

EMPLOYMENT LAW FOR CHARITIES SEMINAR JUNE 2005

MANAGING A FAIR DISMISSAL

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Statutory Procedure

Since October last year the new Statutory Discipline and Grievance Procedures have been in effect. It is not my intention, in this paper, to cover the Regulations or the statutory procedures in any detail.

Under the statutory (three step) procedure, you will have:

First - set out in writing the circumstances which lead you to consider dismissal, send that to the employee and then invite them to attend a meeting to discuss the matter.

Second - hold a meeting. You must give the employee a sufficient opportunity to consider the issue that you have identified in your letter and, at the meeting, you must give them an opportunity to state their case. After the meeting, you must inform the employee of your decision and notify them of their right of appeal.

Third – deal with an appeal if the employee requests. The appeal should be held by someone more senior than the person who made the dismissal, but only if that is possible. After the appeal, you must inform the employee of your final decision.

That procedure is very straight forward. It represents a codification of what has been good practice for many years, but now if you don't get it right then you face a finding of automatic unfair dismissal although the one year rule for bringing a claim does still apply. As an added bonus, if you fail to follow the statutory procedure and there is a finding of unfair dismissal then a tribunal can uplift any award against you by up to 50%. The statutory cap on compensation will still apply.

However, if you do follow the procedure, it does not guarantee that you are going to have made a fair dismissal. If you are looking to make a fair dismissal, your policies and procedures have got to start much earlier than at the stage one letter.

Now I could start with a good piece of lawyerly pessimism and remind you that a decision to dismiss starts even before employment. In a chicken and egg situation, does your contract of employment have a termination clause in it? Does it refer to your Disciplinary Procedures? Have you clearly identified what conduct may lead to disciplinary action being taken? Have you set appropriate performance indicators?

Assuming for now that you have got all this in place, then I propose to focus on the other end of the employment relationship, when dismissal becomes an actual possibility. But first it is important that we remind ourselves of the statutory framework in which a claim of unfair dismissal exists.

Right not to be unfairly dismissed - s94 Employment Rights Act 1996

You should all by now be aware that as a general rule, employees have the right not to be unfairly dismissed. This right is subject to a number of conditions that determine who is eligible to bring such a claim to a tribunal. First, there is the basic concept of whether an individual is or is not an employee. Unfair dismissal does not apply to the wider category of worker to whom more recent employment legislation extends more and more protection.

One of the conditions which most people are familiar with is that the right not to be unfairly dismissed does not apply unless the employee has at least one year's continuous employment. As you might expect, there has been a great deal of case law around the question of how that one year is actually calculated. As a rule of thumb you should take account of notice periods (particularly statutory notice) in calculating whether an individual employee has reached the one year continuous service point. What many do not fully appreciate is that there are more than two dozen exceptions to the one year rule and these exceptions are added to with every new piece of employment legislation. For example, under the new Information Consultation Regulations, a dismissal for a reason connected with an employee exercising their duties as an information and consultation representative will be an automatic unfair dismissal and the one year rule does not apply. Many of the exceptions will not affect you, but you need to be aware of

them, and you need to be aware of the factors that a tribunal look at in determining whether or not a dismissal is fair.

In certain circumstances a dismissal will be automatically unfair if it falls within one of the following categories:

- taking leave for family reasons
- performing health and safety activities
- refusal to work Sundays
- asserting a statutory right
- performing functions as an employee representative
- acting as a trustee of occupational pension scheme
- making a protected disclosure
- rights of a part-time worker or fixed term employee
- participation in protected industrial action
- involvement in trade union membership or activities
- trade union recognition
- working time issues
- selection for redundancy because of an automatically unfair reason
- discrimination, victimisation and harassment

In some cases the one year rule still applies but dismissal will still be automatically unfair if it is in connection with:

- a spent conviction
- flexible working
- TUPE transfer
- failure to follow the statutory dismissal procedure

In addition the compensation cap won't always apply in cases where there is an automatic unfair dismissal, for example where a dismissal is in connection with a protected disclosure or in relation to health and safety activities.

As matters currently stand an employee is not eligible to bring a claim for unfair dismissal where at the effective date of dismissal they have already reached either the normal retiring age relating

to the undertaking in which they are employed or in any other case the age of 65 years. In addition a claim for unfair dismissal will need to be presented to a tribunal within three months of the effective date of dismissal. This rule has always been subject to the tribunal's discretion to extend the time limit where it was not reasonably practicable for the complaint to be presented before the end of that period of three months. The rule has also been made a lot more complicated following introduction of the Statutory Discipline and Grievance Procedures where the time limit can be extended by up to an additional three months.

What is a dismissal?

Most may think that they know what a dismissal is. If you tell someone that they are sacked then that will generally do the trick and there is no dispute about whether or not there has been a dismissal. What about where the employee resigns? Has he been dismissed?

There are a number of situations where there will be a deemed dismissal, but again these are likely to be familiar to you, or perhaps seem common sense:

- Where you are in breach of contract and the employee resigns as a result – known as constructive dismissal
- A heat of the moment resignation which is withdrawn but you do not allow the employee back
- Pressuring an employee to resign, or agreeing a termination payment if the employee resigns
- Failure to renew a fixed term contract
- Failure to allow an employee to return from maternity leave
- Death of the employer

Some common examples of matters that may amount to a constructive dismissal are

- Failure to pay wages on time
- Suspension with out pay without an express contractual right
- Changes to working hours
- But you should also be aware that significant developments have been made in the last few years in relation to the implied duty of trust and confidence where breach of the duty will amount to a breach of contract so that a dismissal may arise where there has been:
 - verbal abuse or bullying

- failure to deal with grievances promptly
- false accusations
- treatment that undermines an individual's authority
- lack of support and excessive workloads

The Unfair dismissal test - s98 Employment Rights Act 1996

In looking at a claim for unfair dismissal, a tribunal has two tests to consider. The first is whether the employer can show that the reason for dismissal is one of the five potentially fair reasons, which relate to:

- Capability
- Conduct
- Redundancy
- Contravention of a statutory provision; or
- Some other substantial reason

If you can satisfy a tribunal that you come within one of those five potentially fair reasons for dismissal then the tribunal will look at the question whether in the circumstances (including the size and administrative resources of your undertaking) you acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee and that test is determined in accordance with equity and the substantial merits of the case. Here the tribunal is permitted to take into account any circumstances that it considers relevant to the dismissal and that includes the manner in which the decision was taken.

It is not for the tribunal to impose its own decision on an employer, but to question whether a reasonable employer, acting reasonably could have reached that decision. The tribunal approaches this question on the basis that there is a band of reasonable responses that could have been made in the circumstances. This has been criticised as creating a type of perversity test in that the tribunal will only overturn a decision, and make a finding of unfair dismissal, if no reasonable employer could possibly have acted in such a way. Nonetheless that is the test you are faced with.

Having set the eligibility criteria by way of background, I want to focus on some of the common factors between all of the potentially fair reasons for dismissal which surround the manner in which you have managed the dismissal.

Confidentiality

The first issue that you may want to consider when you receive or a complaint against an employee or notification of any alleged misconduct is the question of confidentiality. You may receive an anonymous complaint, or you may receive a complaint from someone who makes it clear that they will only assist in any disciplinary procedure if their identity is kept confidential.

This doesn't stop you from initiating your disciplinary procedure. You do have to be careful, particularly because the complaint can be motivated by malice. It is always going to be better if you can present all of your evidence against an employee to allow them to challenge the person who claims to have witnessed. However, the request for confidentiality may be based on genuine grounds, for example through fear of retaliation particularly where employees are drawn from a small local community. As you will appreciate with anything to do with a potential tribunal claim, every case is considered on its own individual merit, but even the most outlined and anonymous complaint can give you reason enough to begin an investigation.

Suspension

The question of suspension is very simple. If your contract of employment does not give you a power to suspend - don't do it. If you suspend where there is no power or if you allow a suspension to run to eight days when you are only allowed to suspend for seven days you are in breach of contract and that may lead to a claim for constructive dismissal which you would have a difficult time in defending.

Where there is a power to suspend, often it is restricted to an allegation of gross misconduct. If that is the case, then don't suspend if the complaint isn't one that will amount to gross misconduct.

As a general principle you should only consider suspending an employee if you have the power to do so and there is a genuine threat of harm or damage either to the individual or to others or the suspension is reasonably necessary in order to conduct your investigation without hindrance.

A particular problem often arises where an employee is accused of criminal activity involving the police. You may find that the police ask you simply to suspend the employee and not follow through any disciplinary procedure whilst they conduct their own investigation and any criminal proceedings. If you don't have the power to suspend, or you can only suspend for a limited period of time it doesn't matter what the police have asked, you will be in breach of contract and the employee will be entitled to claim damages for that breach and potentially compensation for an unfair dismissal. You should always consider the circumstances of the conduct and whether it may be reasonable for you to shift that employee onto some other duties. If not then you should consider completing your own disciplinary process.

Investigation

Before taking any disciplinary action you must have conducted as full and fair an investigation as possible. One of the biggest dangers to an employer is to make an assumption without checking it out. In terms of any disciplinary procedure, if you want to make an assumption, assume that the tribunal will find the dismissal unfair.

When it comes to the investigation - do your homework. Tribunals will often pay more attention to the investigation process than the actual disciplinary meeting.

Ideally, the person who undertakes the investigation should not be the person who is actually going to conduct any disciplinary meeting. Size and resource may make that impossible.

It is important that you talk to any potential witnesses and that proper written records are kept. As part of your investigation, you should meet with the employee against whom any complaint has been made. Whilst you will need to identify the nature of the issues which are to be discussed you should make it clear that any meeting forms part of an investigation and it is not a disciplinary meeting.

In cases of sickness absence a meeting with the employee is an essential part of your investigation. You need to know what the reason for the absence is, whether there is any underlying medical condition and what the prognosis is for a return to work. Often this will require you to consider medical evidence but unless you happen to be a doctor disciplining your own staff, you will not be expected to have any medical knowledge or understanding. You are entitled to rely upon any medical evidence that is given to you whether that is by the employee,

their GP, or a specialist that either they have been referred to, or one that you have asked them to see. Where there may be a conflict of medical evidence, you do not have to work out which is correct.

If the employee refuses to co-operate, then you will have to act upon the facts that are within your knowledge. You cannot assume any sinister reason for the refusal and you should not dismiss on the basis of any refusal, although a refusal may warrant separate disciplinary action on the basis of a breach of contract, where your contracts of employment require your staff to co-operate with a request to undertake a medical. As I've said before, managing your dismissal involves a proper consideration of the terms of your contracts of employment.

Whilst you should always be cautious about proceeding in the absence of a medical report, that is not the same as being afraid of being proactive in dealing with the situation. A tribunal may decide that you acted unreasonably where you were not in a proper position to judge whether the dismissal was an appropriate course but if the employee won't co-operate there is nothing more that you can do. Equally, you should not have to wait for months for an employee to be referred to a specialist where the circumstances of the role require that the duties are immediately assigned and it may be unreasonable to expect colleagues to cover the additional workload or impossible to find temporary cover. Clearly both those alternatives would have to be investigated as part of any decision.

In the cases of redundancy or a potential TUPE transfer an investigation would also encompass the obligation to consult with affected staff. Remember that redundancy is still a dismissal and only potentially fair if the tribunal is satisfied that the decision to dismiss was reasonable in all the circumstances.

Common issues that arise in an investigation will determine the strength of any complaint against an employee. For example, were rules properly communicated to staff and explained? Were those rules clear or is there any ambiguity? How have other employees been treated and is there any issue of consistency?

Employees are not entitled to cross examine witnesses, but can question what has been said, or if only statements are provided the employee can question what has been put into the statement.

Such matters may require that you make further investigation, possibly reconvening the meeting with the employee when you have further details or answers.

It is good practice to allow an employee to be accompanied during such meetings, particularly so where it is likely that some disciplinary sanction such as dismissal may be under consideration, and my comments below, concerning companions, applies.

Consideration

After the investigation has been completed, it is still necessary that a decision be taken on what the appropriate course of action is going to be. The evidence that you have uncovered may suggest that no action is warranted or that the matter can be dealt with at an informal level. Only where it is decided that a formal process is required do you then need to consider the formal steps.

The Stage One Disciplinary Letter

Make sure that the letter is clear that the disciplinary procedure is being applied and that the relevant requirements of the statutory procedure are met.

- The letter must identify the circumstances under consideration. You do not have to provide these in detail and as part of an investigation you may already have discussed much of the detail with the employee.
- Make it clear that he has a right to be accompanied at the meeting.
- Confirm what the arrangements for the meeting will be.
- You must identify where dismissal may be considered that that is the case.

Companions

An employee has a statutory right to be accompanied at any disciplinary meeting by a work colleague or a trade union official. The union representative does not have to be part of any recognised union, nor does the employee have to belong to that union.

You should also consider your own contractual procedures. Sometimes these do allow the employee to bring a friend so don't be surprised if you suddenly find your employee is best mates with a solicitor who happens to be an employment law expert. The request to be accompanied must be reasonable so you can refuse the request where, for example, the employee

wishes to have a colleague present who you believe may hinder the meeting or where it is not reasonable for them to attend. An employee can not insist that a particular colleague attends if that colleague refuses, but where that is the case always consider why there may be a refusal and make certain that it isn't because the colleague fears reprisals.

A colleague who accompanies is entitled to a reasonable amount of paid time off to fulfil that responsibility, including time to prepare for the hearing.

Where you have set a hearing date the employee is entitled to request an alternative time and date where the chosen companion cannot attend. The employee should suggest a date within five days of the original date. If that meeting cannot be held then you do not have to agree to any further request for an adjournment, but it will be good practice to try and re-arrange a convenient time provided that you are properly managing any delay to the process. It is also good practice to make clear in your own disciplinary procedures that in the event that the employee or companion cannot attend you do have the right to proceed with the hearing in their absence.

I referred to managing any delay to the disciplinary processes. One of the important factors in managing a fair dismissal is to avoid unreasonable delay. Clearly where meetings have to be re-arranged to accommodate the employee or their companion then the delay is not of your making, but you must still be proactive in pursuing alternative dates, suggesting alternative companions, seeking written representations from the employee and ultimately in dealing with the disciplinary matter, even if that is in the absence of the employee.

However, you need to be particularly aware of any reason for delay or non attendance which may relate to a disability where you will be obliged to make reasonable adjustments to your disciplinary procedures to accommodate that disability.

The companions rights have been extended are they are no longer simply a witness but are entitled to address the hearing and to put questions to witnesses. The companion does not have the right to answer questions on behalf of the employee but is allowed to confer. Good practice is to allow the companion to play as full a part in the proceedings as the employee wishes. However, it is not the companion's role to interfere with the conduct of the meeting and you would be entitled to ask them to leave or to re-arrange the hearing and request (although the

choice of companion remains with the employee) an alternative companion if they become disruptive.

If you fail to allow the employee to exercise their right to be accompanied, a complaint can be made to the tribunal with compensation of up to two weeks pay. Denying the right to be accompanied would also taint the disciplinary procedure sufficient for that procedure to be unfair.

The Meeting Itself

It is important that you give proper consideration to where and when the meeting will be held and the atmosphere that will be created. You should seek a private location and ensure that there are no interruptions. The meeting room itself should be arranged in as a non-confrontational manner as possible. You should ensure that the meeting takes place, and can be completed, within the employee's normal working hours.

Again, pay particular attention to any disability access issues. Not only must you ensure that physical means of access are appropriate you must take account of the fact that your duty to make reasonable adjustments extends to the disciplinary procedures itself, for example, where an employee may through some mental incapacity have difficulty with comprehending the procedure.

One of the issues that often confuses employers is presenting evidence. In general terms the purpose of the disciplinary meeting is not to determine the facts of the matter as that will have been undertaken in concluding the investigation. The disciplinary meeting is more concerned with the question of the appropriate sanction and any challenge to the facts can be identified as properly a matter of appeal. However, it is important that the facts are put to the employee and he is given an opportunity of responding.

It is good practice, where possible, that the individual who has made the initial investigation and who decided that there was a disciplinary matter to be taken further should present a report on their investigation and present all of the relevant evidence, including any witnesses or their statements to the person who is conducting the disciplinary hearing. As I have already said, resources may not make this possible and it is often the case that the person who undertook the investigation is the same person who will actually meet with the employee again and they will

present their own findings. In either case the employee should respond, although a thorough investigation involving the employee will already have raised most relevant matters so that the employee will have little to add other than in relation to the disciplinary sanction that may be applied. Always remember that if necessary you should make any further investigation into new matters or information that may have been identified during the meeting.

During the disciplinary meeting it is important that you try not to give any indication of the way your mind is going, although the possibility of dismissal should have been made clear in the Stage One letter. It is important that you maintain an open mind throughout. At the end of the meeting make it clear that you will take time to properly deliberate on all that has been said.

Without Prejudice Questions

At some stage during a disciplinary procedure where it becomes apparent that you may be considering a dismissal, you may want to give thought to reaching some form of a negotiated exit, particularly under a compromise agreement.

Without prejudice negotiations are intended to settle a potential dispute between two parties. There is no dispute until the employee has actually been notified that there is some issue for them to answer within the disciplinary procedure

You can't simply open negotiations on the basis of without prejudice discussions without some indication from the employee that they are willing to negotiate the termination of their employment. You should give an employee advance warning that you wish to have a without prejudice discussion and ask them to consent. If you don't do this then the negotiations will not have any protected status and an employee can rely upon statements to the effect that 'they are going and the only question is on what terms' as evidence as a constructive and unfair dismissal.

Even if a discussion is without prejudice it is only matters relating to any potential settlement which are protected from disclosure. An employee can still refer to things that are said, or the way in which such a meeting was held to give examples of unfair treatment.

You must always make it clear that a negotiated settlement is an option which the employee can accept at their discretion. If they do not wish to accept a compromise, then you must make it clear that the employment relationship will continue albeit that it may be subject to any ongoing

disciplinary procedures. At no stage can you make any suggestion that the outcome of that process will be a dismissal as that will give clear evidence of an unfair procedure where the outcome has been pre-determined. Remember that offering an employee money to resign, or a good reference if they go quietly, can amount to constructive dismissal.

Compromise Agreements and the COT 3 compared

In using a compromise agreement you should also be aware of its limitations. The statutory procedure requires that the compromise settles a specific complaint. In practice, compromise agreements have become somewhat all encompassing covering all statutory and other claims that may exist by the employee against the employer.

At this point, all I want to do is contrast effective compromise agreement with the effect of a COT 3 settlement which is the ACAS conciliated settlement of a claim that has been brought in an employment tribunal.

A COT 3 settlement is usually on a full and final basis and it has that effect. A compromise agreement is a contract that will only cover the claims that are incorporated into it as are permitted by the statutory rules that govern compromise agreement ie. the specific complaints that have been raised in relation to the dispute. There remains a big question mark over the effectiveness of a compromise agreement in relation to claims that are subsequently discovered, even though the agreement itself may try to incorporate those type of claims. An example might help explain this point: if you take the standard form of compromise agreement an employee is asked to sign as part of a termination settlement and ask them to sign that agreement immediately after they have started to work with you – how effective do you think that agreement is going to be? Will a tribunal hold that it covers any claim that may arise during the course of employment? It is unlikely that a tribunal will uphold a compromise agreement in those circumstances.

Some compromise agreements are entered into weeks or months before the employment relationship actually terminates. On its wording a compromise agreement can include any issues that might arise in those remaining months of employment, but again it is questionable whether a tribunal would uphold the agreement in relation to a specific complaint that doesn't exist and isn't contemplated.

Ex-Gratia Payments

There are specific consideration that applies to charities in relation to termination payments. Trustees are under a duty to ensure the proper application of charitable funds for the charities charitable objects. However, a charity is permitted to make payments that are necessary in the ordinary pursuit of those objects. There is no dispute that a charity can pay to employ staff (although there is always a question whether a charity may have the requisite power to employ staff which is a matter for the charity's constitution or other governing documents and outside the remit of this paper), but in the proper application of charitable funds, a charity should only make payments that are reasonably necessary, for example, in terms of ensuring that it can attract and keep suitably qualified and experienced staff.

Where an employee has brought a claim in a tribunal it is far easier for the trustees to justify a payment since it will be in settlement of a genuine dispute. There are also the usual commercial consideration of the time and cost involved in. The difficulty for trustees arises in relation to any payment as part of a termination settlement where it will be more difficult for the trustees to establish that the payment is properly made in furtherance of the charitable objects.

This does not mean to say that the payment cannot be made, but rather that, for a charity at least, further and proper consideration needs to be made at an appropriate level and in accordance with appropriate procedures in order for ex-gratia termination settlements to be made. It is not appropriate for such payments to be made as a matter of course by staff without proper authorisation and checks by the trustees in order that the trustees can ensure that they are satisfying their duties.

Alternatives

Always consider whether there is an alternative to dismissal.

- If there are performance factors, are they simply the result of your exaggerated expectations of what can reasonably be achieved? Do you need to consider changing your expectations?
- Does the conduct deserve a dismissal? Dismissal for a first offence which in itself is not gross misconduct will seldom be fair.
- Does the employee's previous behaviour, length of service or loyalty deserve some sanction other than dismissal?

- Are there any other mitigating factors?
- Remember that in some circumstances you are obliged to consider alternatives such as in the case of redundancy or where an employee's disability may be a relevant factor.

Consider what power you have to transfer an employee, demote them or subject them to some other sanction rather than dismissal. Check your disciplinary procedures. These questions should already have been answered as part of a process of prior warnings, or as a minimum as part of the investigation process. If you are the one making the decision to dismiss and you don't know the answer to these questions then you can hardly be acting fairly.

But remember that the tribunal test remains whether you acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the employee.

The Dismissal

Unless the employee is still under a suspension or absent for some other reason a decision to dismiss should always be communicated in person and a written letter confirming the decision handed to the employee or posted

When notifying the employee in person you do not need to give any reasons, although there is nothing to prevent you from doing so. You should be prepared for the question, but you may wish to make it clear that a dismissal letter will set out the decision in more detail. You should avoid getting drawn into any discussion about the decision other than to make it clear that if the employee disagrees with the decision the appropriate action is to appeal.

The dismissal letter must be clear as to the reason for dismissal, identifying any relevant conduct, including any relevant past warnings. You should also identify, if it is relevant, why any alternatives to dismissal are not considered appropriate. The dismissal should be made clear as well as any relevant terms such as notice (unless dismissal is for gross misconduct) salary to date, holiday entitlement and practical matters such as dealing with personal items.

Here, I want to make the point that as part of any dismissal process it is your responsibility as an employer to make it clear why you are disciplining someone, why you are dismissing them and if you don't make it clear then you won't get any sympathy from the tribunal.

Appeal

Ensuring that you are managing a fair dismissal doesn't end when you actually dismiss an employee. Remember that the employee has a right of appeal and ensure that the right is identified and if any appeal is made, that what I have said above about conducting a meeting is followed again. It is possible to remedy defects in the initial dismissal as part of any appeal, although procedural defects now have less significance provided that the Statutory Disciplinary Procedure is followed.

The first consideration is often one of who should hear the appeal. It will ideally be someone more senior than the person who made the decision to dismiss. In any organisations this can be difficult because there simply may not be anyone else. Remember that the Tribunal will take into account an employers size and resources in determining what was fair and reasonable. It may be that an appeal is nothing more than asking the same person to reconsider their decision. If this is going to be the case then the disciplinary procedure should make it clear how the appeal is to be heard.

Another issue is whether the appeal should be a complete rehearing of the disciplinary hearing. It does not have to be and can restrict itself to re-considering the actual decision to dismiss in the light of any further circumstances which have been set out in any grounds of appeal.

One problem which charities often find themselves in (although they are no different from commercial enterprises in this regard) is that when a dismissal is first considered it is discussed openly at board level and you find that all of the trustees feel that they have been conflicted out of actually making a decision in the matter. Many boards who have discussed a particular disciplinary matter may actually fail to see that there is any conflict at all in their subsequently being involved in a dismissal or appeal.

It is good practice for charities that do not have a dedicated HR function to establish a HR sub-committee of their board of trustees. Ideally this should comprise of three trustees with relevant experience, or who have received specific training in dealing with disciplinary procedures. Trustee training should also include equal opportunities. The sub-committee can then be called upon either to form a disciplinary panel in matters which may give rise to a dismissal, or as an appeal committee. The remainder of the board should refrain from any involvement unless

there is a specific requirement which may include acting as an appeal committee itself, particularly for the most senior of staff.

Where there has been any prior involvement or deliberations, particularly amongst board members, or between the individual and the persons hearing the appeal there is likely to be some suggestion, particularly on behalf of the employee that such involvement means that the appeal will have been pre-determined. As with the disciplinary hearing it is important that the person conducting the hearing and who will be making the decision comes to the matter with an open mind.

To seek to minimise this as an issue it is becoming more common place for employers to effectively outsource their appeal functions. HR consultants are in high demand. But remember that since the employer will be paying the consultants fees there is always going to be a suggestion of some bias or pressure to make the 'right' decision.

Conclusion

I'd like to say that if you have followed all that I have said above, then you can relax and congratulate yourself on managing a fair dismissal. Unfortunately, as I'm sure that you all appreciate, each tribunal case is determined on its own facts. I have highlighted many of the common factors that will arise in any dismissal. It is the nature of a paper of this kind that I can only touch on matters that you should take into account.

However if you have followed all that I have said above and considered all of the relevant factors then you should congratulate yourself on having made a reasonable attempt to deal with the dismissal in a fair manner and you should be reasonably confident that a tribunal will not challenge the manner of your dismissal.

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