



Disciplinary processes: What makes a dismissal fair?

14 May 2022



Introductions

Presenters



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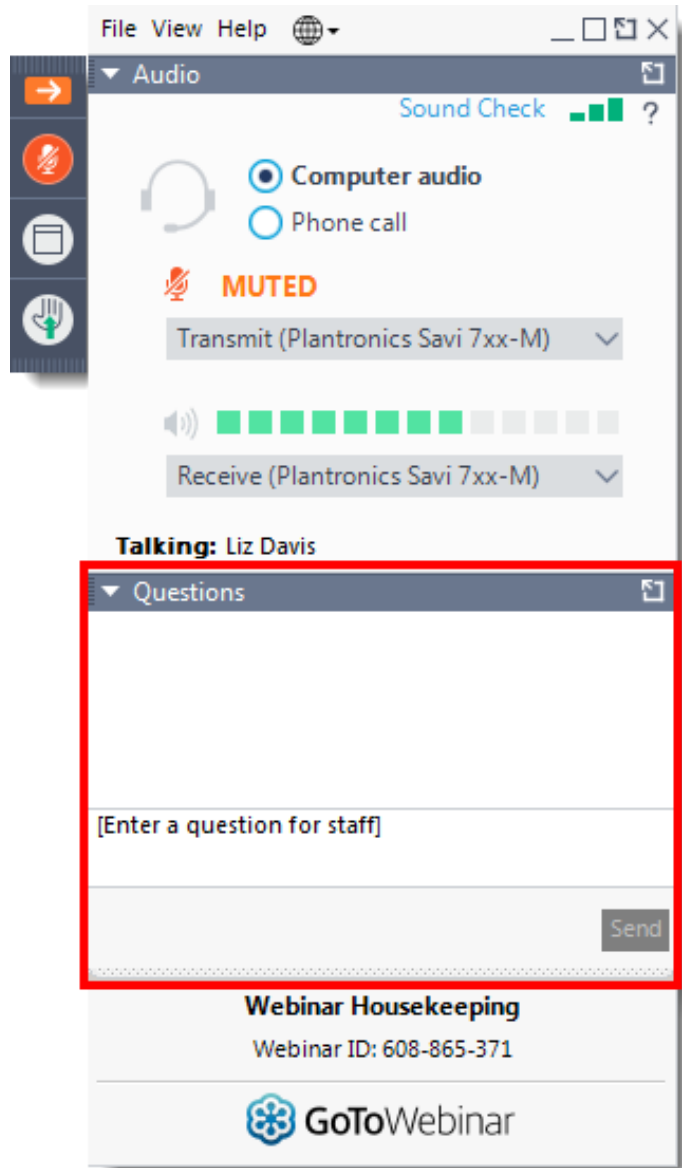




A group of diverse professionals are seated in a modern office environment, likely attending a meeting or training session. In the center, a man with a beard and glasses, wearing a grey cardigan, has his right hand raised high, indicating he wants to ask a question or make a point. To his left, a woman with long dark hair is looking towards him. Behind them, other participants are visible, some looking at their devices. The background features large windows with indoor plants and a bookshelf. The overall atmosphere is professional and collaborative.

How to ask questions

GoToWebinar Housekeeping: Time for Questions



Your Participation

- Please continue to submit your text questions and comments using the Questions panel





Disciplinary processes: What makes a dismissal fair?

12 May 2022

Agenda

- The importance of dismissing fairly
- Policies and procedures
- The legal test
 - Fair reasons to dismiss
 - Acting fairly
- Automatic unfair dismissals
- Line management training
- Q&A



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The importance of dismissing fairly

- Legal duty
 - Employment Rights Act 1996 (ERA)
 - Equality Act 2010
 - Contractual obligations
- Costly if you get it wrong
 - Unfair dismissal (UD) average award £10,812
 - Basic award (£571) & compensatory award cap (cap £93,878 but limited to payment of 52 weeks pay if lower)
 - Bad PR
- Moral duty
 - Treat people as you would like to be treated

Agenda

- The importance of dismissing fairly
- **Policies and procedures**
- The legal test
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The importance of policies and procedures

- Clear, up to date and well communicated essential
- Fundamental to defending a tribunal claim but more importantly preventing a claim in the first place
- They ensure consistent treatment in the management of your employees
- Ensure you comply with employment legislation
- Protects the organisation from tribunal claims

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The legal test



The dismissal was for one of the fair reasons set out in the ERA

The employer acted fairly in all the circumstances in treating the issue as a dismissible offence



Fair reason to dismiss

- Conduct
- Capability
- Redundancy
- Statutory illegality or breach of a statutory restriction
- Some other substantial reason (SOSR)

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Acting fairly

- Employment Rights Act 1996 requires:
 - Proper procedure
 - That the decision was within the band of reasonable responses?
- What does this mean in practice?

Acting fairly: Proper procedure



- Acas code of Practice on Disciplinary and Grievance
- Minimum standards that should be followed
- No legal requirement to follow but a tribunal can make an uplift to the award for any failure to follow these standards

Acting fairly: Proper procedure

- Notification of allegations in writing
- Notification should contain sufficient information about the alleged misconduct, its possible consequences
- Employee allowed to set out their case, answer the allegations, ask questions, present evidence, call witnesses
- Formal warnings must set out the nature of the misconduct and the change in behaviour required and potential consequences of reoccurrence.
- April 2022 webinar looked at [how to write legally compliant conduct allegations](#).

Acting fairly: Proper procedure

- Follow your own company procedure!!
- A thorough investigation is fundamental to the overall disciplinary process
- Main reason for cases failing at tribunal is due to process

The legal test



The dismissal was for one of the fair reasons set out in the ERA

The employer acted fairly in all the circumstances in treating the issue as a dismissible offence



Acting fairly: Decision within the band of reasonable responses

- Tribunal's take account of the size and administration of the employer when considering whether the dismissal was a reasonable response
- A Tribunal will consider the employer's decision to dismiss against an objective standard of a hypothetical reasonable employer
- A tribunal will also consider whether the employer's decision was consistent with how other employees were treated in the same or similar set of circumstances.

Acting fairly: Decision within the band of reasonable responses

- Mitigation must be considered when deliberating on an appropriate outcome
- Having considered the mitigation, is it sufficient to downgrade the sanction or is a dismissal supported?
- **Note!** A dismissal is never an automatic response; other options are available and may be more reasonable
- Final written warning, demotion (if the contract or policy allows)

Acting fairly: Decision within the band of reasonable responses

- That dismissal will not always be the most appropriate response i.e. the outcome
- Options short of dismissal must always be considered – even if you do end up dismissing
- What is a reasonable response to one employer, may not be to another

Acting fairly

- There will be case specific actions
- Your own company policy and procedures
- Any contractual obligations relevant to the employment

Acting fairly

- Warnings issued before dismissing with chance to improve (except GM cases)
- A fair hearing – location, timing, attendees, structure
- Thorough investigation – no stone unturned
- Opportunity to be accompanied
- Right of appeal

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- **Automatic unfair dismissals**
- Line management training

Automatic unfair dismissal

- Occasions where a dismissal is automatically unfair, regardless of the procedure followed.
- Dismissals connected to (not exhaustive):
 - Protected characteristic as per Equality Act 2010
 - Health and Safety activities
 - Whistleblowing
 - Exercising a statutory right
- Many more reasons that could lead to automatic unfair dismissal
- No qualifying service required

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Line management training

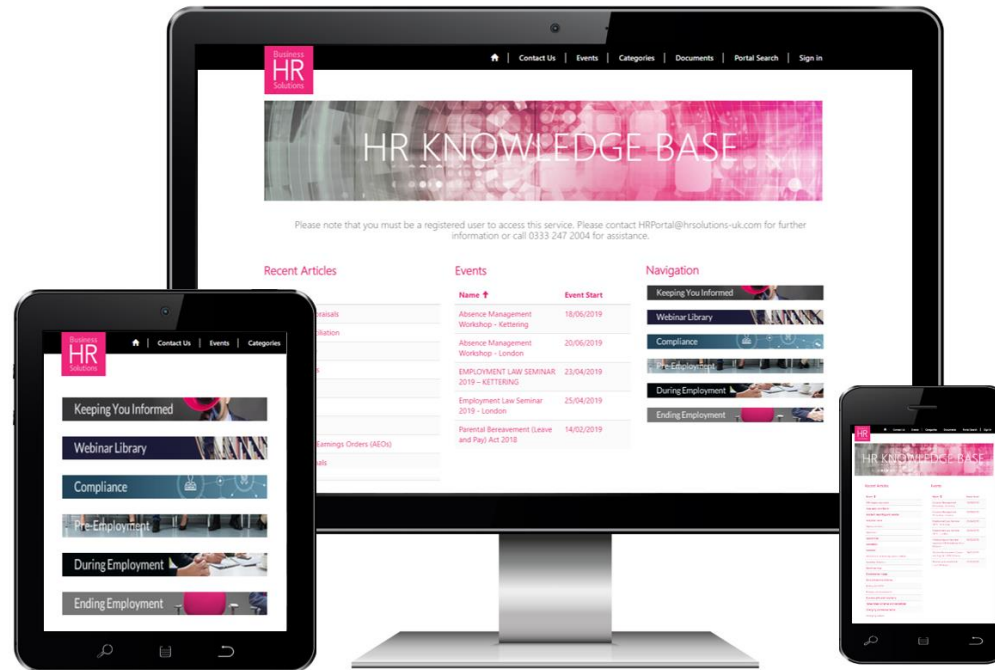
- Handling disciplinary processes require careful handling
- All line managers should be trained in how to manage the disciplinary process including offering refresher training
- Failure to follow a fair procedure, even where the employee is guilty can still lead to an unfair dismissal.





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Find out more: hrsolutions-uk.com/services/business-hr-solutions/



Disciplinary & Grievance Management Development Training

Standard HR policies are put in place to help managers deal with misconduct amongst their employees, and to enable employees to air and resolve any issues in the workplace, yet it takes a skilled manager to get them right.

This CPD accredited, half day course covers the investigation of a disciplinary or a grievance, focusing on the formal process for an appropriate outcome.

Subject Areas:

Ways to dismiss

Informal action

Investigation

Suspension

Disciplinary hearings

Appeals

Reasons to dismiss

Sign up today: <https://www.eventbrite.co.uk/e/disciplinary-grievance-management-development-training-tickets-313296487227>

TRAINING COURSES

HR, Management & Development (Online)

Managing conflict at work 15 June, Thursday | 2pm

* Disciplinary and Grievance 30 June, Thursday | 2pm

Equality & Inclusion 7 July, Thursday | 1.30pm

Managing Poor Performers at Work 13 July, Wednesday | 9.30am

***Continuing Professional Development (CPD)**

****New dates being scheduled****

Book Now!
www.hrsolutions-uk.com/training-courses



TRAINING COURSES

Health & Safety Training Courses

Mental Health Ambassador	27 May, Friday 10.30am – 12.30pm
Level 2 Health & Safety	31 May, Tuesday 9.30am – 4.00pm
Level 3 Safeguarding	14 June, Tuesday 9.30am – 4.00pm
Level 2 Fire Safety/Fire Marshall	21 June, Tuesday 9.30am – 4.00pm
Mental Health Ambassador	24 June, Friday 10.30am – 12.30pm
Level 2 Emergency First Aid at Work	5 July, Tuesday 9.30am – 4.00pm
Level 2 Food Safety	20 September, Tuesday 9.30am – 4.00pm

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UPCOMING HR WEBINARS

Dismissals – what did P&O get wrong?


9 June, Thursday | 10am – 11am

Immigration – the latest developments

14 July, Thursday | 10am – 11am

Trans Equality at Work

11 August, Thursday | 10am – 11am



Save your spot!

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www.hrsolutions-uk.com/upcoming-webinars

HEALTH & SAFETY WEBINARS

An introduction to food safety

19 May, Thursday | 12pm – 1pm

Fire safety laws

26 May, Thursday | 10am – 11am

HSE prosecutions

30 June, Thursday | 10am – 11am

Director's responsibilities in Health and Safety

28 July, Thursday | 10am – 11am

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Further questions?

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TO US

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