guidance	56% (15/27)	7% (15/228)	40% (6/15)	60% (9/15)	0% (0/15)
Discuss Categorisation	22% (6/27)	3% (6/228)	2/6	4/6	0/6
Notify or make aware	15% (4/27)	2% (4/228)	2/4	2/4	0/4
Consultation	7% (2/27)	1% (2/228)	1/2	1/2	0/2
HR consideration how to proceed	4% (1/27)	<1% (1/228)	1/1	0/1	0/1

Table D-51 Non-optional involvement of another during informal action.

Non-optional IoA during IA	% docs	% Disci	% Perf/Capa	% Both
None	82% (186/228)	60% (111/186)	39% (73/186)	1% (2/186)
HRP	17% (39/228)	15% (6/39)	85% (33/39)	0% (0/39)
Senior manager	1% (2/228)	2/2	0/2	0/2
Not appropriate for anyone other than FLM and employee to be involved	1% (3/228)	2/3	1/3	0/3
Both HRP & Senior	<1% (1/228)	1/1	0/1	0/1

<sup>348</sup> Adds to 28 – because particular situation and general in one source.



Table D-52 When non-optional HRP involvement during informal action.

<b>When non-optional HRP involvement during IA</b>	<b>% docs where HRP involvement</b> <small><sup>349</sup></small>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
HRP and / or Occupational health if health, disability or medical	51% (20/39)	9% (20/228)	0% (0/20)	100% (20/20)	0% (0/20)
If change procedure	31% (12/39)	5% (12/228)	1/12	11/12	0/12
Action being taken as result preliminary investigation	10% (4/39)	2% (4/228)	1/4	3/4	0/4
General	10% (4/39)	2% (4/228)	1/4	3/4	0/4
Outcome of meeting or before extending informal action	10% (4/39)	2% (4/228)	0/4	4/4	0/4
Regarding letter	5% (2/39)	1% (2/228)	1/2	1/2	0/2
Arrange support	3% (1/39)	<1% (1/228)	1/1	0/0	0/0
Before Preliminary investigation	3% (1/39)	<1% (1/228)	1/1	0/1	0/1

<sup>349</sup> Adds to 52 – because coding for a document may be to more than one row.

<b>When non-optional HRP involvement during IA</b>	<b>% docs where HRP involvement</b> <small>349</small>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
If sickness absence	3% (1/39)	<1% (1/228)	1/1	0/1	0/1
Insufficient progress	3% (1/39)	<1% (1/228)	0/1	1/1	0/1
Monitoring period	3% (1/39)	<1% (1/228)	0/1	1/1	0/1
To ensure sensitivity	3% (1/39)	<1% (1/228)	0/1	1/1	0/1

*Table D-53 Nature of non-optional HRP involvement during informal action.*

<b>Nature of non-optional HRP involvement during IA</b>	<b>% docs where HRP involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Advice or Guidance (and/or occupational health)	64% (25/39)	11% (25/228)	16% (4/25)	84% (21/25)	0% (0/25)
HRP action (and/or occupational health)	23% (9/39)	4% (9/228)	0/9	9/9	0/9
Consult Liaise	21% (8/39)	4% (8/228)	0/8	8/8	0/8
Joint decision	8% (3/39)	1% (3/228)	1/3	2/3	0/3

Discuss	5% (2/39)	1% (2/228)	0/2	2/2	0/2
HRP involvement	5% (2/39)	1% (2/228)	1/2	1/2	0/2
Meet with HRP	3% (1/39)	<1% (1/228)	0/1	1/1	0/1
Notify Make aware	3% (1/39)	<1% (1/228)	0/1	1/1	0/1

Table D-54 Non-optional involvement of another in transition to formal action.

Non-optional <i>IoA</i> in transition to FA	% docs	% Disci	% Perf/Capa	% Both
None	52% (118/228)	54% (64/118)	46% (54/118)	0% (0/118)
HRP	42% (95/228)	47% (45/95)	51% (48/95)	2% (2/95)
Both Senior manager & HRP	4% (9/228)	7/9	2/9	0/9
Senior manager	3% (6/228)	4/6	2/6	0/6

Table D-55 When non-optional HRP involvement in transition to formal action.

When non-opt'l HRP involvement in transition to formal	% docs where HRP involvement	% all docs	% Disci	% Perf/Capa	% Both
Stated Before	74% (70/95)	31% (70/228)	46% (32/70)	53% (37/70)	1% (1/70)
Early or Not clear whether before	33% (31/95)	14% (31/228)	52% (16/31)	45% (14/31)	3% (1/31)
Particular issue	7% (7/95)	3% (7/228)	2/7	5/7	0/7

Table D-56 Nature of non-optional HRP involvement in transition to formal action.

Nature of non-opt'l HRP involv't in transition to formal	% docs where HRP involvement	% all docs	% Disci	% Perf/Capa	% Both
Advice Support Guidance	51% (48/95)	21% (48/228)	50% (24/48)	48% (23/48)	2% (1/48)
Consultation	25% (24/95)	11% (24/228)	54% (13/24)	42% (10/24)	4% (1/24)
Notify Make aware Contact Inform	20% (19/95)	8% (19/228)	53% (10/19)	47% (9/19)	0% (0/19)
Discussion	11% (10/95)	4% (10/228)	4/10	6/10	0/10
Make decision	6% (6/95)	3% (6/228)	2/6	4/6	0/6
Involvement	4% (4/95)	2% (4/228)	2/4	2/4	0/4
Action (write to employee)	1% (1/95)	<1% (1/228)	0/1	1/1	0/1
In conjunction (arrange meeting - not decision)	1% (1/95)	<1% (1/228)	0/1	1/1	0/1
Liaison	1% (1/95)	<1% (1/228)	0/1	1/1	0/1
Work closely with	1% (1/95)	<1% (1/228)	0/1	1/1	0/1

Table D-57 When Non-optional senior manager and HRP involvement in transition to formal action.

<b>When non-optional senior manager and HRP involvement in transition to FA</b>	<b>% docs where senior involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Stated Before	8/9	4% (8/228)	6/8	2/8	0/8
Early or not clear if before	1/9	<1% (1/228)	1/1	0/1	0/1
Particular issue	0/9	0% (0/228)	0/0	0/0	0/0

Table D-58 Nature of non-optional senior manager and HRP involvement in transition to formal action.

<b>Nature of non-optional senior manager and HRP involvement in transition to FA</b>	<b>% docs where senior involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Consult Liaise	4/9	2% (4/228)	2/4	2/4	0/4
Decides	3/9	1% (3/228)	3/3	0/3	0/3
Takes forward	2/9	1% (2/228)	2/2	0/2	0/2
Agreement	1/9	<1% (1/228)	1/1	0/1	0/1
Work with to ID roles i.e., decision already made	1/9	<1% (1/228)	1/1	0/1	0/1

Table D-59 When non-optional senior manager involvement in transition to formal action.

<b>When non-optional senior manager involvement in transition to FA</b>	<b>% docs where Senior involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Stated Before	4/6	2% (4/228)	4/4	0/4	0/4
Early / not clear if before	2/6	1% (2/228)	0/2	2/2	0/2
Particular issue	0/6	0% (0/228)	0/0	0/0	0/0

Table D-60 Nature of non-optional senior manager involvement in transition to formal action.

Nature of non-optional senior manager involvement in transition to FA	% docs where Senior involvement	% all docs	% Disci	% Perf/Capa	% Both
Decides	3/6	1% (3/228)	3/3	0/3	0/3
Consult Liaise	1/6	<1% (1/228)	1/1	0/1	0/1
Inform	1/6	<1% (1/228)	0/1	1/1	0/1
Refer concerns to	1/6	<1% (1/228)	0/1	1/1	0/1

Table D-61 Comparison of the stages when there is no requirement for the involvement of another.

No IoA required	% docs	% Disci	% Perf/Capa	% Both
For any of the stages below	47% (107/228)	60% (64/107)	40% (43/107)	1% (1/107)
Transition to informal stage	87% (199/228)	54% (108/199)	45% (89/199)	1% (2/199)
During informal stage	82% (186/228)	60% (111/186)	39% (73/186)	1% (2/186)
Transition to formal stage	52% (118/228)	54% (64/118)	46% (54/118)	0% (0/118)

Table D-62 Non-optional involvement of another in transition to preliminary investigation.

Non-optional IoA in transition to preliminary investigation	% docs	% Disci	% Perf/Capa	% Both
None	85% (194/228)	55% (106/194)	44% (86/194)	1% (2/194)
Involvement	15% (34/228)	41% (14/34)	59% (20/34)	0% (0/34)

Table D-63 Nature of involvement of another in transition to preliminary investigation.

Nature of IoA in transition to preliminary investigation	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Involvement alongside FLM	100% (34/34)	15% (34/228)	41% (14/34)	59% (20/34)	0% (0/34)
Decision solely another's	0% (0/34)	0% (0/228)	0/0	0/0	0/0

Table D-64 Who is involved in transition to preliminary investigation alongside FLM.

Who is involved in transition to preliminary investigation alongside FLM	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
HRP	94% (32/34)	14% (32/228)	44% (14/32)	56% (18/32)	0% (0/32)
Senior manager	6% (2/34)	1% (2/228)	0/2	2/2	0/2

Table D-65 Non-optional involvement of another in carrying out preliminary investigation.

Non-optional IoA in preliminary investigation	% docs	% Disci	% Perf/Capa	% Both
None	98% (224/228)	54% (120/224)	46% (102/224)	1% (2/227)
Involvement	2% (4/228)	0/4	4/4	0/4

Table D-66 Nature of involvement of another in carrying out preliminary investigation.

Nature of <i>IoA</i> in preliminary investigation	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Involvement alongside FLM	4/4	2% (4/228)	0/4	4/4	0/4
Action solely another's	0/4	0% (0/228)	0/0	0/0	0/0

Table D-67 Who is involved in carrying out preliminary investigation alongside FLM.

Who is involved in preliminary investigation alongside FLM	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
HRP (Not joint)	4/4	2% (4/228)	0/4	4/4	0/4
Joint FLM & HRP	0/4	0% (0/228)	0/0	0/0	0/0

Table D-68 Non-optional involvement of another in deciding outcome of preliminary investigation.

Non-optional <i>IoA</i> in deciding outcome of preliminary investigation	% docs	% Disci	% Perf/Capa	% Both
None	96% (219/228)	52% (114/219)	47% (103/219)	1% (2/219)
Involvement	4% (9/228)	6/9	3/9	0/9



Table D-69 Nature of involvement of another in deciding outcome of preliminary investigation.

<b>Nature of IoA in deciding outcome of preliminary investigation</b>	<b>% docs where involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Involvement alongside FLM	6/9	3% (6/228)	3/6	3/6	0/6
Decision solely another's	3/9	1% (3/228)	3/3	0/3	0/3

Table D-70 Who is involved in deciding outcome of preliminary investigation alongside FLM.

<b>Who is involved in deciding outcome of preliminary investigation alongside FLM</b>	<b>% docs where involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
HRP (not joint)	4/6	2% (4/228)	1/4	3/4	0/4
Joint FLM & HRP	1/6	<1% (1/228)	1/1	0/1	0/1
Joint FLM & Senior	1/6	<1% (1/228)	1/1	0/1	0/1

Table D-71 Who decides outcome of preliminary investigation without FLM involvement.

<b>Who solely decides outcome of preliminary investigation (FLM not involved)</b>	<b>% docs where involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Senior & HRP	2/3	1% (2/228)	2/2	0/2	0/2
Senior	1/3	<1% (1/228)	1/1	0/1	0/1

Table D-72 Non-optional involvement of another in deciding whether to carry out main investigation.

Non-optional <i>IoA</i> in deciding whether main investigation	% docs	% Disci	% Perf/Capa	% <i>Both</i>
None	66% (150/228)	53% (80/150)	45% (68/150)	1% (2/150)
Involvement	33% (76/228)	53% (40/76)	47% (36/76)	0% (0/76)
N/A	1% (2/228)	0/2	2/2	0/2

Table D-73 Nature of involvement of another in deciding whether to carry out main investigation.

Nature of <i>IoA</i> in decision whether main investigation	% docs where involvement	% all docs	% Disci	% Perf/Capa	% <i>Both</i>
Involvement alongside FLM	76% (58/76)	25% (58/228)	40% (23/58)	60% (35/58)	0% (0/58)
Decision solely another's	24% (18/76)	8% (18/228)	94% (17/18)	6% (1/18)	0% (0/18)

Table D-74 Who is involved in deciding whether to carry out main investigation alongside FLM.

Who is involved in deciding whether main investigation alongside FLM	% docs where involvement	% all docs	% Disci	% Perf/Capa	% <i>Both</i>
HRP	91% (53/58)	23% (53/228)	42% (22/53)	58% (31/53)	0/53
Joint FLM & HRP	3% (2/58)	1% (2/228)	1/2	1/2	0/2
Senior	3% (2/58)	1% (2/228)	0/2	2/2	0/2
Senior & HRP (HRP does not decide)	2% (1/58)	<1% (1/228)	0/1	1/1	0/1

Table D-75 Who solely decides without FLM involvement whether to carry out main investigation.

Who solely decides whether main investigation (FLM not involved)	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Senior	72% (13/18)	6% (13/228)	12/13	1/13	0/13
Joint Senior & HRP	17% (3/18)	1% (3/228)	3/3	0/3	0/3
HRP	6% (1/18)	<1% (1/228)	1/1	0/1	0/1
Senior with HRP	6% (1/18)	<1% (1/228)	1/1	0/1	0/1

Table D-76 Non-optional involvement of another in deciding who carries out main investigation.

Non-optional IoA in deciding who investigates	% docs	% Disci	% Perf/Capa	% Both
None	73% (166/228)	40% (66/166)	59% (98/166)	1% (2/166)
Involvement	26% (60/228)	90% (54/60)	10% (6/60)	0% (0/60)
N/A	1% (2/228)	0/2	2/2	0/2

Table D-77 Nature of involvement of another in deciding who carries out main investigation.

Nature of IoA in deciding who investigates	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Involvement alongside FLM	23% (14/60)	6% (14/228)	11/14	3/14	0/14
Decision solely another's	77% (46/60)	20% (46/228)	93% (43/46)	7% (3/46)	0% (0/46)

Table D-78 Who is involved in deciding alongside FLM who carries out main investigation.

Who is involved in deciding alongside FLM who investigates	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
HRP	13/14	6% (13/228)	10/13	3/13	0/13
Joint FLM & Senior	1/14	<1% (1/228)	1/1	0/1	0/1

Table D-79 Who solely decides without FLM involvement who carries out main investigation.

Who solely decides who investigates (FLM not involved)	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Senior	59% (27/46)	12% (27/228)	89% (24/27)	11% (3/27)	0% (0/27)
HRP	11% (5/46)	2% (5/228)	5/5	0/5	0/5
Unclear who but not FLM	11% (5/46)	2% (5/228)	5/5	0/5	0/5
Joint Senior & HRP	9% (4/46)	2% (4/228)	4/4	0/4	0/4
Senior with HRP	9% (4/46)	2% (4/228)	4/4	0/4	0/4
Senior or HRP	2% (1/46)	<1% (1/228)	1/1	0/1	0/1

Table D-80 Non-optional involvement of another in carrying out the main investigation.

<b>Non-optional IoA in carrying out main investigation</b>	<b>% docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
None	71% (162/228)	44% (71/162)	56% (90/162)	1% (1/162)
Involvement	28% (64/228)	77% (49/64)	22% (14/64)	2% (1/64)
N/A	1% (2/228)	0/2	2/2	0/2
Independent	7% (17/228)	100% (17/17)	0% (0/17)	0% (0/17)
Different to hearing	26% (60/228)	98% (59/60)	0% (0/60)	2% (1/60)
NOT different to hearing	1% (2/228)	2/2	0/2	0/2
NOT HRP	<1% (1/228)	1/1	0/1	0/1

Table D-81 Nature of involvement of another in carrying out main investigation.

<b>Nature of IoA in carrying out main investigation</b>	<b>% docs where involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
Involvement alongside FLM	66% (42/64)	18% (42/228)	71% (30/42)	29% (12/42)	0% (0/42)
Action solely another's	34% (22/64)	10% (22/228)	86% (19/22)	9% (2/22)	5% (1/22)

Table D-82 Who is involved in carrying out main investigation alongside FLM.

<b>Who is involved in carrying out main investigation alongside FLM</b>	<b>% docs where involvement</b>	<b>% all docs</b>	<b>% Disci</b>	<b>% Perf/Capa</b>	<b>% Both</b>
HRP	79% (33/42)	14% (33/228)	70% (23/33)	30% (10/33)	0/33
Joint with HRP	19% (8/42)	4% (8/228)	7/8	1/8	0/8
Senior	2% (1/42)	<1% (1/228)	0/1	1/1	0/1

Table D-83 Who solely carries out main investigation (not FLM).

Who solely carries out main investigation (not FLM)	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Unknown-other	68% (15/22)	7% (15/228)	80% (12/15)	13% (2/15)	7% (1/15)
Unknown-other with HRP	18% (4/22)	2% (4/228)	4/4	0/4	0/4
HRP	5% (1/22)	<1% (1/228)	1/1	0/1	0/1
Joint unknown-other and HRP	5% (1/22)	<1% (1/228)	1/1	0/1	0/1
Senior and/or HRP	5% (1/22)	<1% (1/228)	1/1	0/1	0/1

[Unknown-other could be a senior manager or another manager who is not the FLM]

Table D-84 Non-optional involvement of another in deciding outcome of main investigation.

Non-optional IoA in deciding outcome of main investigation	% docs	% Disci	% Perf/Capa	% Both
None	74% (169/228)	43% (73/169)	56% (95/169)	1% (1/169)
Involvement	25% (57/228)	82% (47/57)	16% (9/57)	2% (1/57)
N/A	1% (2/228)	0/2	2/2	0/2

Table D-85 Nature of involvement of another in deciding outcome of main investigation.

Nature of IoA in deciding outcome of main investigation	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Involvement alongside FLM	44% (25/57)	11% (25/228)	72% (18/25)	28% (7/25)	0% (0/25)
Action solely another's	56% (32/57)	14% (32/228)	91% (29/32)	6% (2/32)	3% (1/32)

Table D-86 Who is involved alongside FLM in deciding outcome of main investigation.

Who is involved alongside FLM in deciding outcome of main investigation	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
HRP	64% (16/25)	7% (16/228)	56% (9/16)	44% (7/16)	0% (0/16)
Joint HRP	32% (8/25)	4% (8/228)	8/8	0/8	0/8
Joint Senior	4% (1/25)	<1% (1/228)	1/1	0/1	0/1

Table D-87 Who solely decides outcome of main investigation (not FLM).

Who solely decides outcome of main investigation (not FLM)	% docs where involvement	% all docs	% Disci	% Perf/Capa	% Both
Unknown-other	75% (24/32)	11% (24/228)	88% (21/24)	8% (2/24)	4% (1/24)
Joint unknown-other & HRP	19% (6/32)	3% (6/228)	6/6	0/6	0/6
Unknown-other with HRP involvement	6% (2/32)	1% (2/228)	2/2	0/2	0/2
HRP	0% (0/32)	0% (0/228)	0/0	0/0	0/0

Table D-88 Decisions or action related to investigation where non-optional involvement of another is not required. (Appendix D)

No non-optional <i>IoA</i> required	% docs	% Disci	% Perf/Capa	% Both
In relation to any of the investigative stages below	36% (81/228)	31% (25/81)	69% (56/81)	0% (0/81)
Transition to preliminary investigation	85% (194/228)	55% (106/194)	44% (86/194)	1% (2/194)
Preliminary investigation itself	98% (224/228)	54% (120/224)	46% (102/224)	1% (2/224)
Transition from preliminary investigation	96% (219/228)	52% (114/219)	47% (103/219)	1% (2/219)
Transition to main investigation	66% (150/228)	53% (80/150)	45% (68/150)	1% (2/150)



Deciding who investigates	73% (166/228)	40% (66/166)	59% (98/166)	1% (2/166)
Main investigation itself	71% (162/228)	44% (71/162)	56% (90/162)	1% (1/162)
Transition from main investigation	74% (169/228)	43% (73/169)	56% (95/169)	1% (1/169)

*Table D-89 Summary of omissions in the documents.*

<b>% of 231</b>	<b>Omission</b>
60%	Do not address whether accompaniment is allowed during informal action
53%	No examples of minor misconduct or misconduct suitable for informal action or examples of general misconduct
49%	Do not state why informal action is desirable
43%	Unstated relationship between informal action and day-to-day management
41%	Do not refer to preliminary investigation or equivalent action
42%	Do not state who will hold records of informal action
35%	No examples of minor misconduct or misconduct suitable for informal action, but examples of misconduct are given
22%	Position informal action outside the document by not giving guidance about its use beyond very brief mention.
19%	No guidance about when to take or not take informal or formal action

## Appendix E. What the Acas Code and Guide say about informal action

*Code of practice, Forward: "Many potential disciplinary or grievance issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally then it may be pursued formally. This Code sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most instances." (Acas, 2015, p.6)*

*Guide Sample procedure for any size business: [Under heading "Principles"]  
"Informal action will be considered, where appropriate, to resolve problems."  
(Acas, 2017, p.55)*

*Guide: "Take informal action wherever possible" (Acas, 2017, p.5 as part of overview)*

*Guide: "Resolve discipline issues informally"*

*Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. A quiet word is often all that is required to improve an employee's conduct or performance. In some cases additional training, coaching and advice may be what is needed. An informal approach may be particularly helpful in small firms, where problems can be resolved quickly and confidentially. There will be situations where matters are more serious or where an informal approach has been tried but is not working.*

*If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.*

*How should it be done? Talk to the employee in private. This should be a two-way discussion, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.*

*Listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee.*

*Where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided.*

*Be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied (see p23). If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.*

*Keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.*

*Consider at any stage whether the use of an independent mediator may be helpful (see p7).”  
(Acas Guide, 2017, pp.10-11)*

*[Note, the Guide also has side-box giving an example about resolving an issue informally and a section about mediation that is not identified specifically as informal action]*

## Appendix F. *Action pathways approach* tables for a simplified hypothetical document

Table F-1 *Action pathways approach part 1 table.*

Position of signal in doc <sup>350</sup>	Signal-content (Text from document) <sup>351</sup>	Signal-type <sup>352</sup>	Signal-content-type <sup>353</sup>	Signal-content-detail / summary of message	Signal-discretion L=Low H=High. <sup>354</sup>	Pos'n in p'way of c'nent <sup>355</sup>	Pathway-component that signal refers to <sup>356</sup>
2	We trust managers to act impartially in matters of discipline.	Primer	Intention / Expectation	Act impartially	H: no detail about how to do.	0	General
4	We pride ourselves on our culture of respect.	Primer	Value / Priority	Act respectfully	H: no detail about how to do.	0	General
5	This procedure must be implemented fairly and consistently.	Primer	Value / Priority	Indirectly acknowledges possibility of unfair discrimination. Be fair and consistent.	H: no detail about how to do this.	0	General

<sup>350</sup> Position of the signal in the document – for sorting purposes.

<sup>351</sup> In this case just that related to informal action and the transition to formal action.

<sup>352</sup> Command if creates *pathway-component*. Primer if acts upon component(s).

<sup>353</sup> Intention/Expectation or Value/Priority.

<sup>354</sup> Discretion awarded or constrained by the signal. Consider component that should be enacted, how it should be carried out or decided, and the *Involvement of Another*. Also, level of detail given, clarity or ambiguity, and whether open to interpretation.

<sup>355</sup> Position of component in pathway – for sorting purposes.

<sup>356</sup> *Pathway-component* that the signal creates or acts on. This is the specific component not component type.

<b>Position of signal in doc<sup>350</sup></b>	<b>Signal-content (Text from document)<sup>351</sup></b>	<b>Signal-type<sup>352</sup></b>	<b>Signal-content-type<sup>353</sup></b>	<b>Signal-content-detail / summary of message</b>	<b>Signal-discretion L=Low H=High.<sup>354</sup></b>	<b>Pos'n in p'way of c'nent<sup>355</sup></b>	<b>Pathway-component that signal refers to<sup>356</sup></b>
6	A preliminary informal investigation is mandatory in all situations.	Command	Intention / Expectation	Always carry out informal investigation	L: "mandatory" "all"	1	Step: Preliminary informal investigation
8	Preliminary investigation must include an initial assessment of the situation and obtaining the employees point of view, except where this would put at risk the ability to collect evidence or any later formal investigation.	Command	Intention / Expectation	Ask employee PoV except when this would affect ability to collect evidence or investigate formally.	L: "must" and detail about what action included in this step.	1	Step: Preliminary informal investigation
1	The Council believes that informal action is often more appropriate than formal action.	Primer	Value / Priority	Choose informal action where possible	H: No detail about when "more appropriate".	2	Decision Point: Informal action or Formal
3	At the Council we prioritise using our excellent relationships to resolve problems.	Command	Value / Priority	Use relationships, i.e., informal, before formal procedure. Prioritise informal action.	H: No detail about how to do this.	2	(General <sup>357</sup> ) Decision Point: Informal action or Formal

<sup>357</sup> If signal that acts generally, also needs to be considered in relation to other signals for a specific component, copy / move the signal and enter as creating or acting on that component.

Position of signal in doc <sup>350</sup>	Signal-content (Text from document) <sup>351</sup>	Signal-type <sup>352</sup>	Signal-content-type <sup>353</sup>	Signal-content-detail / summary of message	Signal-discretion L=Low H=High. <sup>354</sup>	Pos'n in p'way of c'nent <sup>355</sup>	Pathway-component that signal refers to <sup>356</sup>
7	In the case of potential gross misconduct formal action should be started immediately.	Command	Intention / Expectation	If potentially gross, formal immediately	L: "should" H: No detail about what constitutes gross misconduct	2	Decision Point: Informal action or Formal
9	Informal action should be taken for all but the most serious issues.	Command	Intention / Expectation	Informal except for most serious	L: "should" "all but most serious" H: "most serious" open to interpretation	2	Decision Point: Informal action or Formal
10	Examples of conduct suitable for addressing with informal action are: lateness, lack of care, ... <sup>358</sup>	Command	Intention / Expectation	Informal when in this list	L: Examples given of misconduct "suitable" for addressing with informal action.	2	Decision Point: Informal action or Formal
11	Examples of conduct not suitable for informal action are: bullying, theft, physical abuse, data breach ... <sup>359</sup>	Command	Intention / Expectation	Formal when in this list	L: Examples given of misconduct "not suitable" for addressing with informal action.	2	Decision Point: Informal action or Formal

<sup>358</sup> Truncated signal for space reasons

<sup>359</sup> Truncated signal for space reasons

<b>Position of signal in doc<sup>350</sup></b>	<b>Signal-content (Text from document)<sup>351</sup></b>	<b>Signal-type<sup>352</sup></b>	<b>Signal-content-type<sup>353</sup></b>	<b>Signal-content-detail / summary of message</b>	<b>Signal-discretion L=Low H=High.<sup>354</sup></b>	<b>Pos'n in p'way of c'nent<sup>355</sup></b>	<b>Pathway-component that signal refers to<sup>356</sup></b>
13	Where formal action is being considered the decision must be made in collaboration with HR.	Command	Intention / Expectation	Make decision whether to move to formal with HR	L: "must" lofA collaborative decision.	2	Decision Point: Informal action or Formal
12	The informal stage must include making sure the employee knows the standard of behaviour required and exploration of possible reasons for the potential misconduct, such as personal or organisational factors.	Command	Intention / Expectation	Do these things as part of informal stage	L: "must" and detail given of action that must occur.	3	Step: Informal action

Table F-2 Action pathways approach part 2 table.

Position in pathway of component <sup>360</sup>	Pathway-component that signal refers to <sup>361</sup>	Pathway-component discretion <sup>362</sup>	Assessment <sup>363</sup>
0	General	H: No detail about how to do these things.	<ul style="list-style-type: none"> <li>• Positive behaviours primed but no later signalling provides detail about how to go about acting in these ways.</li> <li>• Direction of Travel informal.</li> </ul>
1	Step: Preliminary informal investigation	L: This step is mandatory, and some detail is given about what this should involve.	<ul style="list-style-type: none"> <li>• This means that informal action should always be taken, even if just this preliminary investigation.</li> <li>• Direction of travel informal</li> <li>• Seen as “detering”.</li> <li>• More detail would strengthen this.</li> </ul>
2	Decision Point: Informal action or Formal	For this DP, discretion is somewhat constrained, including by IofA in decision to begin formal action. A list of examples of gross misconduct is needed and more clarity about “the most serious issues” including pointing to list of misconduct that is unsuitable for informal action.	<ul style="list-style-type: none"> <li>• Informal action is primed but with high discretion. This discretion is reduced later by provision of examples of misconduct suitable for informal action (and unsuitable).</li> <li>• <i>Involvement of another</i>: collaborative decision to take formal action deters unfair or inconsistent decisions.</li> <li>• Signals 7 and 13 incongruent. Better to word 7 as “... HR should be contacted immediately to discuss formal action”.</li> </ul>

<sup>360</sup> Position of component in pathway – for sorting purposes.

<sup>361</sup> The point in the pathways that the signal creates or acts on. This is the specific instance of a component not the component type.

<sup>362</sup> Discretion awarded or constrained by the signals related to this component. As note 5 above and consider interaction of signals.

<sup>363</sup> Assessment: of congruence of signals, direction of travel, number of opportunities to resolve informally, allow or deter unfair/inconsistent etc.



Position in pathway of component <sup>360</sup>	Pathway-component that signal refers to <sup>361</sup>	Pathway-component discretion <sup>362</sup>	Assessment <sup>363</sup>
3	Step: Informal action	L: “must” and detail given of action that must occur.	<ul style="list-style-type: none"> <li>• Details of what must happen during the informal action step is given, but there is no non-optional <i>involvement of another</i>, such as accompaniment.</li> </ul>
<b>Overall assessment</b>		The fact that discretion is on the whole low, that some informal action in the form of a preliminary investigation is mandatory and the <i>involvement of another</i> in the form of shared decision-making to move to formal action means that overall, this document is seen as deterring unfair or inconsistent action. In addition, some detail is given about what informal stages should involve. More detail would strengthen this document’s ability to deter.	

## Appendix G. Alternative action pathways approach table for document design

This template groups and orders signals by *pathway-component* to make designing procedure in terms of HRM-signalling that creates and acts on *pathway-components* easier. Table 2 does not change.

Table G-1 Alternative action pathways approach part 1 table for designing procedure.

Pos'n in p'way of c'nent <sup>364</sup>	Pathway-component that signal refers to <sup>365</sup>	Position of signal in doc <sup>366</sup>	Signal-content (Text from document) <sup>367</sup>	Signal-type <sup>368</sup>	Signal-content-type <sup>369</sup>	Signal-content-detail (Summary of message)	Signal-discretion L=Low H=High. <sup>370</sup>

<sup>364</sup> Position of component in pathway – for sorting purposes.

<sup>365</sup> The point in the pathways that the signal creates or acts on. This is the specific component not component type.

<sup>366</sup> Position of the signal in the document – for sorting purposes.

<sup>367</sup> In this case just that related to informal action and the transition to formal action.

<sup>368</sup> Command if creates *pathway-component*. Primer if acts upon component(s).

<sup>369</sup> Intention/Expectation or Value/Priority.

<sup>370</sup> Discretion awarded or constrained by the signal. Consider component that should be enacted, how it should be carried out or decided, and the *Involvement of Another*. Also, level of detail given, clarity or ambiguity, and whether open to interpretation.

# Abbreviations and Glossary

## Abbreviations

Acas – Advisory, Conciliation and Arbitration Service. (Note: Acas refers to itself as “Acas” as opposed to “ACAS” or “A.C.A.S.”).

FLM – front-line manager.

HRM – human resource management.

HRP – human resource practitioner.

LA – local authority; council. Term used in the UK to refer to local government.

LAD – local authority district. Synonymous with LA. Used for coding purposes.

## Glossary

HRM-signalling / HRM-signals – relates to HRM being seen as delivered by signals to employees. See 5.1.1.

Institutional racism – a term with contested definition used to refer to racism at an institutional or systemic, rather than individual, level. See 5.1.3.

Interaction-approaches – approaches to manager-employee interaction. See 5.1.6.  
Adapted in this study as *organisational interaction-approaches*. See 9.1.2.

Pathways – the concept of a route into, within, or out of, an organisation created by employee experience and organisational climate and processes. Examples are related to recruitment and progression. See 5.1.4. Adapted in this study as *action pathways*. See 9.2, and terms below.

## Glossary of terms specific to this study

*Action Pathways* – see *action pathway* terms below.

*Can't-do/won't-do logic* – A logic or assumption proposed by this study to be in action in some of the documents, that misconduct is seen simplistically as no more than a matter of a choice. See 9.1.2.

*Discrete-event (as opposed to processual)* – Approach proposed in this study to be in action in some of the documents, that treats informal and formal stages more separately, and may neglect to explore the broader circumstances. See 9.1.1.

*Involvement of another* – Requirement for someone other than the FLM to be involved in a decision or action. See 8.4.

*Organisational Interaction-approaches* – organisational approaches to informal action. See 9.1.2. An adaptation of interaction-approaches approaches to manager-employee interaction. See 5.1.6.

*Processual (as opposed to discrete-event)* – Approach proposed in this study to be in action in some of the documents, that uses a supportive process incorporating both informal and formal stages, with investigation from the beginning. See 9.1.1.

*Trigger-queries* – queries searching for combinations of words or terms, used to identify employment tribunal decision documents of interest<sup>371</sup>. See 6.4.3 and Table C-1.

*Unintended cultural norm misconduct* – conduct that is either inappropriate or perceived as inappropriate and thus identified as misconduct despite being unintentional and caused by national or cultural norms. See 2.2.

## Action pathways approach terms

These are terms proposed in this study in relation to an *action pathways approach*.

See 9.2.

*Action pathways* – pathways created by written disciplinary, performance, and capability policy and procedure. A development of pathways, above.

*Action pathways approach* – an approach to analysing or designing written policy and procedure.

*Commands* – a signal-type: directly creates a pathway-component.

Decision points – parts of pathway: points where decisions about how to proceed are made.

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<sup>371</sup> Previously the term “triggers” has been used by Barnard and Ludlow (2016) in relation to manual searching.

*Direction of travel* – HRM-signals and pathways are seen as having a direction of travel towards or away from formal action.

*Pathway-components* – the specific (as opposed to type of) step or decision point that the signal creates or acts upon.

*Primers* – a *signal-type*: indirectly acts on a *pathway-component*.

*Signal-content* – a *signal attribute*: the text of the signal.

*Signal-content-type* – a *signal attribute*: *Intention / Expectation* or *Value / Priority*.

*Signal-discretion* – a *signal attribute*: assessment of discretion given by signal.

*Signal-types* – a *signal attribute*: *Primers* and *Commands*.

*Steps* – parts of pathway: actions seen as providing opportunities to resolve an issue.

*Written-procedure-signal model* – model of the signal attributes above.

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