



CHARTERED
SOCIETY
OF
PHYSIOTHERAPY

Stewards' Handbook

Guidance and advice for CSP stewards

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1. Election and accreditation

Who & how many?

Stewards are an essential link between CSP members, the employer and the CSP. Although CSP staff cover all areas of the UK to support and advise members they cannot possibly assist with each problem in every workplace. A local CSP representative who understands the employer, knows what the issues are and can ensure that member's views are represented is vital.

Any member of the CSP can act as a steward, including associate members and rotational staff. CSP representatives are elected by their workplace colleagues to advise and represent all members, irrespective of grade.

There is no set requirement for numbers of stewards; it is left to members to decide locally.

The following guidelines may help:

- There should be at least one steward in each workplace/employer
- Employers covering more than one site will require more stewards
- Employers with several departments will require more stewards; at least one per site
- An area with a significant number of members should have more than one steward
- Stewards can job share, have an alternate, or a deputy steward.

Although all members are welcome to stand for election, the CSP does not advise members with substantial management duties to act as stewards. This may give rise to conflicts of interest the CSP would be keen to avoid.

It is up to CSP members how many stewards they have and who the stewards are. Neither the employer nor managers are allowed to interfere in the process of choosing stewards or dictate how many, or who is elected.

The election process is outlined in CSP Representative Election Policy

Accreditation

It is vitally important that you are officially accredited as a steward by the CSP as soon as possible after election and that we know of any subsequent re-elections; resignations; maternity leave cover etc. to stewards in your workplace. All the relevant accreditation, reaccreditation and resignation forms are available on the CSP website.

www.csp.org.uk/csp-stewards-safety-rep-forms

Once your form has been processed, you will have access to all stewards' resources (via iCSP) and will start to receive information from the CSP. You will receive a letter to give to your Human Resources department that will ensure they know you are there to represent CSP members and you get your entitlement to paid time off to help you carry out the role.

Your first steps

- Do the eBite 'Getting Started - First Steps for Stewards' via the CSP Learning Hub
- Complete your accreditation form online
- If you are not already registered to iCSP, do so immediately
- Check that HR have been informed of your accreditation
- Get any relevant documents from the previous or fellow stewards
- Ask for a briefing on any current issues from the previous or fellow stewards
- If your workplace has a CSP safety rep meet up to find out any health and safety issues
- Check that you have dates of any meetings you'll be attending
- Check the dates of the stewards' induction course and book a place immediately
- Make sure you have received dates for regional training days/online meetings
- Make sure you have contact details for your Regional Steward(s) and Senior Negotiating Officer (SNO)
- Make sure you have been added to your regional WhatsApp group.



2. Your Role

A steward's role includes a wide range of duties; the CSP recognises that stewards are volunteers and have other commitments. Time spent on your role is not dictated and will vary. This provides a large degree of flexibility as to how you carry out your role. In general, the more time and effort you dedicate to the job the more you, your members, and the CSP will benefit.

Your role as a steward may involve some or all of the following.

The list may appear a bit daunting at first but it is there to give an idea of what your role may involve.

Keep in touch with members

- Recruit new members to the CSP
- Inform and educate members about relevant issues
- Encourage members to get involved in the CSP
- Support and represent members with workplace problems
- Represent the views of members in negotiations with the employer.

Getting information

At first it may seem as though you are being bombarded with information: from the CSP; details of local meetings; policies & procedures etc. You will need to judge which items are more important than others.

From the CSP, you will receive regular steward's bulletins and also be registered on the stewards' national and regional workplace reps' networks on iCSP. Please use these very useful and supportive sources of knowledge. There are also a range of briefings and guidance papers for reps and members, on a wide variety of issues produced by the CSP. These can be accessed via the CSP website or the stewards' national iCSP network.

Getting yourself organised

Most employers provide facilities for trade union reps. If you don't have everything you need, check your facilities agreement (more details later). Identify some secure storage space so you can store notes; confidential case work etc.

These days it is vital that you have access to a confidential personal work e-mail address and use of the workplace intranet in order that you can communicate with your members, access policies etc.

Finding out who your members are

One of the first things to do as a steward is to find out who your members are. You can only represent staff that are members of the CSP, so this is essential information. You will also need this information to know who to communicate with. There is more information later in this handbook about workplace mapping, which is a method of gathering information on the workplace to help you plan your work strategically. The first step is to compile a list of members with their contact details and introduce yourself to them.

Useful communication methods

- Face to face
- Email
- Union newsletter
- Social media
- Noticeboard
- Workplace meetings
- Drop-in sessions
- Workplace union stalls
- Surveys
- Workplace walkabouts.

Communicating

How you distribute information and keep members informed will depend on how many members; how many workplaces; geographical issues; the facilities you have and so on.

Personal contact is very important, not only as a means of spreading information, but also as a useful way of getting feedback from your members.

A CSP notice board can be a useful tool; you decide what goes up and when it comes down. Try to keep it tidy; a single sheet on an empty board will get more attention than yet another notice on a cluttered one. You will need to judge what you pass on to your members; don't bombard them with too much. Use the CSP print on demand posters.



Communicating is not just the passing on of information; it is a two-way process. As a steward, you communicate not only with your own members, but also with the CSP, management, other stewards, CSP safety reps, other unions, and sometimes with patients and the public. Maintaining good channels of communication is an important part of your job. Remember you need your members' support so keep them updated and informed.

Holding workplace meetings

As a steward you need to get information from your members and involve them in your work. Informal contact is useful, but sometimes you will need to hold meetings to discuss issues of concern with your members. These can sometimes be difficult to arrange; many members work part-time. Lunchtimes are often best, or during work time if you can get your manager to agree, or at the end of your regular department meeting.

Education

Sometimes providing information to your members is only part of the answer; you may need to help them to understand it too. For example make sure members understand their basic employment rights and how local or national agreements will affect them. Encourage new members of staff to discuss important documents, such as their employment contracts, with you before agreeing and signing them or what the benefits of being a member of the CSP is before recruiting them.

You will also need to make sure your members are fully aware of the implications of any changes to work practices (reorganisations, staffing levels etc.) proposed by management, before they agree to anything.

There is also a short IST on the Role of the CSP steward that you can run with members to help them understand your role; how you can help and support them and how they can help you too!

Motivation

Encouraging members to take an active interest in CSP affairs and in workplace issues is not always easy. Providing regular information; holding meetings; taking up members' problems - all of these help to build an atmosphere of activity.

As the CSP steward you should try to build a team of CSP members that are willing to help you or take on a particular responsibility or even role. At times you will have to give a lead, but your energy and enthusiasm will rub off on others. Even if you are the only steward, or have one other steward in a large or geographically fragmented workplace, identifying a few other active members to help you with particular parts of your role, undertake tasks on sites other than your own, or just participate actively in discussions will make your job much more enjoyable and will act as a motivator to other members in turn. Ideally each workplace would have a team of stewards, safety rep and workplace contacts.

Negotiation

As a new steward you will probably feel intimidated by the thought of negotiating with management. Remember that you already have the necessary skills from your interactions with patients and carers, so there is no need to feel intimidated. You may be involved in negotiations at a number of different levels:

- With other trade unions during joint meetings with management
- With your line manager on behalf of individual members
- With your department manager on behalf of a group of your members.

Representation: Case work

As a steward, one of your most important jobs is to help members find a satisfactory solution to their problems at work. Sometimes, you may be able to give the answer by explaining the terms of agreements and how they apply.

The types of issues you may need to support members with include, capability, sickness absence grievances and disciplinary procedures. It may be possible to resolve these issues informally through discussions with the relevant manager or you may need to support members to raise issues formally via the employer's procedures.



Keeping records

Keep a clear and accurate record of what you have done so that you can explain the outcome, or pass the information to a senior steward or your SNO if the need arises. Remember, always put things in writing and make notes of any meetings with management, no matter how informal.

Case files should be stored in a locked cabinet for 6 years following conclusion of the case. Your employer should provide this as part of your local facilities agreement and if they do not please contact your SNO for advice.

When you resign as a steward or leave your current employer please pass any case files onto your successor. If there is no one taking over, please make sure you discuss any ongoing cases with your SNO and arrange for files to be securely stored.

GDPR

As a steward you need to be aware of the need for data protection. As CSP members you will be very familiar with the principles of confidentiality in relation to patients, including the need for security of all patient information. The same principles apply to any case work you may undertake in your role as a steward or safety rep on behalf of the CSP.

<https://www.csp.org.uk/publications/gdpr-guide-csp-stewards-safety-representatives>

3. Potential conflicts of interest

CSP members are now employed in a greater number of geographical locations, often without the optimal number of stewards to represent them. This can result in stewards being asked to attend meetings in dual capacities e.g. in a service/clinical role as well as a steward. Though in general these circumstances should be avoided by having more than one steward in an organisation, there may be occasions when the situation is unavoidable. If this situation arises you need to be very careful. For example as a steward you may find yourself in meetings where there is a conflict e.g. discussing cuts in your clinical area in a meeting where you are there as a CSP representative rather than a clinician/manager.

Whenever speaking in such a meeting it is important to always make it clear from which role you are expressing an opinion e.g. “as the steward I would recommend...” or “as the clinical lead I would suggest...” It is easy for a statement expressed from a service or clinical perspective to be mistakenly thought to be given as a steward. This may be seen as CSP support for an action or decision that may not represent the views of the CSP. Should there be occasions where a steward's opinion differs from that as a clinician – or more likely as a manager- it may be inappropriate for the steward to be representing both views. In such circumstances if another steward is not available, then another clinician/manager should be found to represent the clinical/manager role. For example it is not recommended that stewards act as a steward in a disciplinary/ capability case where the steward has a supervisory role with the affected member.

It is not possible to foresee all situations where such conflicts may occur but where feasible avoid attending meetings in dual roles and where this is not possible be clear from which role you are speaking or acting. Ensure that all meeting minutes/summaries action plans reflect which role you are/were/will be acting or speaking in.



4. Your Rights

As a CSP steward you have a legal rights to carry out your role. If you work for an employer outside the NHS you will need to check whether the CSP has a recognition agreement with your employer.

These include:

- Reasonable time off for undertaking trade union duties and for training
- Facilities to carry out your role such as desk, lockable storage and access to a computer
- Access to information relevant to negotiations or change in the workplace.

Facilities and time-off agreements

Most NHS employers will have a facilities agreement (or it may be part of your recognition/partnership agreement) that provides trade union reps with at least the minimum facilities and time off required under the NHS Terms and Conditions Handbook. The ACAS Code of Practice on Time Off for Trade Union Duties & Activities lists the advantages of agreements for both employers and unions and what an agreement should specify. This can be accessed on: <https://www.acas.org.uk/>

Facilities available should include:

- Use of a room for meetings
- Use of a desk
- Lockable storage
- Access to a phone and other office equipment
- Use of notice boards and email/intranet
- Dedicated office space.

Time off should cover:

- Negotiating on terms and conditions
- Representing members
- Communicating with members
- Attending trade union staff side meeting.

Training includes steward's induction course, follow-on courses and regional training days. It can also include training by the TUC.

As well as being entitled to time off to take part in negotiations, stewards are also entitled to paid time off to:

- Prepare for negotiations;
- Inform members of progress;
- Explain results to members.

For an example of a good policy you can access the national facilities agreement agreed as the minimum standard in Scotland.

Trade Union duties and activities

There is a difference between trade union duties some of which are detailed above and trade union activities. Where trade union duties are generally based around negotiation with the employer and representing members trade union activities tend to be concerned with the broader aspects of trade union work.

CSP members and representatives are entitled to time off to carry out trade union activities but unlike when carrying out duties there is no statutory (legal) right to be paid for carrying out union activities.

It is sometimes difficult to distinguish between trade union activities and duties.

The NHS Terms and Conditions Handbook

<https://www.nhsemployers.org/publications/tchandbook>

states that reps and members should be entitled to “reasonable” time off to:

- Attend committee meetings of their trade union
- Attend annual conferences such as ARC
- Vote in properly conducted ballots on industrial action
- Vote in union elections
- Attend meetings to discuss urgent matters relating to the workplace.



It is “silent” on the issue of whether this should be paid time off. Ideally the local Time Off and Facilities Agreement should allow for paid time off for trade union activities. Wherever possible you should point out to your employer that participating in trade union activities brings many benefits to the members in your department.

The CSP has extensive resources for stewards and safety reps on their rights to take time off. These can be found on the CSP website at A Quick Guide to Time off and facilities

Right to information for collective bargaining

As a steward you may need information from your employer to be able to carry out your role effectively. Since 1977 there has been a general duty on employers to provide recognised trade unions with information for collective bargaining purposes.

With some restrictions around commercial information, unions are entitled to seek any relevant information they need to prepare for discussions and negotiations with the employer. Specifically mentioned are: pay and benefits, conditions of service, manpower, performance and financial information, though that isn't meant to prevent you asking for other data too. In all cases unions may need to demonstrate the relevance of their request, which should always be in writing.

Employers should aim to be as open as possible, while unions should plan carefully when seeking information by allowing enough time and being as clear as possible about what they want and why. If your employer is repeatedly refusing to supply you with information then speak to your SNO as you may be able to take a case to Central Arbitration Committee (CAC).

If the union isn't recognised

Unfortunately stewards working for employers who do not recognise the CSP do not have the same legal rights to time off or facilities as those working for employers that recognise the union. Despite this there are some legal rights that cover stewards in this situation.

The Employment Relations Act 1999 gives all workers the right to be accompanied to grievance and disciplinary hearings by a fellow worker or 'companion'. Stewards can therefore be a companion for members despite not being recognised by the employer.

If you are in a non-recognised workplace one of your first steps might be to get the CSP recognised. The Employment Relations Act 1999 gives employees the Right to Seek Recognition. If over 50% of the workforce join the union it is possible to require the employer to grant some recognition. This is quite a complex process so you should contact your SNO if you are in this situation.



5. Support and Resources

Don't worry if all this seems overwhelming at first. There are many people ready to help and advise you and lots of information available to you to enable you to learn and carry out your role.

These include:

- Other CSP stewards and safety reps in your own workplace
- Reps from other trade unions that you will meet up with on a regular basis
- Your Regional Steward and other CSP stewards across your region
- CSP stewards nationwide via national stewards' iCSP site <https://www.csp.org.uk/icsp>

You will have the opportunity to meet your Regional Steward(s) at your training days. In addition you will have contact details for them if you need advice at other times.

Senior negotiating officers (SNOs)

Your Senior Negotiating Officer is an employee of the CSP and works in the Employment Relations and Union Services directorate. The main role of the SNO is to support the stewards and safety reps in his/her region/country. You are given contact details for your SNO when you are accredited. If you are not sure who your SNO is then please contact the CSP immediately.

Your SNO is there to support and advise you and they will help you on any matter to do with your members' workplace issues and assist in hearings or negotiations. The SNO also provides the training at the regional training days.

The Senior Negotiating Officers (SNOs) are allocated specific responsibility for particular regions/countries, this enables the CSP to have an input into NHS structures at a regional/country level and to develop links with other unions at a regional/country level. Each SNO spends much of their time supporting and assisting individual stewards across their 'patch' with particular individual or collective issues.

This will involve advising stewards on how to:

- handle cases
- give advice to members
- deal with managers at a department level
- work with other trade unions in the workplace
- negotiate with management.

SNOs tend to be involved where negotiations/individual cases are complex or difficult or where stewards are inexperienced and seek additional support. The expectation in ERUS is that local stewards will take responsibility for local negotiations and problems and that the steward not the member(s) will contact their SNO if they feel they need help.

Regional training days

There are also training days in every region/country and regular online meetings. The days are organised by your regional steward and SNO and advertised in advance on your regional stewards' network of iCSP.

The meetings cover:

- Training on a variety of topics, some skills based such as assisting members with grievances or negotiating local policies.
- Discussing issues, both national and local which affect you and your members.
- Getting up to date information on issues ranging from pay negotiations to health policies in your region/country.
- Raising issues of concern to you locally
- Receiving advice and support from the SNO and other local reps that may be facing the same issues.

These are vitally important to help you to be an effective steward and you should make every effort to attend. Remember, as an accredited rep you are entitled to paid time off to attend training.



Employment Relations and Union Services (ERUS)

ERUS is a directorate of the CSP and as a steward you can get support from staff employed in this directorate. Staff in this directorate work in a range of areas including training, health and safety, trade union organising, research and policy, legal services, communication and national negotiating and bargaining.

Interactive CSP (iCSP)

iCSP is a free and easy to use web and e-mail system, developed by the CSP, designed for members and run mainly by members. iCSP provides news on events, projects and initiatives. Members have access to discussion, useful documents and web-site links.

As a steward you will find the national stewards' network and your regional one invaluable as a source of information, support and discussion. When you are accredited as a CSP steward you are automatically registered for the appropriate stewards' networks but only if you are already registered to iCSP. Go to the CSP website then select iCSP and then choose stewards national from the networks drop down box.

eBites

There is a suite of bite sized online courses for stewards available via the CSP Learning Hub to help keep you up to speed with key workplace issues. Each eBite is a self-contained module that contains a mixture of text, video and quizzes. The first one you should do is the eBite 'Getting Started - First Steps for Stewards'. It provides a step by step guide on what to do after being elected as a steward, including an introduction to the role, the rights stewards have and where stewards can get support.

The Enquiries Team

The enquiries team is often the first point of contact for members contacting the CSP for help or advice if they haven't approached their steward directly. If the enquiries team is unable to assist the member directly they will pass the call/e-mail to the appropriate function within the CSP. However, if the call is about a workplace issue in the workplace you represent, the member will be advised to contact you as the steward.

Other CSP support and resources

- Training for stewards: <https://www.csp.org.uk/networks/stewards/training>
- ERUS information papers on a wide range of terms and conditions; legal and other HR issues are available on the website
- Stewards' bulletins
- Interactive CSP (iCSP) - the networks for stewards, restricted to stewards only, to allow you to talk to peers freely and openly about your issues at work
- CSP website <https://www.csp.org.uk/>
- CSP weekly bulletin
- CSP Equality and Diversity Toolkit <https://www.csp.org.uk/publications/equality-diversity-toolkit-practical-guide-csp-stewards-managers-members>
- TUC training and education: <https://www.tuc.org.uk/training>
- Labour Research Department (LRD): <https://www.lrd.org.uk/>



1. Organising and Recruitment

The strength of the CSP, both as a professional body and a trade union, is in the membership. The simple fact is that the more members we have, the stronger we are. Recruiting new members is a vital part the role of a CSP steward.

A stronger union with more members means increased influence, a stronger bargaining position when negotiating terms and conditions and increased income to continue to deliver more and better services to reps and members.

Trade union organising aims to move the culture of trade unions away from an “insurance” style model (“we’re there if you need us – hopefully you won’t!”) back towards increasing collective strength. This means encouraging groups of members to come together to achieve common goals that improve their working conditions.

Changes to the economy, the health service and student membership means that we can no longer rely on the fact that physiotherapists and support workers will join the CSP automatically. Changes to the structure of the health service in England may also affect our ability to negotiate fair terms and conditions. Factors such as NHS pensions, nationally agreed pay bands, annual leave and redundancy pay may be subject to significant change. It is essential that we are well organised to get the best deal for CSP members in a changing environment.

In practical terms organising means involving as many people as possible in the work of the CSP, campaigning creatively on relevant workplace issues and knowing who is a member and who is a potential member. It is about taking a slightly different approach to your work as a steward. It is not a prescriptive set of rules or a great deal of additional work for reps.

Mapping the workplace

Mapping the workplace is a key task for a steward. It is essentially about finding out who in your workplace is a CSP member and who isn't. This information will then help you to plan your work to both recruit new members and involve existing ones in the union. There is a great deal of potential information you

could gather about staff in your workplace. It is important therefore that mapping is kept as simple as possible and that you only collect as much information as you actually need.

The CSP recommends that you document the following information about your workplace:

- Who works there and their pay band
- Working patterns – are they full or part time?
- Whether they are members of the CSP
- Whether they might become more active in the CSP or even become a CSP rep.

A map can take any form. How you design your workplace map depends very much on the size of your workplace, the number of sites, who will maintain the map and the facilities available to you.

Why do we map the workplace?

Although mapping can sometimes feel like a chore, especially when you are busy, the information it gives you is essential for your role as CSP steward. Having a completed and up to date map of the workplace can assist you to:

- Find a point of contact on each site to distribute information
- Know where to concentrate your recruitment efforts
- Identify members who are active and can join you in running campaigns.

Recruiting new members

When your workplace map is complete and up-to-date you should have a good idea about who is a CSP member and who is not. Don't forget about students on clinical placement, physio assistant and therapy support worker staff and physiotherapists who qualified overseas. They are all eligible to become to CSP members.



The main reason people give for not being a member of a trade union in the UK is that they have never been asked to join! Make sure you talk to your colleagues about the CSP and ask the question, “Would you like to join the CSP?”

The CSP has a great range of materials to help you and your colleagues to recruit new members. All recruitment and promotional materials are available for stewards via regional training days or by emailing enquiries@csp.org.uk. It is essential to have a good supply of application forms and information so email us as soon as your stocks are running low!

An experienced CSP steward explains the benefits of mapping her workplace.

“Having an up-to-date map of the workplace makes my job as steward a lot easier. I know exactly where the members that I represent are based and how to contact them. This means I can communicate information and get feedback quickly and easily.

In addition, knowing who is an active CSP member helps me to feel supported in my role as a steward. I often ask active members to help me keep the workplace map up to date and to speak to non-members about the benefits of belonging to the CSP”

Top tips for recruiting new members

Recruiting new members can seem daunting but remember that it does not always have to be you that does the talking! Potential members are more likely to join if a friend or work colleague approaches them informally so don't be afraid to ask other CSP members to help. When approaching potential members remember to engage them, ask questions, listen to them and respond. Rather than make assumptions about what would engage them in conversation ask them questions. Asking them how things are in the workplace and if they have any issues is a good start.

- Rather than do all the talking, encourage the other person to speak
- Ask open questions, such as ‘why do you think that?’ ‘What would make you join?’
- Acknowledge their views or feelings.

Respect their view, even if you do not agree with it, such as: ‘I can see why you sometimes feel like that...’

Convert their objection into a question, for example: ‘so you would feel more like joining if you felt the CSP were more pro-active in the areas that interest you?’

What to avoid:

- Do not be impatient or defensive
- Do not give the impression that you are in a hurry (even if you are!)
- Do not interrupt
- Do not make assumptions – people do not always say what they mean
- Do not get involved in downward spiral, negative talk.

Try and round the conversation off with some kind of commitment, however small, appropriate to what has been said, such as: ‘would you read this leaflet if I leave it with you?’ Finally do not assume that if someone doesn't want to join, that will always be the case. Approach the potential member again at a later date (*but don't badger them too much!*).

Involving members

Once people have joined the CSP the next step is to get them involved in the organisation in some way. This not only helps you by being able to delegate tasks but also builds the strength of the union. Everyone has a role to play in the CSP. This can be doing small things such as attending CSP workplace meetings or completing a CSP survey to larger tasks such writing articles for your CSP workplace newsletter, updating the CSP noticeboard on their worksite or participating in campaigns. Don't be afraid to ask someone to do something- the worst that can happen is that they say no! If they do say no then respect that and don't push them.



Here are some ideas to get you started:

- As part of your workplace mapping identify map members who might be willing to help you with some small tasks
- Make a note of what skills members have that they can contribute to the CSP e.g. newsletter design skills
- Identify issues that members are more likely to interest and engage members
- If you think someone might be willing to get involved start off by giving them some small tasks.

Ways members could get involved:

- Attend workplace meetings
- Distribute CSP literature
- Complete a survey
- Sign a petition
- Write articles for newsletter or help with the design
- Keep CSP noticeboard up to date
- Talk to colleagues about what the CSP is doing
- Give new colleagues a CSP application form.

Building a CSP team

As a steward your role is to represent members individually and as a collective. Try to involve other members in different aspects of this work. Think of yourself as leading the team of members you represent, and remember to work with the safety rep to share work you would otherwise do yourself.

If you represent members across different sites, try to find at least one member in each site who is willing to be a workplace contact – a position (that does not come with facility time) for someone who can help you distribute information, organise

the workplace and feedback any issues. By building a team of members with formal or informal CSP roles you will be better able to face up to workplace issues together.

Increasing the profile, size and strength of the CSP can't be left to one steward. Ideally each workplace should have a CSP team made up of stewards, safety reps and workplace contacts and other interested members. Previously we emphasised that larger workplaces should have several stewards to spread the workload but even smaller workplaces can have a number of stewards. The CSP team should keep in regular contact to identify any workplace issues, allocate work and share skills and knowledge. The team may increase at certain times e.g. when organising workplace campaigns that members may wish to help run.

In the stewards, safety rep, equality rep (if you have one) and other interested members section of the CSP Learning Hub you will find an eBite <https://vle.csp.org.uk/course/index.php?categoryid=37> on Building the CSP Workplace Team, which explains what is meant by the 'CSP Workplace Team' and takes you through the process of building a team in your workplace. It is primarily aimed at stewards but will also be of use to safety reps who want to build the CSP team in their workplace.

CSP Safety Reps

A key member of the CSP team is the safety rep. The safety rep's main role is to make sure employers fulfil their legal obligations towards their employees and to assist members in getting their health and safety problems resolved. The Health and Safety at Work Act 1974 give safety reps this function and their duties are outlined in detail under the Safety Representatives and Safety Committee Regulations 1996 (also known as the brown book).

Such duties include:

- Investigate potential hazards and dangerous occurrences at the workplace
- Examine causes of accidents at the workplace
- Investigate complaints by members regarding their health, safety or welfare at work
- Make representations to the employer on behalf of members regarding their inspections or members complaints
- Carry out inspections of members' workplace



- To be consulted by the employer on health and safety matters
- Attend meetings of safety committees.

Safety reps have a number of legal rights to carry out their role, including the right to paid time off to carry out their duties, conduct quarterly inspections and the right to be consulted on substantial changes to staff's health and safety / new technology and when undertaking risk assessments.

Make sure that you meet regularly with your safety rep to discuss and plan joint work. There are many issues that cross over both the stewards and safety reps role such as stress, bullying, and change management. If you don't have a safety rep try and recruit one! Discuss with members about electing one.

Issue-based Organising

From time to time, invite members to think broadly about any issues affecting them at work which they might not consider pressing enough to bring to you. This might be something like increasing pressure to work overtime, concern about bullying or undermining behaviours, or a feeling that their roles are becoming more generic. You might also think about things that would improve your work, such as a stronger voice or profile for physiotherapy in your workplace or in the community.

These are the kinds of issues you might decide to organise around. Organising, put simply, means collectively planning and carrying out a few simple activities – such as undertaking a survey about the amount of overtime worked, or preparing an article for the in-house magazine or local press about some aspects of your work you are particularly proud of – in order to achieve a goal that you have identified together.

If bigger issues emerge, such as a proposal to change workplace policy, and you think that the formal processes will not make a big impact on the decision, you can organise some activity to influence this decision. This might be a simple step like a petition or letter, or a more wide-ranging campaign.

Workplace campaigns

Running successful campaigns in the workplace is at the heart of being a trade union. If members see the union taking action on issues that are relevant to them in their working life they are more likely to get involved and support you in your role. Non-members are more likely to join if they see that the CSP has been successful in tackling local issues.

Many NHS organisations have effective fora for managers and trade union reps to work in partnership at both a workplace and a departmental level. These should be your first port of call when raising concerns from members or when requesting changes to working conditions. Where this is unsuccessful or consultation has not taken place it may be appropriate to run a workplace campaign.

Some workplace issues, such as the closure of a service or hospital, will require a large-scale campaign in conjunction with other unions. Other campaigns may be about smaller issues within your department which may affect only your members or only a few staff e.g. changing facilities, changes to local study leave procedures.

The CSP has produced a detailed guide for stewards entitled 'Campaigning in the NHS'. This can be accessed in hard copy or via the CSP website or stewards' national iCSP site. The guide is primarily focused on campaigning around the changes taking place in the NHS in England but much of the content will be of use to stewards in Scotland, Wales and Northern Ireland and for running smaller departmental campaigns.

Here are some key pointers when considering running a campaign:

- Be proactive in finding out members' concerns in the workplace. This could be through individual meetings, larger workplace meetings, social networking or through your network of active members
- Set up a campaign team, you can't do all the work yourself! If a campaign is run by too few people they run the risk of "burning out" while colleagues who have not been involved feel excluded
- Decide on the timeline of the campaign and exactly what you are hoping to achieve. Also think about what you will accept, often a campaign is about forcing dialogue on an issue rather than a win/lose situation



- Which campaign tool or tools will be most effective? There are lots of ideas in the Campaigning Guide such as petitions, leaflets, lunchtime demonstrations or open meetings. Your SNO and the CSP press office can help and advise you as well
- Consider submitting a collective grievance, this is a much underused campaign tool
- Think about allies for your campaign – what about other unions or patient groups?

An up to date workplace map will be invaluable to the organising team when running a campaign. Knowing where people are based and how to contact them will save time as will identifying a contact member for each site or team. Make sure that you continue to identify non-members as well as campaigns are great recruitment tools. Use it as a “hook” when talking to potential members and get them involved in the work of the CSP straight away

Spread the Load

The CSP has many resources to support stewards and these are easily accessed via regional training days or by emailing enquiries@csp.org.uk. In addition your SNO will always be happy to speak to you regarding any ideas or concerns you have about running a workplace campaign.

Remember that asking members to assist you in recruitment, mapping and campaigns will help “spread the load” and get more people involved in the work of the union. The more members we have, the more effective we are and the better we can support members in the workplace. In the current climate of economic uncertainty coupled with a changing NHS there has never been a more important time to undertake organising and recruitment activity.

2. Working With Your Employer

The demands made on CSP stewards have grown in the past few years with the changes to the NHS resulting in an increase in local negotiations. You play a major role in ensuring the CSP has a strong voice and a high profile at local level. ERUS relies extensively on the skills of CSP stewards to ensure that the majority of problems and issues can be dealt with locally without the need to call for the presence of an SNO.

In your workplace this will involve you attending staff side meetings (this is the term used for the group of recognised trade unions and local reps working together) and also joint meetings with management (these may be called JNC or JCC for example) on a regular basis. Whilst this may seem onerous, it is an important role and should be prioritised.

You are allowed paid time off to attend these meetings. Often the discussions, negotiations and agreements reached will have consequences for CSP members, so you want to make sure that you have a say in the outcome and represent your members’ views.

National and local negotiations

Many public sector employers, including the NHS, are part of a national bargaining and negotiation process. Where this applies a recognition agreement would be made between the employer and unions nationally that allow for national negotiations on terms and conditions including pay, holidays, working hours etc.

These national agreements, which in the NHS is the NHS Terms and Conditions Handbook, usually form the basis of local negotiations. You can access the latest version of the NHS Terms and Conditions Handbook online which ensures you are referring to the most up to date version.



Recognition & partnership agreements

Recognition agreements acknowledge the rights of a trade union or number of unions to represent their members' interests in the workplace. Each workplace agreement is different and has been negotiated between management and trade unions in your workplace.

A good agreement will contribute to:

- positive working relations between unions and management
- high levels of employee participation and union membership
- effective procedures for dealing with problems and changes.

Make sure you have a copy of your workplace recognition/partnership agreement and are familiar with the content.

Look out for:

- What you have recognition for?
- Who meets with management?
- What you have Recognition for.

Negotiating

Collective bargaining takes place at meetings between unions and management that require agreement being reached between them before changes are implemented. Ideally unions should have negotiating rights for pay, terms & conditions and local policies & procedures. This will not include issues subject to national agreement under AfC as this is negotiated nationally.

Consultation

Consultation instead of negotiation is where the employer may decide to seek the views of the unions while reserving the right to make the final decision themselves. The consultation process should provide a meaningful opportunity to influence the outcome, so it should allow for enough time to talk to members get their views and feedback and have discussions with management.

Your Recognition Agreement

- Does it say who the parties are to the agreement?
- Does it include the basic principles?
- Does it recognise all health service trade unions in your workplace?
- Does it allow for negotiation not just consultation?
- Is the desirability of union membership mentioned?
- Will policies & procedures be subject to negotiation?
- Is the agreement subject to change by mutual agreement?
- Does it clearly specify the structures for negotiations and consultation?
- Does it detail what happens if there is a failure to agree (referral to ACAS)?
- Who meets with management?

Occasionally policies & procedures are for consultation only, this is less than ideal and if your agreement is due for review, you should try and ensure that policies & procedures are for negotiation. Meaningful consultation should be sought in any workforce changes, such as management restructuring, changes to working patterns, redundancies etc.

Representation

This is where trade unions are recognised for the purpose of representing individual members only but without negotiating or consultation rights. This is often the case where union recognition exists in the non-NHS sector.

Stewards should try to ensure that the CSP achieves and maintains full rights to negotiation on all local pay, conditions and policies and procedures.

Many recognition agreements limit the number of seats the trade unions can have on smaller negotiating committees. If this is the case try and make sure the CSP has a seat at the table. 'Shared seats' can affect the CSP, along with the other smaller unions. There may be a 'shared seat' for the smaller unions, if this is the case make sure who ever holds it is fully accountable.



Partnership working

Partnership working is a term you will hear frequently used within your workplace in relation to discussions between unions and management. Partnership is rooted in the belief that mutual gains are possible even though unions and employers will inevitably have differences and conflicts of interest from time to time.

Within the NHS, social partnership working has been introduced as a way of giving unions and the members they represent a voice on issues that are critical to healthcare and the success of the organisations which deliver them. This goes beyond terms and conditions of employment to include the workforce implications of Government policy; NHS finances and service priorities; new patterns of service delivery and staff surveys. It should mean the workforce through their trade unions are involved from the start, before decisions are made, not told what the decision is at the end.

Local level

At local level, arrangements are variable; some employers have used the existing joint consultative committees whilst others have established separate partnership arrangements. You will need to find out how it works within your own organisations from previous stewards or Chair of Staff Side.

A partnership agreement

It is important for all parties to understand and be aware of what partnership means and that clear terms of reference are developed and agreed from the start. Many organisations have 'Partnership Agreements' which provide a framework for partnership working including the aims and expected benefits, set out the key principles, establish the commitments expected of all the parties and the process and procedures to be followed. As with any agreement it is crucial this is developed jointly and reviewed on a regular basis.

Issues for negotiation/consultation

The management side will often produce draft policies, procedures or proposals for discussion at joint meetings and these will be on a wide range of issues from disciplinary procedures to car parking proposals; and from flexible working through to pay protection. You will find a range of ERUS publications giving advice on good practice to help you prepare your response along with other members of staff side. Although it is not possible for ERUS officers to look through all workplace policies and procedures, if you have a specific concern or query on an aspect of a policy you should contact your SNO.

The decisions made within these joint meetings will affect CSP members and it is therefore crucial to have active stewards involved in negotiations to ensure members' interests are being put forward. In working toward safeguarding the interests of CSP members it can be invaluable to build alliances with stewards from other unions, particularly those who may share the same or similar concerns.

Trusts that have successfully applied to become 'Foundation Trusts' by meeting a range of Government targets are permitted greater flexibility in relation to pay and terms and conditions and are not subject to the same central regulatory framework as other NHS trusts. This could result in more local determination of pay and terms and conditions.

Working with other unions/staff sides

Trade union reps need to meet separately from management on a regular basis to discuss strategies and share information. This may mean meetings of all the unions in your workplace or just CSP stewards. It is useful to agree with management the frequency of staff side meetings and establish the right for all union reps to attend.

More often than not a meeting once a month may be enough, but you should ensure there is provision to enable you to hold additional meetings if there are specific situations such as:

- Significant organisational changes are taking place
- Pay or other terms and conditions negotiations
- New legislation that will have an impact etc.



Staff sides vary dramatically within the NHS and the effectiveness of your meetings will depend on the experience, attitude and commitment of the union reps in your workplace. You may have a very cohesive staff side that is well chaired and gets business done efficiently, considering all the different unions' viewpoints. Conversely, it may be poorly organised and ineffective; many are somewhere in between the two.

One of your roles may be to build alliances and working relationships with other union reps to help strengthen the staff side and your voice in it. Only by doing this can you do business efficiently, reach a consensus and negotiate from a position of strength with management.

You must ensure that the CSP has its own seat on the staff side, since it is up to the unions to decide the number of representatives on this committee. All recognised unions should have a seat on it no matter how small.

Above all, it will be the close working arrangements and consensus of all unions that will ensure that a united staff side is best able to tackle difficult issues and achieve the best deal for all members.

Negotiation skills

You will receive training on negotiations at your Stewards' Induction course. The key to negotiating is preparing the case well, and keeping your members informed and involved. Remember that when you meet with management as a steward you meet as equals.

Gathering information

Robust information is essential for all negotiations.

Gather information from:

- Your member(s)
- Relevant workplace agreements
- Managers
- CSP/SNO.

Setting objectives

You must also establish your objectives when you negotiate with management.

- What is your ideal?
- What would you like to achieve?
- What is the minimum your members will settle for?

If the negotiation involves other trade unions you will have to agree objectives with the other unions at your staff side prior to meeting management. Consider the pressure you can put on management to get the matter resolved e.g. how strongly do your members feel about the issue?

Don't expect to get all you ask for. Be prepared to make some concessions. Think about these beforehand. When you go and see management, present your arguments, and what you are asking for, in an orderly and logical manner.

Always try to get a decision of some sort, even if it has to be referred to more senior management so that you can go back to your members to decide on the next step. Do not agree to anything unless you are absolutely sure your members and the rest of staff side will accept it. Ensure that any agreements or courses of action are put in writing.

Tell ERUS

Please keep your SNO informed of all major developments in your workplace. In particular, if you have any problems with negotiations on recognition or seats on negotiating committees please inform your SNO immediately. It is much easier for SNOs to achieve a good result in the early stages of a problem, rather than being called on for help when a problem has escalated.

Remember, SNOs and ERUS staff are there to help you, so if you have any worries or concerns about any issues that you are faced with, please contact them for advice and assistance.



3. Getting Active in the CSP

The CSP is a member led organisation, which means that the policies and work of the CSP is decided by its members. As a steward you have the opportunity to have your say and influence the direction of the organisation by being involved in the CSP networks and national democratic structures.

Stewards network

This is a well-trained and organised network of stewards throughout the UK. The aim of the network is to provide stewards with the knowledge and support to handle the majority of members' problems confidently. The CSP devotes considerable financial resources to training our stewards at both residential and day courses throughout each year.

Getting ready to meet management

- Get a copy of your recognition/partnership agreement
- Get copies of other important workplace agreements: e.g. facilities; disciplinary; grievance
- Find out when staff side meet and put the dates in your diary: also the joint meetings with management
- Talk to the staff side chair and secretary and introduce yourself
- Familiarise yourself with the relevant sections of your intranet
- Meet with your relevant physio/department manager
- Get copies of old agendas/minutes from staff side and JNC meetings to give you an idea of the issues being discussed
- Talk to other union reps to mentor you at your first few meetings.

Stewards are kept up to date and fully informed on both local and national issues by means of regular issues of Stewards News, stewards' networks on iCSP; the website; the CSP's e- bulletin and Frontline.

Stewards in each region/country meet regularly at the regional training days and elect a Regional Steward from their number.

The National Group of Regional Stewards meets three times per year and nominates regional stewards' representatives to a number of CSP committees to provide those committees with an input based on the views of the stewards' network and the majority of CSP members.

Safety Reps network

The CSP takes health and safety issues very seriously and provides support to its network of safety reps. Induction courses are provided for new reps as well as two training days per year in their own region/country organised by the regional safety rep along with the Senior Negotiating Officer (SNO).

Safety reps are kept informed by means of regular issues of Safety News and through the national and regional safety reps networks of iCSP. As with stewards, local safety reps elect one of their number as the Regional Safety Rep, who attends the National Group of Regional Safety Reps meetings.

National level

You will find out more information about the CSP's national structures and networks on the the CSP website <https://www.csp.org.uk/> We also have a really useful eBite <https://vle.csp.org.uk/course/index.php?categoryid=37> Your CSP that will help you understand the different structures and what they are for.



This section of the handbook is to guide and support you when advising and representing members in the workplace. As a CSP steward should always be the first port of call for all members in respect of casework and workplace issues. Even where members initially contact the regional steward or the CSP centrally in the first instance, they will be referred back to the local steward. Not to do so would be to undermine you as the workplace representative and means you will not have a full local picture.

However where you are inexperienced in representation or it is a more complex case and you need advice or support this is always available from your Senior Negotiating Officer (SNO). You may also have more experienced local stewards from the CSP and other unions that you can call on for advice and support.

You should have contact details for your local SNO, please feel free to contact them for advice or just to talk an issue through. Email is often the most effective means of contact. Always contact us directly rather than asking the member to.

Health Care Professions Council (HCPC) Complaints

The HCPC is the body with statutory responsibility for regulating the physiotherapy profession. Where a member receives a letter from the HCPC in relation to a complaint from any source (patient, employer or another health professional) it is important to advise the member to contact their SNO via ERUS or if you are involved in the situation at a local level then you should contact the SNO. There is also a CSP information paper; 'HCPC

Investigations, A member Guide', on the website for members who are going through the HCPC complaints process. HCPC cases are often complex and may require legal advice so SNO's should be directly involved.

1. Handling Individual Casework

When an individual approaches you to take on a case, regardless of the type of case, the first step is always to check that they are a CSP member. If they join after the incident they need assistance with has taken place, they are not entitled to representation or assistance from you or the CSP centrally in relation to the matter. Appendix 1 has more detail on this.

Individual casework is concerned largely, but not exclusively, with handling grievances, disciplinary cases and capability issues. Members may also approach you about other issues, such as discrimination, bullying and harassment or contractual problems and the approach to handling any cases is very similar. Remember your SNO is there to support and advise you.

Your employer may well have separate policies to deal with different issues, but the advice in this briefing about the importance of gathering information and preparation is a common theme whatever the nature of the issue. (Check the ERUS publications list as there are a number of specific CSP publications on a wide variety of issues. You can access these through the stewards' national iCSP network or the CSP website.)

You should ensure that as a steward you are aware of the different local employment policies that exist. When a case arises the local policy should determine how the employer deals with the issue including the sequence of steps they will follow and who will be involved.

Your job is to give the member information and advice about what will happen and, once you have all the information you need, advise on the merits of the case, including whether you believe CSP representation is appropriate or not. It is important to give the member an honest and objective view even where it may not be popular.

Your role is to help the member to 'tell their side of the story' or help solve a workplace problem. This is likely to involve prompting or helping them to gather the necessary information; formulate their arguments; produce written statements of case when indicated; represent the member in a manner agreed with them and to seek guidance from your SNO.



We realise that stewards are volunteers and undertake the role in addition to their other duties so wherever possible it is legitimate to encourage the member to do as much as possible in respect of preparation particularly in the case of grievances. This also demonstrates the commitment of the member(s) to pursuing the issue. Their involvement in the preparation of disciplinary cases may need to be more limited as there can be constraints governing their contact with other staff and access to the workplace and sources of information.

It is important to emphasise that your role is to **represent** the member not to 'defend' them. You will be expected to put forward the case in a manner that highlights the strengths and deals with any weakness in a way that is likely to achieve the best outcome for the member. However you should not say anything you know to be untrue on a members behalf or condone them doing so. As outlined above the steward's role is to ensure that all elements of the member's case are clearly presented to management.

If you resign as a steward or leave your current employer please pass any case files onto your successor. If there is no one taking over, please make sure you discuss any ongoing cases with your SNO and arrange for files to be securely stored.

CSP representation

Please note that employment advice and representation of members at meetings and hearings (including the level of representation) is provided at the discretion of the CSP and may be withdrawn in exceptional circumstances when it is judged appropriate to do so. In the rare event of representation needing to be withdrawn the decision would be taken by the relevant SNO after discussion with the member concerned. If this does happen and the member wishes to complain there is a complaints procedure that can be accessed via the CSP website.

2. Grievance Procedures

A grievance is defined in the legislation as 'a complaint by an employee about action that the employer has taken or is contemplating taking in relation to him (sic)'. Grievances may be individual or collective (where a group of employees have the same complaint).

Minimum standards for grievances and disciplinary procedures are set out in codes of practice produced by ACAS.

Local policies vary, but at the very least the policy should provide the opportunity for the member to present their written grievance to the employer, have a face-to-face meeting and receive a response from them. If the grievance is not upheld they are entitled to a right of appeal to a different (more senior) level of management.

Many local policies, particularly in the public sector, contain more stages (often three or four) that allow the grievance to be put before managers of increasing seniority. Often there are time limits at each stage that should be adhered to. These should be long enough to be practical on bringing people together to hear the grievance but not so long as to cause undue delay for the member concerned (e.g. 4-6 weeks). Where grievances involve a health and safety issues timescales will likely be much shorter.

A member has the legal right to be represented at a grievance hearing. Ideally policies should stipulate that dates of meetings should be mutually agreed but failing that if you are not available on the date chosen you can ask for the meeting to be postponed.

Listed below are some of the key parts of grievance procedures. These are things you should look out for within your own procedures and make sure are included.



Status Quo

Members often have problems because management try to introduce changes to their work or working conditions without consulting either them or local unions.

Any change in working patterns or conditions of employment should only come after discussion and agreement with the union and member(s) involved. Where change takes place without negotiation or consultation members may have a grievance. The grievance procedure should ideally allow members to continue working to the existing arrangements until the grievance has been heard: this is called the 'status quo'. It simply means leaving things as they are pending further discussion between the union and management.

Check your procedure as many do not have status quo clauses considerably weakening the position of the member. Often the clause may appear with qualifications where the status quo won't apply such as 'where patient care is affected' or 'dependent on the needs of the service' Again be careful of these as they can weaken the ability of you and the member to invoke the status quo clause.

In certain circumstances it is inappropriate for the status quo to be invoked:

Health and Safety: where normal working might mean going back to unsafe working conditions, it may be worth trying to negotiate an extra clause. For example: "If the requirements of the status quo conflict with safe working practices, then working conditions will be made safe while the matter is under discussion."

Racial/Sexual Harassment: where a member is subject to racial or sexual harassment, normal working must mean being safe from harassment. It could involve moving an alleged harasser pending an investigation and possible disciplinary hearing.

Panels

The final stages in grievance procedures will vary between employers. In some procedures, particularly individual grievances, the final stage will be the Chief Executive. However the CSP recommends that there should be a panel convened for the final internal stage. The most common model is a panel consisting of three members from the Trust or Health Board. If this is the model used the panel should preferably be non-executive members (those not directly employed by the trust/health board).

External Appeal

Ideally, a grievance procedure should have access to an external level of appeal such as a joint approach to ACAS (see below). However a considerable number of employers have not agreed to any external level for individual grievances and only allow ACAS to be brought in for collective disputes.

It is also normal for procedures to specify that both sides must agree to the external part being involved; this is normal as ACAS are unlikely to get involved unless both parties have agreed to the process.

Failure to Agree

What happens when you come to the end of the procedure without reaching agreement?

Here are some possible outcomes:

- Management concedes
- The union withdraws or drops the case (after consultation)
- A third party is called in to conciliate, arbitrate or mediate
- If management imposes the change then industrial action may be considered in the most serious cases. You must seek advice from your SNO if this is the case.
- Legal action is considered (if applicable).



If there is no agreement reached the action taken will depend very much on the nature of the complaint. We anticipate that you would have already involved your SNO where a failure to agree seems likely. Failure to agree is likely to happen in collective grievances rather than individual cases.

Advisory, Conciliation and Arbitration Service

ACAS is the Advisory, Conciliation and Arbitration Service and is a statutory body that provides codes of practice on various employment related matters. The service's primary task is to give independent information and advice to employers and employees and offer conciliation and arbitration services for collective industrial disputes and employment tribunal cases.

3. Your Role in Grievance Case Work

- Discuss the grievance with the member advising them honestly on the various options and merits of the case.
- Ensure the grievance is submitted in writing in whatever format the grievance policy (or other policy where appropriate) stipulates complying with any time limits specified
- Encourage the member to identify and gather together all the information required in order to pursue the grievance.
- Support them to produce a written statement of case (see disciplinary procedures)
- Ensure that the employer adheres to the agreed procedure and draw any breaches to their attention in writing.
- Along with the member, present the grievance at the hearing in a format agreed with the member in advance, which allows the case to be presented to greatest advantage.
- Discuss the employer's response with the member and agree any further action if required

- Lodge an appeal in accordance with the policy, if necessary, and support the member at any appeal
- Seek advice from the SNO at any stage of the process. This may include queries about the merits of a case; whether a case should be submitted to an Employment Tribunal; where the steward feels the member's expectations are unrealistic; where the issue is not within the control of the employer.
- Advise the member honestly on the prospects of success at every stage and discuss with them the merits of continuing, having taken advice from the SNO if required.

Collective Grievance/Disputes

A collective grievance (also referred to as a dispute) would be appropriate where the employer's action affects more than one employee or a group of employees. If you are considering using a collective grievance then please contact your SNO for advice and support through the process.

The role of the representative is the same as in individual grievances but you will have to meet and agree a course of action with all those involved and not just an individual member. If the collective grievance only affects physiotherapy then you must ensure that all those involved are members of the CSP.

However, collective grievances can also involve staff from more than one union e.g. physiotherapy and occupational therapy, in which case you would need to work with the UNISON rep for OT and/or any other relevant trade union reps on behalf of all the union members affected.

It is also not uncommon for the staff side to 'lodge a dispute' with management, on an issue that is affecting all staff, for example a very poor policy that management may be trying to impose or changes to car parking. In these circumstances it is essentially a collective grievance on behalf of all trade union members in that organisation.

The threatening of a grievance can be an effective tactic to get management to act, but should only be done if members really are prepared to proceed to a formal grievance.



Example grievance letter

Dear Physiotherapy Team Lead

RE: CSP COLLECTIVE GRIEVANCE

I am writing to inform you that two CSP members within the Enterprise Trust are lodging a grievance in accordance with Trust procedure. This grievance is in relation to the proposed redeployment of staff to a GP clinic in the South of the region.

The grievance has arisen as a result of the following issues:

- Lack of reasonable consultation/notice of period to allow for change in personal circumstances.
- Unclear reasoning behind staff selection
- Lack of consideration for impact on development/learning/progression as a result of permanent working in an isolated environment
- Failure to offer compensation for additional travel expenses accrued as a result of change of base which should be offered for a 2 year period as staged in the 'The Organisational Change Policy' 4.1
- Lack of reasonable consideration for staff's personal circumstances which will result in considerable difficulties in attending work and may cause significant financial hardship.

We have tried to resolve these issues informally but feel a satisfactory compromise was not reached. It is now felt that regrettably we have not option by but to raise a formal grievance and invoke status quo to ensure meaningful discussions are held prior to the implementation of any change.

In accordance with the Grievance Policy we anticipate a hearing to be arranged within 7 days and look forward to working towards a solution.

Please confirm receipt of this letter and the status quo arrangement in writing for our records.

Yours sincerely.....

4. Capability Procedures and Cases

Increasingly, stewards find themselves assisting members who are facing capability proceedings in the workplace. As it is such an important issue and affects managers as well as other members, the CSP has separate guidance in this area, in the form of the "Physiotherapy Competence and Capability Resource Pack". You will find it an invaluable source of information if you are advising or representing a member in this situation, to supplement this brief introduction.

Workplace Procedures

These procedures may be referred to by a number of titles, such as capability, competence or performance management. The CSP's view is that separate procedures for addressing capability are appropriate and that disciplinary procedures are rarely flexible or supportive enough to allow capability problems to be dealt with successfully.

Your capability procedure should have been agreed locally and you should be able to access it in the normal way, on the hospital intranet or from your line manager or HR department. As local procedures, capability policies will vary from workplace to workplace. However, typically, they will include an informal stage followed by around three formal stages.

The Informal Stage

The informal stage may involve meetings between the member and their line manager or supervisor; it is not uncommon for members to fail to approach you during this period, although it is always helpful if you are made aware of issues at the earliest possible stage. The issues or problems are usually explained to the member at this point and objectives set for improvements.

If matters are not resolved within the timescales set, the manager may notify the member that they will be escalating the issue to the formal stages of the procedure. Even if the informal stage of your procedure does not explicitly identify a member's right to be represented, the CSP's view is that members should always be encouraged to seek advice from their CSP steward and to bring them to meetings if they feel that additional support would be helpful.



The Formal Stages

Capability proceedings can feel rather different from disciplinary processes, with hearings often being less formal and involving more discussion and participation on the part of the member. Nonetheless, the final outcomes can be very similar. For example, at each formal stage any member who has not met the objectives set previously is likely to be issued with a written warning.

At the final stage a failure to have improved sufficiently will result in either dismissal or re- deployment/downgrading into a different role or job. Therefore, the stakes for members are just as high as in disciplinary proceedings, with their jobs and careers ultimately at risk. CSP members who are qualified physiotherapists and who are dismissed or redeployed to a non-physiotherapist job on capability grounds, are also likely to find that their employer refers the matter to the Health Professions Council.

It can also be harder for members to make the necessary improvements or changes than in a disciplinary situation. In the latter, unsatisfactory conduct can often be readily addressed or amended; however in capability situations, members are usually already doing their absolute best to perform well in their given role and this can be a far more intractable problem.

Common Issues with Capability Proceedings

As a steward, you may come across all or some of the following common problems with capability proceedings:

Be sure it is a capability problem: as a steward you must always be vigilant in this respect. Although a number of members do unfortunately have problems with their performance at work, it is always important to rule out other causes of the problem, such as inadequate supervision, bullying at work, a clash of views or personalities etc.

Rule out any other contributing factors: even if there are valid concerns about capability it is vital to understand any issues that might be contributing to the problem. These could be factors such as stress or other problems outside work; ill-health; or an underlying disability, such as dyslexia or Asperger's syndrome. Identifying these factors is key as the approach to addressing the problem might

be completely different. If you and the member think there may be an underlying disability, or another underlying diversity issue, such as race, you can refer to the CSP's Equality and Diversity Toolkit for further help. There should be a copy of this in your department from the previous steward and your manager should also have a copy; if not, please call the CSP to request one.

Not addressing problems early enough: where there are real issues with performance, it is common for capability problems not to be addressed appropriately at an early stage. Many members with capability issues are rotational staff and the problem gets moved on as they change rotations but never really addressed, especially if people are newly-qualified and would be expected still to be finding their feet. In addition, senior staff or supervisors are understandably reluctant to raise what will always be a difficult subject with members who are trying their hardest to succeed. Nevertheless, it is always better for the problem to be addressed as early as possible. If members have been led to think they are performing satisfactorily when they are not, it hugely increases the shock to them when the issue is finally confronted.

Setting appropriate timescales for improvement: capability issues usually take some time to address effectively as they often affect core areas like communication skills and clinical reasoning. If your local procedure includes inadequate and inflexible timescales at each stage, members can inadvertently be "set up to fail". Some capability problems may need any particular stage in the procedure to last several months to stand any chance of being resolved successfully. Timescales of, for example, 4-8 weeks to make a fundamental improvement to clinical reasoning are unrealistic.

Too many objectives: in conjunction with the above point, objectives should be limited to a manageable number of key areas. Too many objectives at once make it extremely hard for a member to improve sufficiently in any.

Support to achieve the objectives: it is crucial that, along with objectives being realistic, there is adequate support to enable members to achieve them. Such support might include some formal support or training/re-training, but is much more likely to involve increased access to supervision, more time to complete tasks and mentoring.



Monitoring shouldn't last forever: unlike the fixed timescales for disciplinary warnings, capability procedures do not always set a time when monitoring will cease if performance has been satisfactory. It is important that members are not “under the microscope” on a permanent basis; this can be unduly stressful for people and lapses are inevitable if there is such close scrutiny all the time. This can also lead to members who have had capability problems having standards and expectations imposed on them that are higher than those applied to other staff. Once the agreed targets have been met there should be an agreement that monitoring ceases and this should be expressed in your local policy.

Supporting and Representing Members with Capability Problems

In conjunction with this section, you should refer to the preceding pages for advice on supporting and representing members in these circumstances. As with other forms of individual casework, the principles are the same when it comes to areas such as interviewing a member to make sure you have all the salient information; establishing the outcome the member wants and discussing whether or not it is realistically achievable; and accompanying them to meetings and hearings. As always, your SNO is also on hand for support or further advice.

5. Equity, Diversity & Belonging Cases

Casework will almost always involve handling sensitive material and information, and equity, diversity and belonging casework potentially even more so. With this in mind, it is important to take stock of the arrangements you make when undertaking equity, diversity and belonging casework. For example, where do you meet the member, where do you store their information and how, do you need to make any reasonable adjustment?

It's important to understand the issues facing the member and in almost all cases it is going to be advisable to meet the member in person. Conducting equity, diversity and belonging casework via email is not recommended. The key task at the first meeting is to understand the issue/s. In other words, what are the issues which the member wants to have resolved? Sometimes this will be straightforward, but in most cases the issues can be complex with employment and equality legislation playing a part.

Contact your SNO immediately as they can help and support you through the process and ensure you have gathered all the relevant facts, checked any workplace policies and any other resources. The CSP Equality and Diversity Toolkit <https://www.csp.org.uk/publications/equality-diversity-toolkit-practical-guide-csp-stewards-managers-members> will be essential guidance for you in dealing with and equity, diversity and belonging issues. Your SNO will also ensure that you have a clear record of dates as timelines as there are very strict time limits associated with employment and equality legislation..

6. Disciplinary Procedures and Cases

Disciplinary action is contemplated when the employer believes an employee's conduct or behaviour is unacceptable and in breach of its disciplinary code.

Although employers are not required by law to have procedures to be followed in cases involving discipline and dismissals they are expected to follow steps set out in the ACAS Code of Practice. Many employers, particularly in the public sector, will have local policies that give better provision than this.



Case law and ACAS guidance suggest that an essential element of a fair disciplinary process that reflects natural justice consists of:

- An investigation
- The employee to receive in writing details of the allegations and any evidence to support it/them
- A hearing taken by a manager who did not investigate the complaint.
- An opportunity for the employee to explain their case and call witnesses if appropriate
- The right of the employee to be accompanied by an accredited representative or friend
- The right to an appeal (we would always press for this to be a more senior manager not previously involved in the case).

As well as decisions on outcomes, breaches of process can sometimes give rise to a complaint to an Employment Tribunal (ET). You should discuss disciplinary cases with your SNO to help you through the process, identify your arguments, support you and ensure your SNO has a full picture if cases do go to ETs or the HPC.

There are a number of key features you should look for in your own workplace procedure. It is vital you have a copy of it and are familiar with what it says.

Counselling

The line manager, through 'counselling', will deal with many alleged breaches of discipline informally. It should be clear that this is not part of the formal procedure, but an informal way of resolving issues without having to resort to formal disciplinary action. An informal discussion should, identify the alleged shortcomings and encourage improvement with an agreed plan and a timescale. This stage may not include a right to representation but should if possible. You also need to be aware whether this will be recorded on a member's personal file.

Investigation

Once in the formal stages, a good procedure will clearly provide for an investigation to establish whether there is a case to answer prior to a disciplinary hearing. It should establish the facts through the questioning of witnesses, the staff member, and acquiring documentary evidence. A manager will be appointed as the Investigating Officer for this purpose.

Following an investigation a decision should be taken as to whether or not there is a case to answer. If there is, a formal hearing should be set up and the member given reasons in writing. If there is no case to answer all details of the investigation should be removed from the members file.

Suspension

If suspension is mentioned in a procedure it should be clear that it will only be used in exceptional circumstances e.g. allegations which could suggest patients or staff are at risk. Suspension is not a disciplinary measure and should be used to allow time for a full investigation. Any suspension should therefore be on full pay. It should be for the shortest time possible and there should be an explicit provision for a regular review. Wherever possible the steward should be present before the member is suspended to argue whether it is appropriate and to agree a time scale.

Disciplinary Hearing

There should always be a formal disciplinary hearing before any disciplinary penalty is imposed, even if it is for a 'recurring offence'. The procedure should detail how the hearing will be handled, the process, notification, use of evidence, witnesses etc.

The member should be notified in writing of the allegations along with the details of the hearing: including date, time and place, who will be attending and in what capacity, and any documentary evidence and witnesses. They should also be informed of their right to representation and the steward and member should be given sufficient time to prepare their case. The manager(s) hearing the case should not have been previously involved.



During the hearing the steward should have the opportunity to put forward the member's case and bring witnesses if appropriate. There should be the right to adjourn throughout the hearing. An adjournment is a short break which allows you to have a private discussion with your member. After the hearing a written record of the charges, the evidence, the outcome and how the outcome was reached should be available.

Outcomes

Following a formal hearing, if the allegation is upheld, this will usually lead to a warning, the type depends on the provisions of your procedure and the nature of the misconduct. The warning may be verbal, a first written warning, or a final written warning. (Although termed verbal, this warning will be entered on the employee's record).

A few procedures don't include verbal warnings and move straight to written warnings. Minor first offences should result in the lowest penalty available. However in more serious offences the lower warnings can be omitted and may result in a final written warning.

Where employees have received a verbal or first written warning any further misconduct may result in management taking further action. If this is the case there will still need to be another disciplinary hearing before the punishment can be given, although it is likely to be a much more serious level of warning. It is essential that the levels of warning given are applied consistently and fairly.

Gross Misconduct

Where a member is charged with gross misconduct the procedure may allow management to convene a hearing that could lead to dismissal if the individual is found guilty of the offence. It is important that the decision to dismiss can only be taken by a high level manager, e.g. Chief Executive or directorate level, to ensure consistency.

In cases of gross misconduct members should still have the opportunity to state their case, including any mitigating circumstances, and dismissal should not be automatic. There should also be the provision for a final written warning, or possibly downgrading or redeployment as an alternative.

Time Limits

If a warning has been issued it should only last for a limited time, how long will depend on your procedure. The CSP's view is that verbal warnings should last no longer than 3-6 months, written warnings for 6-12 months and final warnings for 12-24 months, although many procedures do have longer timescales and some even have the option to keep some warnings on records indefinitely. This should be resisted if you are re-negotiating a new procedure. You should keep a note of warnings issued against your members and double-check with management that they have been removed at the right time.

Representation

If a member faces disciplinary charges make sure they are represented. Your procedure should give you this right and managers must inform members of their right to representation throughout. Remember; check they are a member of the CSP before you start.

The Right to Appeal

If the outcome of a disciplinary hearing is inappropriate, unfounded or the correct procedure hasn't been followed your member should be encouraged to appeal. Be aware that the time limits in policies for submitting an appeal are often very short, so you need to act promptly. A senior manager not involved in the original hearing should convene the appeal. Appeals following dismissal should be to a panel of the Trust/Health Board, preferably with non-executive directors.



Disciplinary Action against Stewards

The ACAS Code says:

“Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the

circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee’s agreement”

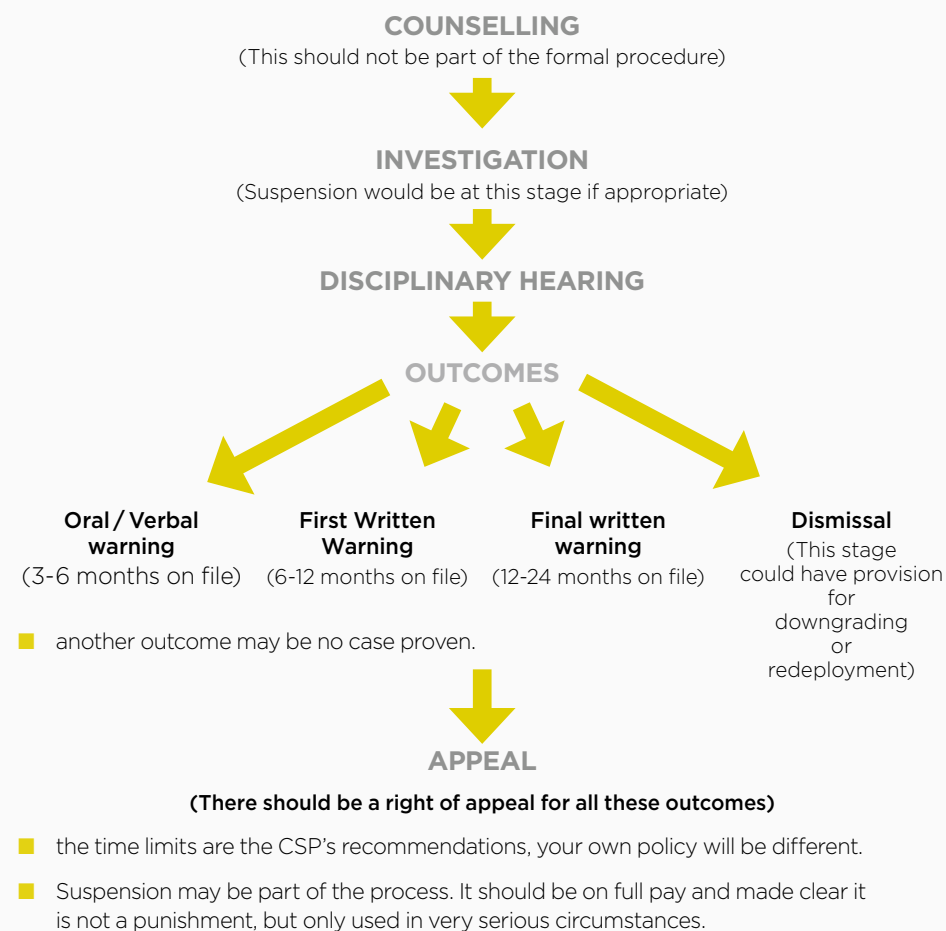
Written procedures should spell out that full time officers are called in before any steward is disciplined. This is to prevent victimisation.

Criminal Offences

A conviction for a criminal offence should not lead to disciplinary action or dismissal unless it reflects on the member’s ability to do their job. The main consideration should be whether the offence would make them unsuitable for their type of work.

A Model Disciplinary Procedure

A model procedure should incorporate the following stages with appropriate rights of representation throughout and time limits for warnings:





7. Role of the steward in Disciplinary Cases

This can involve some or all of the following:

- Ensuring that you are familiar with the relevant local procedure.
- Making sure the member has received a copy of the procedure and explaining all the key elements of it to them. If they understand what is likely to happen and the sequence of events this can help to alleviate some of the anxiety
- Offering reassurance to the member at a difficult and distressing time. This needs to be balanced with ensuring that unrealistic expectations are not raised particularly in the early stages before details of the allegation are clear.
- Supporting the member during the investigation. This is likely to involve discussing their recollection of events in advance of the meeting with the investigation officer to ensure their evidence is clear and consistent and attending the investigation meeting.
- Gathering relevant information. You will need to see what information and evidence your member can provide, including previous documentation, and check any other workplace policies or rules. This may include identifying any supporting witnesses.
- Advising the member. Once the charges and facts are clearer, advising your member of the possible outcomes and options.
- Representation. Supporting your member in the hearing. You will need to be familiar with the format in advance and agree whether you or the member will do the talking or who will do which part.
- Informing and seeking advice from the SNO.

Role of the Senior Negotiating Officer (SNO)

We are keen to support stewards to handle disciplinary issues wherever possible and you should keep your SNO informed of developments. They are there to provide advice and support as needed. If members face serious charges e.g. allegations of gross misconduct you should discuss the case with the SNO immediately.

1. Clarifying the Allegations

When a member approaches you about a potential disciplinary matter it is important to ensure that the number and nature of the allegations is absolutely clear. The member should receive this information in a letter, but if not, insist they are put in writing in advance of any meeting to discuss the case.

If the written allegations are not clear, clarify any ambiguities immediately with management. It is unhelpful to discover later in the process that you and management have different views of the matter at issue.

Once you are clear what the allegations are you need to get the members response to them. This will involve meeting with them, but getting a written response from the member in advance may be helpful to you.

It can be difficult to try and extract all the essential information from the member or where there is new or unfamiliar information to assimilate. Difficulties can be exacerbated by the distress or agitation that individuals often feel when allegations have been made against them.

A written response allows you to meet the member with a greater understanding of the nature of the case. It also allows you to identify areas where you need further information, apparent inconsistencies, potential witnesses, and the correct workplace policies you might need. It may also highlight documentary evidence you will want to ask the member to bring to the meeting or will need to request from the employer.

2. Employment Policies and the Role of HR

You will need to familiarise yourself with the disciplinary procedure and any associated guidance as a priority since this should determine how the employer will deal with the case. Ensure that you comply with the terms of the policy. You do not want to give the employer additional grounds for complaint. In particular, note any time limits that you need to comply with. It is worth putting relevant dates in your diary to ensure that deadlines are not missed.

If you feel that your manager is not following the policy at any stage you should raise this with the Human Resource department. They have a role in ensuring that policies are implemented fairly and consistently.



3. Interviewing a Member

Interviewing members is an important part of the steward's role and developing an effective technique will bring significant benefits in terms of case outcomes and time spent dealing with cases.

The aim is to ensure that at the end of the interview you have a clear picture of the issue or the events. In the interview you will need to strike a balance between demonstrating interest and concern for the member's predicament whilst being honest about the merits of their case and avoiding raising false hopes.

Interviewing Techniques

It is helpful to start by setting out the context of the meeting and reminding the member of your role. In particular, you need to stress that you will be asking them questions that may be quite probing. They may feel that you are interrogating them or doubting their version of events. However, your purpose is to explore with them issues that management will ask about during a hearing. As their representative, you need to know their version of events and the member needs to have considered in advance how they will respond to a particular line of questioning from management.

They should be reminded to be open and honest with you whatever the circumstances. They need to understand that it is better for you to know all the facts from the start whether they are helpful or not. It is more damaging if weaknesses are exposed during a hearing. It is more difficult for you as the representative to deal with them and undermines the credibility of the member's case.

Even where members have supplied information in advance they should initially be encouraged to give an account of events in their own words succinctly without interruption. You should draw to their attention evidence that is unclear or inconsistent and ask for an explanation. You can be certain that these areas will be thoroughly explored by management often to the members discomfort if they are not identified by you and addressed directly in your statement of case.

Summarising your understanding of events back to the member is a useful strategy to check the facts. In complex cases you may need to do this in sections.

Outcome of the Interview

By the end of the interview you should know:

- When the problem arose
- Who was involved
- Where it happened
- What the nature of the problem is
- Why the problem occurred
- If there are any witnesses
- What protocols/procedures/rules are involved
- The member's disciplinary record (same offence/other offences), specifically any current warnings on file.

Identifying Mitigating Circumstances

You will need to ask the member whether there are any personal circumstances that may have had an impact on the events or behaviours that are the subject of the investigation. These may include matters relating to health, personal or domestic difficulties, the conduct of colleagues towards them e.g. bullying and harassment or work related factors such as an excessive workload or staffing shortages.

You should explore with them what the impact of these factors was or were and if appropriate seek permission to disclose details during the hearing. You should ask whether they have raised any of the issues with anyone before and if not why not?

If they have raised the issues you should enquire what action if any was taken as a consequence. Arguments about workload pressures, bullying and harassment by colleagues or unreasonable demands by managers are more powerful where these have been raised previously with the employer, preferably in writing. (However, the fact that they have not been raised before does not mean they cannot be raised now).

You may also want to take the opportunity to ask if they are aware of similar cases affecting other staff and how they were dealt with to explore consistency of management practice.



Making a Record of the Meeting

You will need to make a note of all the essential points. The bullet points above should help you ensure that you've covered all the key areas. You should send a copy of your notes to the member and ask them to check the accuracy. This is a further safeguard to ensure neither you nor the member have missed anything.

Agreeing Next Steps

At the conclusion of the interview the member may well be keen to hear your assessment of the case in light of the information they have provided. It is important to give an honest opinion although it may be that before giving a definitive view you may need to study local policies and protocols or talk to you SNO to make sure you have covered everything. Don't feel pressured into suggesting any courses of action that, on reflection, you may regret or are unsure about.

Whatever you decide you should explain to the member what will happen next and where possible give an idea of the timeframe, even if it is just to tell the member you need to check policies, talk to the SNO before you can give them any advice. Make sure you do tell them you will be in touch with them within the next few days.

Identifying Supporting Witnesses

Whilst interviewing the member you may identify potential witnesses. If their evidence is helpful you should ask them to produce a written statement or summarise their evidence in a written statement yourself. In either case you need to ensure that they sign and date the statement as an accurate record.

You will not be able to interview management's witnesses before the hearing, but you should receive a copy of the witness statements in advance of any hearing to prepare your questions.

There is more detailed advice on using and questioning witnesses in the ERUS guidance 'Dealing with members Casework; the Written Case Statement; Witnesses; Use of Questions'.

4. The Investigation Meeting

Most disciplinary policies include the provision for the investigating officer/manager either to interview or ask for a statement from the individual who is the subject of the investigation.

Attending the investigation meeting with the member serves a number of useful purposes:

- the member feels they have support at what is generally a very stressful time
- the meeting is conducted fairly and the member is not pressured, intimidated or encouraged to stray away from the facts
- the line of questioning gives a useful indication of the possible case against the member
- you will be able to take notes of the questions and answers, to help agree a factual record of the meeting.

You may prefer to prepare a written statement in advance, but in either case the advice to the member is the same. They should answer the allegations in a concise and factual manner. Make sure you see any written statement prepared by the member beforehand.

Where a meeting is held you and the member should have discussed the allegations in advance of any meeting. Both you and the member should then be provided with the notes of the meeting to check it accurately reflects the information given.

In an interview you should intervene if the investigation officer encourages the member to speculate or deviate from the facts relating to the specific allegations.



5. Assessing the Case prior to the Hearing

Reviewing the evidence and assessing the case to identify its strengths and weaknesses and considering how you will highlight the former and limit the impact of the latter at the hearing is an ongoing activity from the time you first interview the member until the case is completed.

You are likely to come to a view about the merits of the case on reading the allegations and hearing the member's response to them. However, in the process of gathering information from different sources new information may emerge that can change the whole complexion of the case and you should always be alive to this possibility and avoid prejudging the outcome.

For example, you may be representing a member who faces allegations that they shouted at the manager and were insubordinate. No-one actually witnessed the exchange, but a member of staff in the nearby staffroom heard the member raise her voice, but couldn't hear what was said.

During the course of the investigation another member comes to you in confidence. They report having heard the manager bullying the member in her office immediately prior to the incident. The manager was criticising the member in an aggressive way. The member was trying to explain why she was unable to take on more work, but the manager kept interrupting. The member was trying to back out of the office and the witness reported the manager following her and jabbing her finger towards her face aggressively to emphasise her point.

The witness tells you the member was clearly distressed and angry and eventually turned and strode away. The manager went after her and they both disappeared round the corner towards where the alleged incident took place. Obviously this development would substantially change the nature of the case.

Whilst you may not discover a new witness, quite frequently even apparently small developments can emerge that have a substantial impact. Although this guidance stresses the ongoing nature of analysis the point at which you start preparing for the hearing will require you to thoroughly review and assess all the evidence.

6. Documentary evidence

Copies of any documents that management will refer to in their case should be provided in advance of any hearing. You may also have identified helpful relevant paperwork during the course of your own information gathering that management have not referred to and which supports your case and you will want to produce this.

You should receive any evidence from management (their 'bundle') in advance of the hearing so you have enough time to read and prepare. Hopefully, this will give you a good idea of their case and likely arguments. The bundle may include the report of the investigation officer; witness statements; policies or other documents that management will rely on to prosecute the case. Disciplinary procedures often include reference to the use of documentary evidence in hearings.

The Written Case Statement

The requirement to produce a written case statement in disciplinary cases and grievances is a feature of some employers' policies.

However, whether they are specifically required or not it is a useful device that serves a number of purposes:

- It encourages you and the member to consider the management case and the member's response in a systematic way.
- It provides a "prompt" and a structure during the presentation at the hearing.
- It allows you to leave the panel members with the detail of your response to the allegations rather than relying on notes taken by them over which you have no influence.

But be aware they can often be time consuming to prepare.

Structuring the Statement

The statement should take the panel in a logical manner through your case and lead them to the conclusion you would like them to reach. There are a number of steps it may be helpful to consider when thinking about writing the statement, the following is an example of how this can be set out:



1). **Identify the key issues: Jane Graham has been accused of poor timekeeping, specifically that she has been half an hour late to work three times in the last two weeks.**

2). **Identify what your case will set out to prove:**

- That Jane has been late to work is not disputed.
- She has been delayed by road works on the route in to work.
- She is not able to allow more time for her journey for reasons of childcare
- Time made up by taking a shorter lunch break and in any case frequently works longer than her contracted hours when service needs demand this.
- That the trust has local policies on flexible working that would allow Jane and her managers to manage the current situation without resorting to punitive action.

3). **Say how you will prove your case: Testimony/Witness statements from:**

- Other staff members to confirm the presence of road works
- Other parents confirming car pool arrangements
- Supervisor confirming previously spotless record in relation to timekeeping and preparedness to work overtime when service demands.
- Using flexible working policies to illustrate how they could be applied in this case.

4). **Identify the key conclusions you want the panel to reach** (including appropriate penalties, if any)

- Disciplinary action is not appropriate. Jane deserves support not sanction.
- Discussion should take place to facilitate flexible working arrangements while the road works are going on so that Jane can manage her home and work commitments
- The trust's flexible working policies need to be more widely publicised so this situation doesn't arise in future.
- Regular management training on the trust's employment policies is necessary.

The written statement is provided to the panel in advance but check with your local procedure.

Producing the Written Case Statement

When drafting the written case statement, study management's case and the members response carefully. Firstly, identify the facts that are not disputed. However, make sure you are clear about the specific areas of agreement. For example the management case may allege that the member has deliberately falsified documents. The member may agree that the documents have been incorrectly completed, but in error, not with malicious intent.

Next, look at the areas where facts and allegations are disputed. Identify if there are any areas where you have evidence that will disprove the management allegations or will reduce the seriousness of the charge. This may be testimony from the member, a witness or witnesses, independent documentary evidence or a combination of these.

Ideally, testimony from the member really needs to be verified or supported from another source to have credibility with the panel. For example the employer may allege that the member went to the gym while they were on sick leave, thus undermining their recovery. It may be that their GP advised them that they should try and increase their activity to regain their fitness for work. If the GP is prepared to write a letter confirming this advice this is likely to be helpful evidence.

Always look carefully at management's evidence and the conclusions they draw from it. You should check the evidence for factual accuracy e.g. that figures in a table add up, that an extract from a policy document comes from the current policy and is an accurate quote and not quoted out of context. If the information is accurate, in terms of the conclusions they draw, are they accurate/ reasonable? For example, if the member is accused of abuse of the sickness absence policy, are the relevant provisions of the policy unambiguous or could they be construed in more than one way?

Where local policies are involved, it is important to establish how accessible the policies are in the work area and that they are the current version, whether they are publicised within the workplace.



In addition you should enquire whether training has been provided if this is relevant and if so how frequently. Don't assume that because training has taken place the member attended. They may have been absent when it took place or it may have been organised before they were employed there.

It may be relevant to explore whether practice in the work area reflects the provision of any workplace policy. It may be that custom and practice amongst all the staff in the same work area mirrors the practice of the member. For example the sickness absence policy may stipulate that staff have to phone in within 30 minutes of the normal start time. However, evidence may be available that other staff have previously phoned in outside this period and not been subject to disciplinary action. Any discrepancies or inconsistencies will need to be highlighted and commented upon.

For example does the evidence justify disciplinary action against the member? Is any of the evidence circumstantial or uncorroborated? Is there evidence that similar cases or circumstances have been dealt with differently in the past?

Your aim is to question management's case and highlight the strengths of your own case.

Procedural Flaws

In your statement you should highlight any procedural flaws particularly if they are sufficiently serious to impact on the outcome of the case. They can be a key to success so it is important not to overlook them.

For example:

- Was the member offered the opportunity to state their case?
- Was the investigation undertaken in a fair manner?
- Were notification requirements adhered to?
- Was the member informed of the right of representation?
- Was reference made in the investigation report to previous unproven allegations or complaints that were not pursued that should not have been referred to and are likely to prejudice the deliberations of the panel?
- Was an adequate investigation of the facts of the case undertaken?

Mitigating Circumstances

Mitigating circumstances are normally introduced in the statement after the substantive arguments are made and any procedural flaws addressed.

The kind of issues that would be relevant will have been identified during discussions with the member and might include:

- The member has previous exemplary service
- It was a one-off incident
- It was a genuine error
- Workload pressures or other work related factors
- Personal circumstances-illness, domestic or financial problems
- Training needs were not addressed.

The written statement needs to cover:

- Introductory paragraph setting out the member's role in the organisation and how long they've worked there.
- An outline of the circumstances of the case
- what you intend to show
- witnesses you will call and their contribution to the case
- identifying any facts that are not disputed
- apologising/showing insight for any failures if appropriate
- Any issues of dispute and discrepancies in the management's evidence
- any mitigating circumstances
- reference to relevant documents (appendices to the written statement)
- the issues the panel will need to consider when reaching a decision.



The written case statement needs to be agreed with the member. If the disciplinary policy does not require submission of a written statement you need to agree with the member whether the statement is for your own use or whether copies are to be provided to the panel and management representatives on the day.

Where a written submission is required the disciplinary policy usually stipulates particular time limits. It is important to ensure that you adhere to these since missing the deadline may mean that you are unable to put your case before the panel and only the management evidence will be considered which would be a disaster for the member.

Sample Statement of Case

Introduction

Jane Graham is a Band 6 physiotherapist working in the outpatient department at the Band-Aid hospital. She has worked for the trust for nine years and has an unblemished disciplinary record.

Statement of Case

This disciplinary hearing is being held to consider allegations that on three occasions in the last two weeks Jane Graham was half an hour late to work.

That she was late is not disputed but our evidence will show that the reason for this was road works on the route Jane has to travel along on the days of the week when she drops her children at school before work. This is the only road to the school so no alternative routes are available. Jane does not dispute this and is sincerely sorry.

When Jane arrived late for work on the third occasion her manager complained to her that patients had been kept waiting that this was unacceptable and that she would be taking the matter further. Later that same day Jane received a letter from her manager inviting her to attend a disciplinary hearing in relation to allegations of poor timekeeping

Jane is a member of a car pool with three other sets of parents. The days when she was late coincided with the days when it was her turn to drop her own child and three other children at school before work.

Jane was not able to allow longer for her journey to work on the days she was dropping off the children because the school gates do not open until 0815 so she is unable to safely leave the children until that time. Jane reaches the road works at peak travel times so faces long queues which lead to her late arrival at work.

Jane accepts that with hindsight, when the road works started she should have discussed with her manager the potential impact on her journey to work. However, she thought that the situation would ease as other motorists, who had a choice of journey time, modified their arrangements to avoid the queues. When the problem persisted into the following week she realised she would have to speak to the manager although she didn't know what the manager could do.

Jane was not aware of the trust's flexible working policy, which would have been the ideal way to address her current difficulties. The policy had been introduced whilst she was on maternity leave. Unfortunately, although she was an ideal candidate to benefit from its provisions, it was not drawn to her attention on her return to work and is not well-publicised in the workplace.

In any case events overtook Jane as her manager was waiting for her when she arrived late on the third occasion. She complained about Jane's timekeeping and the impact on patients. Jane should have tried to offer an explanation at that point but, conscious that patients were waiting and already feeling flustered as a result of her difficult journey, she said nothing. She did anticipate, however that she would have the opportunity to discuss the issue later with her manager and was upset when she received a letter delivered the same day, inviting her to a disciplinary hearing.

Angela Holmes and Roger Panton, two of our witnesses are parents involved in the car pool who will confirm that Jane was delivering the children to the school on the days in question. Also that the school gates do not open until 0815 and that this is the earliest time the children can be left safely. They will also describe the traffic problems that they too experienced due to the road works after they had dropped the children off at school at this time.



Andrew Martin, our third witness, was until recently Jane Graham's line manager before he secured a promotion in the neighbouring trust. He will confirm that whilst he was her line manager Jane was always very punctual and when service demands necessitated it worked over her contracted hours.

Procedural Flaws

The process followed in this case breaches the provisions of the trust disciplinary policy on a number of counts;

The policy emphasises the expectation that managers will draw shortcomings to the employee's attention and give them the opportunity to improve before considering disciplinary action. Unfortunately, this did not happen in this case.

All allegations will be investigated to determine whether the disciplinary hearing should take place, again this did not happen.

The policy states that the employee is entitled to be represented at any meeting, yet the letter inviting Jane to today's hearing makes no reference.

It is reasonable to suggest that had a proper investigation been undertaken the reason for Jane's late arrival would have been identified and a more positive approach may have been adopted involving the use of the trust's flexible working policy rather than recourse to the disciplinary policy.

Conclusion

Jane does not deny that she was late to work on three occasions during a two-week period. The reason for her late arrival was roadworks on the route from her children's school to work. She was unable to allow more time for her journey because the schools fixed opening hours precluded this.

7. Pre-hearing Preparation

You and your member will need to decide how you will present your case.

For example;

- the member reads the statement and/or does most of the talking
- you read any statement on behalf of the member and do most of the talking
- the member reads any statement and you present the mitigating and other arguments.

In some cases you may decide to question your member during the hearing so it is perfectly acceptable to rehearse with them your lines of questioning. It is not advisable to allow them to write down your questions or produce prepared answers however nervous they are, as this is likely to undermine their credibility with the panel. You may also put to them the kinds of questions you anticipate management will ask (and your witnesses if you have any).

The member should be encouraged:

- To be truthful
- To be polite
- Not to interrupt you
- To listen carefully to the questions and give concise, specific, factual answers
- Not to be confrontational or to argue
- Not to lose their temper
- To address their answers to the panel
- To let you assist if they get confused.



Questioning your Member & the Use of Questions

Asking questions effectively is an important skill in conduction hearings of any sort.

You will only have one opportunity to question witnesses so you must identify all the information you need to get from them and frame suitable questions to ensure you get the information you need.

You may find it useful to have a separate page for each witness and divide the page in half and write the question on one side and leave a space to insert the answer on the other. This allows you to record responses quickly during the hearing.

Question	Answer
What did you say to Mr Jones?	
What time did the incident happen?	

Questions for Investigation Officer and Management Witnesses

Questioning management representatives or their witnesses is often referred to as cross-examination. This differs in a number of respects to questioning your own side. You obviously won't have had the opportunity to question them in advance of the hearing and unless you only explore evidence they have previously provided in written statements their contribution is less predictable than your own witnesses and could be damaging to your case.

First decide whether you need to cross-examine a particular management witness. It is not obligatory for you to do so and you would only wish to if you believe they can reveal particular facts that are helpful to your case.

In relation to your questions:

Prepare the majority of your questions in advance

- Keep them short and specific
- Ask one question at a time
- Take a brief note of key answers on your question sheet
- Don't interrupt the witness when they answer unless their answer is completely irrelevant to question
- Repeat the question if you don't get an answer
- Keep an eye on the panel to ensure they are not looking impatient or disinterested with your line of questioning. If so, move on
- Ask a question even when the answer is known if it will highlight an important point for you
- Don't "push" for evidence, you may get an answer you don't want!
- If you're challenged about a line of questioning, be prepared to outline your rationale for it.
- Your aim during cross-questioning is to clarify points and highlight any inconsistencies or discrepancies in the management evidence.

Questioning Witnesses

The witness should be taken through their statement. You can ask them a series of questions that allow them to outline the evidence provided in the statement. You will want to ensure that your questions are short and simple and worded in such a way that the witness has a clear idea of what is wanted.



If the question has several parts ask one part at a time and get the answer before proceeding to the next part, for example:

Q. **“Did the patient complain of pain during the movement?”**

A. **“No, he didn’t”**

Q. **“Did you actually ask him if the movement was painful?”**

A. **“ Not specifically then, no, but I asked him before starting the shoulder movements to let me know if he felt any pain”**

Avoid asking the member or your witnesses a series of leading questions although it is tempting to do so when the member is nervous. It does not give a particularly good impression to the panel. A leading question is one where it is clear that a particular answer is required, for example;

“When you made that comment to your colleague I don’t think you really meant it did you?”

Unhelpful Answers

You will always find that there are certain answers that are unhelpful to your case. Sometimes it is possible to address them directly, but at other times there is no satisfactory response and you have to let them go and move on. The important thing is not to allow yourself to lose your focus because of one setback.

If evidence emerges that is completely new to you then you should think of asking for an adjournment to allow you to discuss the development with the member for a few minutes.

You will be given the opportunity to cross-examine the investigation officer and the management witnesses during the management presentation. Your earlier analysis of the evidence should allow you to identify in advance many of the questions you want to put them.

Summing Up

Summing up may be little more than reiterating the conclusions of your statement of case. From your analysis of the case you should be able to produce a rough outline of what you plan to say.

During the hearing you may note down additional points you want to add for example where management assumptions or arguments made during the hearing are undermined.

You should ensure the statement covers:

- Facts that were proved or established
- Relevant supporting evidence
- The principal issues the panel should consider when reaching a decision
- Why the panel should find in favour of the member
- Mitigating arguments
- Where appropriate suggested remedies instead of a sanction e.g. training rather than the disciplinary sanction.

8. Witnesses

Identifying Witnesses

In a few cases it may be that you want to use witnesses, or a supporting from them, to help support your member. If this is the case then make sure that there are no inconsistencies

between the testimony of the member and the witness. If there are any inconsistencies these need to be discussed with the member and you will need to think carefully about using them. Remember if you are unsure contact your SNO for advice.



Statements

You should talk to the witness and, if needed, encourage them to provide a written statement or a timetable/diary of events as soon as possible. Statements from both the member and any witnesses can be beneficial for a number of purposes:

- They can assist in the compilation of a written statement of case and provide questions for use at the hearing.
- They can act as a prompt when you take the member or witness through their evidence before and at the hearing
- They will provide a comprehensive record of testimony which can be useful as time passes and recollections fade.

Statements should contain:

- Name, job title, relationship to the case
- The facts of the case based on the individual's first-hand knowledge in chronological order
- Details of documents to which the evidence refers
- Evidence which is likely to be disputed by the other side in cross examination
- The date and recollections of what was said and by whom during the incident(s).

Choosing a Witness

When choosing a witness to attend a hearing you need to consider whether they will be helpful to the member's case. A further important consideration is how they will appear at the hearing. If they are likely to give conflicting evidence or contradict themselves under cross examination you will need to consider very carefully how important their evidence is and whether on balance they are likely to have a positive or negative impact on your case.

You can take steps to try and minimise the anxiety witnesses feel by rehearsing the questioning with them including likely lines of questioning during any cross examination by management. The preparation of a written witness statement that you can take them through at the hearing can also be valuable.

The ideal witness:

- is truthful
- is consistent even under pressure
- answers questions concisely
- does not appear unduly nervous
- doesn't lose their temper
- is not easily led.

CSP Members Appearing As Witnesses

Circumstances sometimes arise where members are asked by the employer to attend meetings as a part of a management investigation and appear as a management witness at

a hearing. This will be because they have witnessed or may have knowledge of an incident or event or it may be as a result of a complaint that they have made about another employee.

CSP stewards will not normally accompany members to meetings such as these. The employer is responsible for providing any reassurance and support that is required by employees in these circumstances. This remains the case even where a CSP steward or officer is representing the individual who is the subject of the allegations and may cross-examine witnesses during the course of the hearing.



Members sometimes feel that this is not fair and that they are entitled to CSP representation; however the role of stewards/ERUS in such cases is to represent the member who is being investigated or is the subject of the hearing that may result in disciplinary action (or capability) being taken against them by their employer.

Where you or the SNO is representing a CSP member at a hearing and another CSP member is a witness or several are witnesses it is difficult for all parties. Even where they are giving evidence that is unhelpful your member's case they must be allowed to do so without interference.

Cross-examination of witnesses is a vital part of the process however and they may need to be pressed and their statement probed to ensure your member gets a fair hearing.

Witnesses are entitled to be treated with respect and should not be subject to oppressive or intimidating behaviour. This can be counterproductive, both in the defence of the member and in terms of your role as a steward after the hearing is over.

9. Final Preparations before the Hearing

Ensure that you and your member know when and where to come to and make sure that you have everything you need, specifically:

- All the documentation you will need during the presentation, including your written statement of case if you have prepared one (sufficient copies for the panel and management representatives if they have not been submitted in advance)
- The management bundle of documents
- Any witness statements
- The disciplinary policy
- The pre-prepared questions and opening and closing statements
- Plenty of paper and pens including highlighter pen.

The process for dealing with disciplinary cases is set out in your local disciplinary procedure. Most include a description of how a disciplinary hearing will be conducted and you should familiarise yourself with this before the hearing takes place so you know what to expect and can explain the process to the member.

10. The Disciplinary Hearing

Usually the steps will be as follows:

Introduction

The chair of the panel will introduce themselves and invite all those present to do so. They will outline the allegations and how the hearing will be conducted e.g. the order in which presentations will be made and clarifying at what point questions can be asked and by whom.

Presentation by the Investigating Officer

The Investigating Officer presents their case. They usually make an opening statement, outlining the steps they took to investigate the allegations and elaborating on their findings.

They call any witnesses that they have previously identified and take them through their evidence as set out in the witness statements that will have been provided to you as part of the management bundle. Witnesses are only allowed to be present when they are giving evidence. At other times they must wait in another room.

Whilst this is going on you will want to make notes of:

- Points that arise that you didn't expect or that the member didn't mention!
- Ambiguities or inconsistencies you will want to explore
- Points that you dispute
- Hearsay evidence
- Confusing or misleading evidence



- Damaging allegations
- Gaps in the evidence
- Breaches of procedure.

If you have thoroughly read and analysed the management evidence during the preparation of your case there shouldn't be too much that you haven't anticipated. In any event you would want to ensure that the questions you ask the investigating officer and witnesses during the hearing address the issues raised.

You will be given the opportunity to seek points of clarification and ask questions (called cross examination) after their initial presentation and after each of the witnesses in turn. Panel members also have the opportunity to ask questions.

The investigating officer is allowed to re-examine any of their witnesses after this process. The purpose of this should be to clarify any points that have arisen during the cross- examination by you or panel members.

Your Presentation

You then take the panel through your case and put questions to any witnesses, if you are using any. In addition to any questions you have discussed with the member prior to the hearing, you may need to ask additional questions to deal with issues that come up during the management case.

The investigating officer is able to ask you, the member and each of the witnesses you call questions or points of clarification. The panel members can also ask questions after the investigating officer has finished questioning the member and each witness.

During this process you should make a note of:

- Any damaging admissions or unqualified statements made
- Ambiguous or misleading answers
- Answers given out of context.

You will then have the opportunity to ask the member and witnesses any additional questions that have arisen that you wish to deal with at this point.

Adjournments

Either party can ask the chair of the panel for an adjournment. During the adjournment both parties withdraw, usually for an agreed time period to allow private discussion. Both parties return at the same time.

This is to ensure there can be no allegation that one party has sought to influence the panel in the absence of the other party.

You would ask for an adjournment:

- To consider any (new) evidence or unexpected developments that arise during the hearing
- To refer back a point and take further instruction from the member
- To restore control: for example where the member or any witness becomes confused or very distressed or loses their temper
- Take stock before the closing statements.

Summing up

Both parties are invited to make a closing statement, usually the management side first.



The Panel Adjourn to Consider the Evidence

The panel adjourns to consider all the evidence that has been presented to them and reach a decision. If during their deliberations they decide that they need clarification from either party they will ask both parties to return whilst the point is explored.

They may ask all parties to wait if they believe they can reach a decision on the same day. Where they anticipate requiring more time for their deliberations they would usually indicate when they expect to have reached a decision and how this will be communicated to the parties. It is possible that the panel decide that they need to investigate the matter further before reaching a decision.

If this is the case you would need to establish that you would have the opportunity to comment on any new evidence and the process for reconvening the hearing at a future date.

Responding to the Decision

If the decision is given on the day and is favourable to the member you would thank the panel and withdraw. If the decision is not favourable, do not allow the member to try and reopen the defence at this point. It is inadvisable to make any comment until you have had time to discuss the outcome with the member and consider whether an appeal is appropriate.

The panel should indicate that they will confirm their decision and the rationale for it in writing, but if this is not made clear you should ask for it, ensuring that a copy is provided for yourself. The letter should detail the penalty and any conditions, for example any improvements required and timescales, as well as the member's right of appeal.

Where the outcome of the hearing is dismissal the letter should state the date of termination. It should also stipulate that there is a right of appeal and identify who this should be addressed to and any time limits that apply.

Stewards should discuss the outcome with the member taking advice from the SNO where appropriate. Any appeal should depend upon the merits of the case and the prospects of success.

If it is agreed that the case should be appealed, the member should lodge the appeal in accordance with the provisions of the local policy adhering to any time limits. If the member is not going to appeal it is advisable for the steward to confirm this in writing to the member to avoid misunderstandings.

The Appeal

Your disciplinary policy should give the member the right to appeal at every stage of the procedure. There are always time limits for submitting an appeal and must be adhered to.

Appeals should consider:

- Whether the decision was inappropriate
- Whether the penalty was unduly severe
- Whether a fair process was followed
- Where new evidence comes to light after the original hearing.



11. How to Deal With Common Problems

The purpose of the meeting is unclear

It is important to establish in advance the purpose and status of any meeting. Sometimes management will try and move straight from what starts out as an investigation meeting into a disciplinary hearing when a member says something that appears to incriminate them. You should intervene and insist that the investigation is completed before any separate hearing is convened.

New information emerges

If the management introduces new evidence during the hearing that you have not seen before, you may ask for an adjournment to consider it or if it is serious and requires further investigation you should ask for the hearing to be stopped and reconvened at a later date to give you the opportunity to do this.

Some disciplinary procedures preclude the introduction of new evidence during the hearing and if yours is one of these you should challenge it.

If you are unable to prevent the new evidence being considered or are not given proper time to consider it and the outcome of the hearing is unfavourable this is likely to be one of your grounds of appeal.

Insufficient time

Preparation for individual casework can be very time-consuming, particularly when stewards are volunteers and trying to undertake this role in addition to their own job. Employers may try to arrange hearings at very short notice allowing insufficient time for you to prepare.

The facilities agreement you have with your employer should stipulate adequate time off for trade union duties and you should cite this in cases of difficulty. Good disciplinary policies should also stipulate reasonable timescales and that dates of the hearings should be mutually agreed.

If you are unable to secure sufficient time to prepare your case adequately you should put your concerns in writing to the HR representative supporting the panel.

Remember you should approach your SNO for advice and support in the event that any of these problems arise.



CSP

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Further information

Enquiries Team

Tel: 020 7306 6666

Email: enquiries@csp.org.uk

This document can be made available
for people with sight problems.

Tel: **020 7306 6666**

This handbook is also available online:

www.csp.org.uk/stewardshandbook

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