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By signing below, I confirm that the work presented is my own, unaided work. I understand the regulations pertaining to candidate malpractice and the action that may be taken as a result.

Signed: *N. Williams*

Date: 8th May 2021

Glossary of Terms

- Acas - Advisory, conciliation and arbitration service
- ET – Employment Tribunal
- H&S – Health and Safety
- PIDA – Public Interest Disclosure Act

HRM Issues at Big Buses Limited

Section A

1.)

- **ET1 Process:**

According to GOV.UK (2021a), the relevant regional office of the Employment Tribunal (ET) receives the claim to the tribunal and a copy is sent to the respondent known as an ET1. The respondent is also sent a form in the post known as an ET3 as well as an ET2 which details the period of 28 days in which the ET3 should be completed and returned to the ET. 28 days is from the date that the form is sent, not the date that it is received (Munro, 2015). This form can be sent to the ET by post or by email. As well as confirming details of the claimant and the respondent such as full name and address, the ET3 requires the respondent to outline its defence of the claim. If the respondent wants to request an extension to the time limit to make a response it must do so within 28 days of receiving the claim form. When the 28 day period has elapsed, the case will be listed for either a full hearing or a preliminary hearing in the ET. If the respondent does not respond within 28 days, the case will still be listed, and the respondent will lose their right to take any further part in the proceedings. A copy of the completed ET3 is sent to the claimant by the ET (Taylor and Wilkson, 2016).

- **Detail of the ground of any claim being brought:**

Ordinary Unfair Dismissal

According to Lewis and Sargeant (2019), ordinary unfair dismissal is when an employer does not follow a full and fair procedure. In this case, an employee could win a case for unfair dismissal even if the reason for dismissal was valid. The procedure that has been undertaken by the employer will be considered when the case reaches an ET. Case law that is usually referred to when looking at ordinary unfair dismissal claims is the British Home Stores versus Burchell (1980) IRLR 379 case where in order to fairly dismiss someone for misconduct, the employer needs to form a genuine belief, based on reasonable grounds, following a reasonable investigation that the employee had committed the misconduct complained on (Medhurst, 2018). The below reasons demonstrate that a reasonable investigation was not followed and therefore Gethin can claim for unfair dismissal:

• Gethin has worked for the company for more than two years (since 2014) and has an employee employment status. Gethin has also brought the claim within 3 months less one day of the dismissal (in this case 15 days of the dismissal). These meet the criteria set out by Acas (Advisory, Conciliation and Arbitration Service) for bringing an unfair dismissal claim (Acas, 2021).
• In the meeting with Steve Smith after the altercation, Steve handed Gethin a letter to attend a disciplinary meeting. This demonstrates that Steve had already decided that a disciplinary meeting would be held before conducting a fair and thorough investigation. It is only after an investigation where there is a case to answer, Steve can invite him to attend a disciplinary meeting. This is stated in the Acas code of practice on disciplinary and grievances (Acas, 2021b).
• The investigation was conducted after a disciplinary letter was given to Gethin but should have been conducted before (Acas, 2021b), (Daniels, 2019).
• The investigation should have been conducted by somebody who is not involved in the case for instance, another manager, HR or external investigating officer. This is to make sure that the process is fair. Steve was a witness to the altercation and therefore, should have been interviewed as a witness and should not have investigated or be involved in the disciplinary hearing (Honeyball and Bowers, 2012), (Acas, 2021b).

• A different person is advised to handle each step of the disciplinary procedure for instance, the investigation, the disciplinary hearing/outcome and the appeal hearing (Acas, 2021b) (Willey, 2012). In this instance, both Gavin and Steve conducted the investigation and disciplinary hearing.
• Steve should not have been involved in the investigation or disciplinary hearing because of the previous break down in relationship where Gethin has continually raised complaints to Steve about the working environment during COVID-19. Gethin claims that Steve had never liked him in his ET1. This leads to an unfair procedure.
• Steve and Gavin did not let Gethin state his case, answer any allegations that have been made, ask questions or present evidence in the disciplinary hearing which is not in line with the Acas code of practice on disciplinary and grievances (Willey, 2012), (Acas, 2021).
• The investigation that was conducted was only provided to Gavin and Steve and was not provided to Gethin prior to the meeting or in the meeting for him to state his case against what was raised in the findings of the investigation (Acas, 2021), (Honeyball and Bowers, 2012).
• The company should have told Gethin that they were going to investigate in writing. The company should have told Gethin why they are carrying out an investigation, by who, what there are going to do, that they need to talk to witnesses, how long it could take, what will happen next and state that everything will be kept confidential (Acas, 2021). Instead, the company informed Gethin afterwards that they had spoken to other mechanics on duty at the time that the incident had taken place.
• According to Acas (2021c), the recommended time frame to appeal against the outcome is 5 working days from receiving the outcome. In the outcome letter to Gethin, the company gives him only 72 hours to appeal (3 working days). The company did not give Gethin enough time to appeal against the decision.

Automatic unfair dismissal – making a protected disclosure

If the main reason for dismissing an employee is because of their involvement in whistleblowing, then this is automatic unfair dismissal (Collins, 2012). The Public Interest Disclosure Act (1996), section 103A creates 2 levels of protection for whistle-blowers. *“The dismissal of an employee will be automatically unfair if the reason for the dismissal is that they have made a protected disclosure”*. This act also *“protects workers from being subjected to any detriment on the ground that they have made a protected disclosure”*. A protected disclosure has two components:

What was disclosed: a disclosure is made when a worker provides information that they reasonably believe shows wrongdoing that falls under one of the six categories set out in the legislation. In this case, Gethin made a disclosure regarding the poor health and safety procedures of the company with poor enforcement of employees wearing face masks. This falls under the category of *“health or safety of any individual has been, is being or is likely to be endangered”*. When making a disclosure the worker must also reasonably believe that the disclosure is in the public interest. We can assume that Gethin’s disclosure was in the public interest as it can impact on other employee’s health and safety within the company (Public Interest Disclosure Act, 1996, Section 103A).

Who was the disclosure made to: depending on who a worker makes the disclosure to; the law sets out a number of legal tests that a worker must satisfy in order to be protected (Public Interest Disclosure Act, 1996, Section 103A). Gethin made the disclosure to Steve a number of times, but insisted that the company did not do anything about it apart from putting more hands, face and space signs up.

Gethin also has statutory whistleblowing obligations for example, the obligation to notify management of any risk to health and safety under regulation 14 of the management of Health and Safety at work regulations (1974). As Gethin has made a protected disclosure and has been treated negatively by dismissal then this is a breach of his legal rights under the act. Gethin has the right under this legislation to bring a claim for compensation at an ET.

Wrongful dismissal

According to CIPD (2020a), wrongful dismissal is when an employer has breached an employee's contract. Wrongful dismissal is usually to do with notice or notice pay. The company did not pay Gethin his notice pay and therefore, the company was in breach of contract. The notice period an employee is entitled to is normally set out in their contract of employment (CIPD, 2020a). If there is no contract of employment Gethin is entitled to the minimum notice period (Acas, 2021a):

- Working for two years – 2 weeks
- Every year after two years – add 1 additional week up to a maximum of 12 weeks.

Gethin is entitled to 6 weeks' notice pay which he did not receive from the company (March 2014 - November 2020). His contract of employment could provide Gethin with additional notice. Gethin would also be entitled to receive accrued holiday and any other pension/employment contributions (Acas, 2021).

Automatic unfair dismissal on the ground of rising Health and Safety (H&S) concerns

Gethin can claim automatic unfair dismissal on the ground of rising H&S concerns according to the Employment Rights Act (1996) section 100 if the reason for the dismissal is that he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed was harmful or potentially harmful to health or safety.

Gethin brought to the attention of Steve circumstances connected to his work such as the failure of people wearing face masks which he believed was harmful to his and other employees' H&S. Gethin felt that Steve did not deal with this complaint properly. Steve's action was to only put more "hands, face and space" signs up.

• Defences to the claim:

Defence against ordinary unfair dismissal

• The incident that took place is considered gross misconduct. According to CIPD (2020b), gross misconduct can include "physical violence" which is what took place between Gethin and Robert, where Robert was pushed to the floor.
• Gethin was not wearing a face mask when he approached Steve after the incident took place which is not in line with the Coronavirus Act (2020). Gethin also caused a major health and safety concern during the altercation with Robert where chemicals and containers were knocked to the floor causing a workplace hazard. This was in breach of the Health and Safety at Work Act (1974).
• Gethin claims that he was provoked by Robert however, there were no witnesses to him being provoked.

- | |
|---|
| <ul style="list-style-type: none"> • The company formed a reasonable belief based on reasonable grounds following a reasonable investigation that Gethin was not provoked. The company asked Robert for his statement which confirmed that he did not provoke Gethin. There was no evidence apart from the large storage containers and tools being knocked to the floor and the spillage of chemicals. Steve also said he saw Robert on the floor with Gethin standing over him and stated that it was obvious that Gethin had pushed Robert. |
| <ul style="list-style-type: none"> • Gethin did not deny pushing Robert to the floor and said that he was provoked. According to Steve, Gethin did not “provide no satisfactory explanation over his assault or his failure to wear a face mask”. |

Defence against automatic unfair dismissal -Making a protected disclosure

The company put signs up to remind employees of “hands, face and space”. The company sent out a number of communications to staff to remind them to comply with Health and Safety procedures and to wear face masks.

From Gethin’s ET1 he claims that he raised the issue of face masks to Steve however, in Steve’s statement he does not accept or deny this. Gethin needs to demonstrate that he was dismissed because of the protected disclosure he made to Steve. If he did not raise this with Steve then this demonstrates that Gethin was not dismissed based on making a protected disclosure as he was unaware of it. If Gethin did raise this issue with Steve, the reason for dismissal was not based on him making a protected disclosure, but it was based on gross misconduct with him pushing Robert to the floor. This demonstrates that there is no link between making a protected disclosure and the reason he was dismissed. This can be linked to the Panayiotou v Kernaghan & Anor claim where the reason Panayiotou was dismissed was related to him becoming unmanageable and not related to his previous protected disclosures (Hadrill, 2016).

Defence against wrongful dismissal

The company believed that the incident was gross misconduct and believed that they could dismiss Gethin without notice or any further payment because it was an unprovoked attack on another employee and was a breach of the employment contract (CIPD, 2020b). A claim that is usually referred to at an ET with regards to this is the Pepper V Webb (1969) WLR 514 case where an employee was terminated by summary dismissal because of foul language, standard of work and poor manner. This demonstrated that he had breached the contract of employment and so summary dismissal was justified (Colling Biggers & Paisley Lawyers, 2012).

Defence against automatic unfair dismissal on the ground of rising Health and Safety (H&S) concerns

Similarly, to the defence to Whistleblowing, Gethin needs to demonstrate that he was dismissed because of the health and safety concerns he brought to the attention of Steve (Daniels, 2019). If he did raise this issue with Steve, the reason for dismissal was not based on him raising this issue, but it was based on the altercation between Gethin and Robert where Steve witnessed Gethin not wearing a face mask and Gethin standing over Robert on the floor.

• **Strengths and weaknesses of the claim:**

Strengths of the claim:

- Gethin has previous good behaviour where he has only had one oral warning previous to the disciplinary over his 6 year employment.

- The company did not follow the Acas code of practice on disciplinaries and grievances as mentioned previously under “ordinary unfair dismissal” (Acas, 2021b). This claim is likely to be unfair because of the process that was undertaken by the company.

Weaknesses of the claim:

- Gethin did not deny pushing Robert to the floor and Steve saw the altercation where Gethin was standing over Robert. Gethin claimed he was provoked however, there were no witnesses that could confirm or deny this.

2.)

- **Types of remedies available to a tribunal and the factors it will consider:**

In situations such as reinstating and reengaging, the ET will look at whether the relationship between the employer and the employee has broken down. If so, it is unlikely that the tribunal will reinstate or reengage the employee as future employment would seem untenable. In conduct situations such as Gethin’s case, reinstatement and reengagement is very rare (Honeyball and Bowers, 2012).

Another factor that the tribunal will consider is whether or not the employee has been replaced. If so, there may not be able to offer reinstatement as there may not be a need for his job anymore. Another factor they will consider is if Gethin has obtained employment elsewhere (Honeyball and Bowers, 2012).

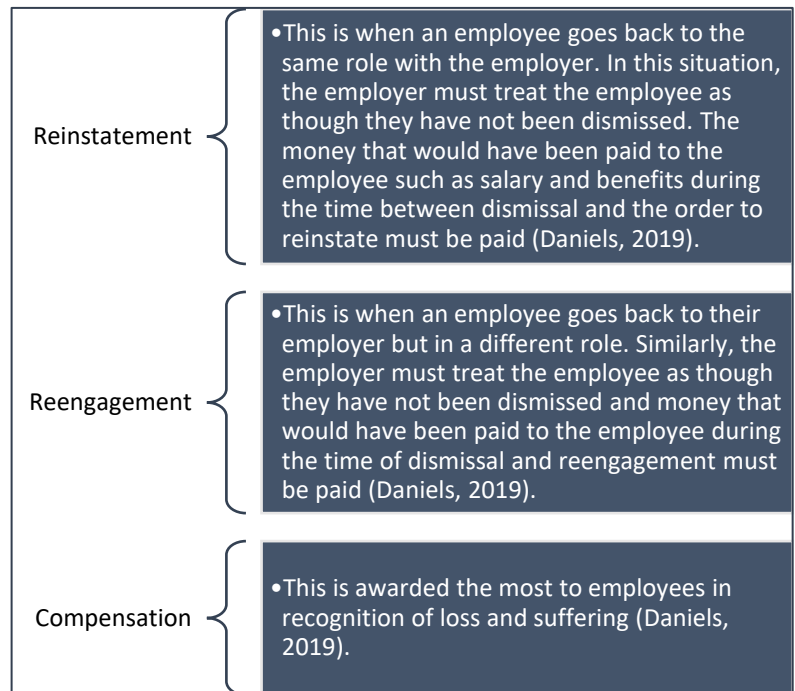


Figure 1

Gethin stated in his ET1 that he wanted to be reinstated and receive compensation. The tribunal is likely to give compensation if he wins his claim because of the breakdown in relationship with management and colleagues.

- **The amount of any financial award:**

According to Daniels (2019), Gethin’s basic award is calculated by:

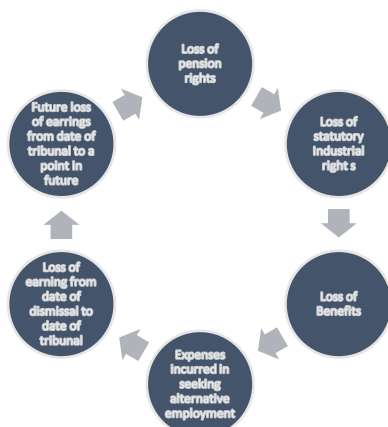


Figure 2

- $6 \text{ (Number of years service)} \times 1 \text{ (under the age of 41)} \times £500 \text{ (weekly pay)} = £3,000$

Those mentioned in figure 2 are taken into consideration when determining the compensatory award according to section 118 of the Employment Tribunal Rights Act 1996 (Lockton, 2011), (Daniels, 2019):

If Gethin has obtained other employment, Gethin will have to declare his salary earned (mitigate loss). He will only be able to claim the difference between his previous salary and his new salary. The maximum compensatory award is £89,000 or the employee’s

salary (whichever is the lowest). In this case, the maximum for Gethin would be £26,000 as this is his annual salary (CIPD, 2021a).

The maximum compensation award that Gethin could win at an ET is made up of his basic award (£3,000) plus his annual salary (£26,000) which is £29,000 minus any loss of earnings mentioned in figure 2.

- **Factors that might reduce or increase the level of any financial award made by the tribunal:**

Factors that might increase the award:

- If Gethin won his case on whistleblowing, the financial award would be uncapped and would increase his reward.
- If the ET concluded that the organisation did not follow the Acas code of practice on disciplinary and grievances then the tribunal can increase the amount of compensation up to a maximum of 25%. From the information provided, it is clear that the company did not follow the correct process when conducting the investigation or the disciplinary hearing and it is likely that Gethin would be awarded this (Acas, 2021b).

Factors that might decrease the award:

- Gethin failed to appeal against the decision made by the company. Although the company failed to state the correct appeal timescale, Gethin was given the opportunity to appeal regardless if it was only 3 days.
- Gethin's contributing faults such as his reaction to Robert is misconduct and therefore could reduce his reward. Gethin did not deny pushing Robert. This refers to the *Parker Foundry Ltd v Slack* (1991) IRLR 11 case where Slack was dismissed following a fight with a colleague. The ET found that Slack had been unfairly dismissed because of how the company handled the claim. The ET awarded only 50% of the compensation because they believed that his conduct had made him 50% to blame for the dismissal (Honeyball and Bowers, 2012).
- Gethin would have been dismissed by the company regardless of the fall down in procedure with not following the Acas Code of Practice (McKie, 2006). If the company followed the correct procedure, they would have dismissed him on gross misconduct as he did not deny this. This can be argued as a thorough investigation such as obtaining CCTV may have shown other evidence in Gethin's favour. This refers to the *Polkey v A E Dayton* (1987) AC 344 case where it was determined that the employer did not act correctly because they had not consulted Polkey over possible redundancy. The ET concluded that even if the procedure had been followed, Polkey would still have been made redundant (Guinan, 2009) (Painter and Holmes, 2015).

- **Settle or proceed to tribunal?**

I would recommend that the company settle the case rather than proceeding to a tribunal because of the management time and legal costs that are involved. If the company settle the case before going to a tribunal they could use the money that they would have used on solicitor fees on reaching a settlement. Another reason would be the company reputation could be damaged as tribunal cases are published online (Acas, 2013). Big Buses Ltd have contracts with schools which can be damaging if Gethin wins on health and safety and whistleblowing. Future employees may also not want to work for an organisation with poor health and safety processes in place. Also, the company did not follow the Acas code of practice when conducting a fair and thorough investigation and disciplinary.

To conclude, I would recommend the company settling instead of going to an ET where potentially they would get criticised for their process which could lead to reputation damage which is a greater cost to the organisation (Daniels, 2019).

Section B – Julie Davies

Dear Mr Dave Thomas,

According to Acas (2021d), Julie has the right to make a flexible working request to change her start and finish time and to request to work from home. She also has the right to ask for the change to be made to specific days as she has done by requesting to work on Monday and Fridays from home and to change her hours from 8am-3pm. As Julie has been working for the company for longer than 26 weeks (19 months), and has not made any other flexible working requests throughout her time with the company, by law she has the right to make a flexible working request to her employer. Julie is also a parent and a carer for her elderly mother and therefore, her request must be fairly considered.

The company should follow its flexible working policy that should be Acas compliant. If the company does not have a flexible working policy in place, then the company should follow Acas' code of practice on handling requests for flexible working (Acas, 2014).

As the Managing Director, you are entitled to ask Julie to complete a formal flexible working application which is available from the Government website (GOV.UK, 2021b). This is a form which asks the employee to include their current working pattern, the working pattern they wish to work, commencement date of change and the impact of the new working pattern on the organisation and on other colleagues. You have the right to take up to 3 months to consider this request but this can be extended if you agree to a longer deadline with Julie. Julie should ensure that she submits her application to yourself in advance of the date she wishes the request to take effect (GOV.UK, 2021b).

Once you have received this application from Julie, you should confirm receipt of the application. Before making any decision, you should set up a meeting to talk to Julie about her request (Acas, 2021d). According to CIPD, (2021b) in this meeting you should ask Julie to talk about her reasons for the change, how any problems with making the change might be dealt with and any other option Julie may consider if the change is not possible. Julie can be given the option to bring someone to the meeting for instance, a trade union representative or a co-worker. There is no legal requirement to ask an employee to bring someone to a flexible working meeting (Acas, 2021d). This depends on the companies' policy.

It is important to note that Julie's request to work 8-3 without a lunch break cannot be agreed as by law Julie will be required to take a lunch break for anything over 6 hours according to GOV.UK (2021c). This means that Julie is requesting to work 32.5 hours a week spread over 5 days instead of 35 hours. You should clarify this with Julie to make sure she understands that if an employee works over 6 hours they are required to take a break. In this case, Julie is entitled to 30 minutes as this is what she usually has. It seems that Julie wants to keep her 35 hours and thought she could do this by working 8-3 without a break which is illegal (GOV.UK, 2021c).

Once you have clarified this with Julie, it is only then the request can be fairly considered. It is worth noting that the request to change her hours can be turned down if there is a legitimate business reason to decline the request as listed in the Acas code of practice. Legitimate reasons consist of additional business costs, inability to re-organise work amongst other staff and negative effect on performance and the business' ability to meet customer demand as mentioned in your email (Acas, 2014) (Taylor and Emir, 2012).

Her request to work from home on Monday and Fridays is more difficult to refuse as Julie has been working from home during the pandemic. The question that needs to be considered is, did Julie work well working from home and is she able to perform her role at home on Monday and Fridays? It is important to note that Julie is a carer for her mother, and has caring responsibilities for her children so allowing for this will partially meet her flexible working request which will bring many benefits for both Julie and the company. It will lead to a more

productive employee as she will feel valued and supported in regards to her caring responsibilities which will drive motivation and output (CIPD, 2020d). Again, her request to work from home can be turned down if you have a legitimate business reasons to decline the request (Acas, 2014).

The decision should be done in writing to Julie. If you accept Julie's request, or accept it with modifications, you should discuss how and when the changes might be implemented. If you reject the request, you should allow Julie to appeal the decision if she feels the decision was wrong or unfair. According to Acas (2021d), it is advised that Julie does this informally first. Julie should do this as soon as possible or within the timeframe indicated within the company's policy which should be Acas compliant of 3 months (unless agreed otherwise). The appeal should be heard by someone independent and not by yourself to make it a fair process.

Julie could bring an associative discrimination claim against the company if they refuse her flexible working request because of her association with another person belonging to a relevant protected group of disability (GOV.UK, 2021d). It is unclear if her mother is disabled as it does not give a reason to why she is shielding however, the company must prove that the request has been turned down because of legitimate business reasons and not because of her association with another person belonging to a relevant protected group.

If you have any further questions, please do not hesitate to contact me.

Kind Regards,

Nia Williams

HR Consultant

Section B – Lucy Bell

Dear Mr Dave Thomas,

Information that the organisation receives about an employee must be stored and kept confidential in line with GDPR (GOV.UK, 2021e). According to ACAS (2021e), only appropriate senior and involved members of staff should have access to this information. Lucy should have been kept informed of how her records are being stored/used and she should have been informed from the beginning of how to withdraw her consent from having her records stored and used in the organisation. The relevant managers who have access to the absence information should not tell other staff the reason for Lucy's absence.

According to Unison (2021), employers may need to keep employees informed about COVID-19 in the organisation but should not name individuals. Instances where this applies is when social distancing at work is impossible and where a member of staff has tested positive. In this case, the employer will have a duty of care to tell other employees who have worked closely to that employee to go home and to take a COVID-19 test. Employers however, should be regularly cleaning and encouraging good hygiene practices to prevent infection. Workplaces should follow health and safety guidance set out by the Government such as following social distancing at work (GOV.UK, 2020).

According to CIPD (2020e), there is no longer a specific statutory retention period when it comes to retaining sickness records. It is advisable to keep records for at least 6 months after the end of sick leave in case of a disability discrimination claim however, if there is a personal injury claim, the limitation is 3 years. If there is a contractual claim for breach of an employment contract, it is advised to keep records for 6 years after the employment ends. Data must be kept secure and must be processed for legitimate reasons.

As the employer, you have a duty of care for your employees. Although it is not a legal requirement to carry out return to work meetings, you should follow your policies and procedures with regards to sickness management. Return to work meetings allows you to support the employee and make reasonable adjustments to prevent any further absences. If you do not follow your policies and procedures, then you are in breach of duty of care towards your employees (Acas, 2021e).

As Lucy has raised a grievance regarding her line managers' practice of holding a return to work meeting and the communication with other staff about her absence, you should follow your own grievance procedure. If you do not have your own grievance procedure in place, you should follow the Acas Code of Practice on disciplinary and grievance procedures as a minimum (Acas, 2021b). The below table outlines the steps within the Acas code of practice:

- If Lucy has not done so already, she will need to write to the organisation setting out the nature of the grievance, any evidence and what she wants you as an employer to do about it. You must acknowledge the grievance raised and deal with issues promptly. You must follow a full and fair procedure (Acas, 2021b).
- It is a good idea for you to deal with the grievance informally first. Where the issue cannot be resolved informally then it may be pursued formally (Acas, 2021b).
- When an employee raises a formal grievance, a meeting should be held within ideally 5 days by the employer (Acas, 2021b). A letter should be sent to Lucy to invite her to attend the meeting which should detail the date, time, location, the grievance raised and the right to be accompanied. You should give Lucy enough time to prepare and bring any evidence to the meeting to support her grievance. This meeting is an opportunity for yourself to ask any questions. You should ask Lucy to provide more information about it and discuss how

it could be resolved. As the employer you should take notes or appoint someone else to take them (Willey, 2012),(Acas, 2021b).

- To make a fair decision, you may investigate the grievance to see if there is a case to answer and to gather evidence from all sides. As you are not involved in the case, and the grievance is towards her line manager, then you can carry out the investigation. You should tell Lucy as soon as you decide to open an investigation. Your workplace might have timescales within the policy for investigations. Any delays should be explained to anyone involved and written in the investigation report. During the investigation meetings, you will need to get information from Lucy, her line manager and other witnesses and gather physical evidence. In this case, you could gather the email evidence where her line manager has allegedly sent an email to all staff explaining Lucy's absence details. Again, anyone involved in the grievance procedure has the right to be accompanied. This should be detailed in the invite letter (Pitt, 2011), (Acas, 2021b).
- When there is enough information and the investigation is finished, you should have a written report. You should share this with the employee. You should recommend at the end of the report one of the following; formal action (to initiate a disciplinary hearing), information action (training or coaching etc) or no further action (counselling, mediation etc) (Acas,2021b).
- Depending on the investigation, it is only then you will know if there is formal action needed. If there was evidence that her line manager shared personal data without her consent to other employees in the organisation then this is a breach of the Data Protection Act (2018) regarding sensitive data. The organisation should follow the disciplinary process set out in their policy or follow Acas (2021b). This disciplinary hearing should be held as soon as possible after the investigation by a different independent person for instance, another manager. This should be set out in writing to the line manager along with the detail of the alleged misconduct, any evidence from the investigation, date, time, location of the hearing, information on the employee's right to be accompanied to the hearing and possible outcomes (Acas, 2021b).
- The hearing is for both the employer and the line manager to state their case. The employer should explain the alleged misconduct and go through the evidence. A note taker should be present during the hearing. The line manager should have a chance to set out their case and to answer any allegations. They also have the right to ask questions, show evidence and to call any relevant witnesses. At the end of the hearing, the disciplinary officer should take time before deciding on the outcome. They should inform the employee of the timeframe and what will happen next. For a disciplinary outcome that is not a dismissal, the employer may decide to give the employee goals to reach and timeframes to complete them. The outcome should be communicated to the employee as soon as possible and in writing. The employer has the right to appeal if they think the outcome is severe or if they think the procedure was wrong or unfair. Acas recommends 5 days from receiving your outcome as an appropriate amount of time to appeal. An appeal hearing will then be organised in line with the company's disciplinary and grievance procedure/Acas code of conduct (Nairns, 2011),(Acas, 2021b).

If you have any further questions, please don't hesitate to ask.

Kind Regards,

Nia Williams

HR Consultant

References

1. Acas, (2021a). *Dismissals*. [Online]. Available at: <https://www.acas.org.uk/dismissals/unfair-dismissal> (Accessed 28 March 2021).
2. Acas, (2021b). *Acas code of practice on disciplinary and grievance procedures*. [Online]. Available at: <https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures> (Accessed 28 March 2021).
3. Acas, (2021c). *Appealing a disciplinary or grievance outcome*. [Online]. Available at: <https://www.acas.org.uk/appealing-a-disciplinary-or-grievance-outcome> (Accessed 28 March 2021).
4. Acas, (2021d). *Making Flexible Working Request*. [Online]. Available at: <https://www.acas.org.uk/making-a-flexible-working-request> (Accessed 14 March 2021).
5. ACAS (2021e). *Absence from work*. [Online]. Available at: <https://www.acas.org.uk/absence-from-work/fit-notes-and-proof-of-sickness> (Accessed 14 March 2021).
6. Acas, (2014). *Code of practice on handling in a reasonable manner requests to work flexibly*. [Online]. Available at: <https://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests/html> (Accessed 22 April 2021).
7. Acas, (2013). *Settlement Agreements (under section 11A of the Employment Rights Act 1996)*. [Online]. Available at: <https://www.acas.org.uk/code-of-practice-settlement-agreements/html> (Accessed 08 April 2021).
8. CIPD, (2021a). *Statutory rates and compensation limits*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/about/statutory-rates#gref> (Accessed 08 April 2021).
9. CIPD, (2021b). *Flexible Working Practices*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working/factsheet#gref> (Accessed 14 March 2021).
10. CIPD, (2020a). *Wrongful Dismissal*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/dismissal/wrongful-dismissal-questions#gref> (Accessed 28 March 2021).
11. CIPD, (2020b) *Dismissal*. [Online]. Available at: <https://peopleskillshub.cipd.co.uk/managing-people-essentials/dismissal> (Accessed 28 March 2021).
12. CIPD, (2020c). *Unfair Dismissal*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/dismissal/unfair-dismissal-questions> (Accessed 03 May 2021).
13. CIPD, (2020d). *Coronavirus (COVID-19): Flexible working during the pandemic and beyond*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/relations/flexible-working/during-COVID-19-and-beyond#gref> (Accessed 22 April 2021).
14. CIPD, (2020e). *Retention of HR Records*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/people/hr/keeping-records-factsheet> (Accessed 14 March 2021).
15. CIPD, (n.d). *Case Law on discipline and Grievance issues*. [Online]. Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/discipline/cases> (Accessed 03 May 2021).
16. Colin Biggers & Paisley Lawyers, (2012). *Can you sack someone for swearing at the boss?* [Online]. Available at:

<https://www.cbp.com.au/insights/insights/2012/november/can-you-sack-someone-for-swearing-at-the-boss> (Accessed 03 May 2021).

17. Collins, H (2012): *Employment law*. 2nd ed. Oxford, Oxford University Press.
18. Coronavirus Act, (2020). [Online]. Available at: <https://www.legislation.gov.uk/ukpga/2020/7/contents/enacted> (Accessed 03 May 2021).
19. Daniels, K. (2019). Termination of employment. In: *Introduction to Employment Law*. London: Kogan Page Limited.
20. Data Protection Act (2018). [Online]. Available at: <https://www.gov.uk/data-protection> (Accessed 03 May 2021).
21. Employment Rights Act (1996). *Health and Safety Cases*. [Online]. Available at: <https://www.legislation.gov.uk/ukpga/1996/18/section/100> (Accessed 28 March 2021).
22. GOV.UK, (2021a). *Form ET3: Respond to a claim made to an employment tribunal* [Online]. Available at: <https://www.gov.uk/government/publications/respond-to-a-claim-made-to-an-employment-tribunal-form-et3> (Accessed 28 March 2021).
23. GOV.UK, (2021b). *Right to request flexible working: Application form*. [Online]. Available at: <https://www.gov.uk/government/publications/the-right-to-request-flexible-working-form> (Accessed 22 April 2021).
24. GOV.UK, (2021c). *Rest breaks at work*. [Online]. Available at: <https://www.gov.uk/rest-breaks-work> (Accessed 14 March 2021).
25. GOV.UK (2021d). *Discrimination: your rights*. [Online]. Available at: <https://www.gov.uk/discrimination-your-rights> (Accessed 22 April 2021).
26. GOV.UK, (2021e). *Data Protection*. [Online]. Available at: <https://www.gov.uk/data-protection#:~:text=The%20Data%20Protection%20Act%202018%20is%20the%20UK's%20implementation%20of,used%20fairly%2C%20lawfully%20and%20transparently> (Accessed 14 March 2021).
27. GOV.UK, (2020). *Keep Wales safe at work*. [Online]. Available at: <https://gov.wales/keep-wales-safe-work-html> (Accessed 14 March 2021).
28. Guinan, G (2009). Legal Q&A: *Return of the Polkey Principle*. [Online]. Available at: <https://www.personneltoday.com/hr/legal-qa-return-of-the-polkey-principle/> (Accessed 04 May 2021).
29. Hadrill, (2016). *Panayiotou v Kernaghan & Anor – Whistleblowing and the reason for dismissal*. [Online]. Available at: <https://www.redmans.co.uk/panayiotou-v-kernaghan-anor-whistleblowing-and-the-reason-for-dismissal/#:~:text=Subsequent%20to%20his%20dismissal%20Mr.known%20as%20%E2%80%9Cwhistleblowing%E2%80%9D>. (Accessed 03 May 2021).
30. Health and Safety at Work Act (1974). *Employees duties*. [Online]. Available at: <https://www.legislation.gov.uk/uksi/1999/3242/contents/made> (Accessed 28 March 2021).
31. Honeyball, S. and Bowers, J. (2012) *Honeyball and Bowers' textbook on employment law*. 12th ed. Oxford: Oxford University Press
32. Kidner, R (2019). *Blackstone's Statutes on Employment Law*. Oxford University Press.
33. Lewis, D. and Sargeant, M. (2019) *Essentials of Employment Law*. 15th Ed. London: Chartered Institute of Personnel and Development.
34. Lockton, D. (2011) *Employment law*. 8th ed. Basingstoke: Palgrave Macmillan.
35. McKie, S. (2006). *Dismissal: Polkey's place in the modern world*. [Online]. Available at: <https://www.personneltoday.com/hr/dismissal-polkeys-place-in-the-modern-world/> (Accessed 30 March 2021).
36. Medhurst, J. (2018). *Why the BHS V Burchell decision is still relevant 40 years on*. [Online]. Available at: <https://www.personneltoday.com/hr/british-home-stores-v-burchell-40-years-on/> (Accessed 30 March 2021).
37. Munro, S. (2015). *Responding to an employment tribunal claim: five tips for employers*. [Online]. Available at: <https://www.personneltoday.com/hr/responding->

[to-an-employment-tribunal-claim-five-tips-for-employers/](#) (Accessed 04 May 2021).

38. Nairns, J. (2011) *Employment law for business students*. 4th ed. Harlow: Longman.
39. Painter, R. and Holmes, A. (2015) *Cases and materials on employment law*. 10th ed. Oxford: Oxford University Press.
40. Pitt, G. (2011) *Employment law*. 8th ed. London: Sweet and Maxwell.
41. Public Interest Disclosure Act,(1996) Section 103A. *Protected Disclosures*. [Online]. Available at: <https://www.legislation.gov.uk/ukpga/1998/23/contents> (Accessed 28 March 2021).
42. Public Interest Disclosure Act, (1996) Section 100. *Health and Safety Cases*. [Online]. Available at: <https://www.legislation.gov.uk/ukpga/1996/18/section/100> (Accessed 04 May 2021).
43. Taylor, S. and Emir, A. (2012) *Employment law: an introduction*. 3rd ed. Oxford: Oxford University Press.
44. Taylor, S. and Wilkinson, K. (2016) *Employment Law* in Taylor, S. and Woodhams, C. (2016) *Human Resource Management. People and Organisation*. 2nd ed. London: Chartered Institute of Personnel and Development.
45. Unison, (2021). *Coronavirus: your rights at work*. [Online]. Available at: <https://www.unison.org.uk/coronavirus-rights-work/> (Accessed 14 March 2021).
46. Willey, B (2012): *Employment law in context*. 4th ed. Harlow: Pearson