

Dismissal: Hints, Tips and Solution-Focused Answers for Employers

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Social Media

Using grey area examples, where is the line between an employee's personal life and bringing the organisation into disrepute, e.g. inappropriate comments or behaviour on Facebook or TikTok?

Overview

- Vicarious Liability case law – “within the course of employment”
- Unfair Dismissal case law – issues relevant to fairness
- Summary of potential measures which employers can take to safeguard against claims



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Equality Act 2010 Vicarious Liability

Harassment – s.26

Unwanted conduct, related to a protected characteristic, which has the purpose or effect of violating person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Liability of employer for acts of employees – s.109

- Anything done by A in the course of A's employment must be treated as also done by the employer.
- It does not matter whether that thing is done without the employer's knowledge or approval.



Earlier case

Otomewo v Carphone Warehouse Ltd ET/2330554/2011

Two colleagues hijack third colleague's mobile phone and post on his Facebook wall:-

“Wooo-hooo. Finally came out of the closet. Gay and Proud”.

At work, during working time.

Carphone Warehouse vicariously liable for sexual orientation harassment.



More recent case

Forbes v LHR Airport Ltd UKEAT/0174/18/DA

Employee A posts picture of “golliwog” on Facebook

Away from work, in her own time, no mention of work or any colleagues

Post subsequently shown by another colleague to employee Forbes

Forbes claims harassment against airport – deemed not to be within the course of employment



Private WhatsApp chats

BC and ors v Chief Constable of the Police Service of Scotland and ors [2019] CSIH 61

- 17 Scottish Police Officers participated in closed WhatsApp chat group
- Posts in the chat included comments that were sexist, racist, antisemitic, homophobic and mocking of disability, plus crime scene photos in breach of rules
- Held that Article 8 Rights not infringed when using the chats as basis for misconduct proceedings

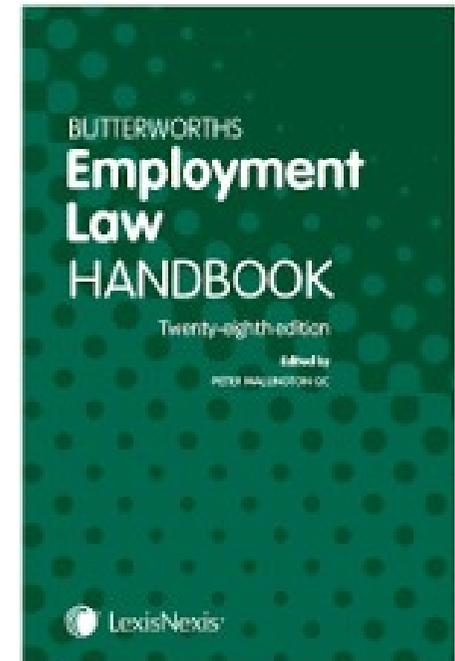


2. Unfair Dismissal case law

Employment Rights Act 1996 s.98(4)

Whether a dismissal is fair or unfair:-

- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
- (b) shall be determined in accordance with equity and the substantial merits of the case.



Teggart v TeleTech UK Ltd [2012] NIIT

00704_11IT

- Male employee – posts vulgar comment about female colleague on Facebook, naming employer and the colleague
- *“quick question who in Teletech has A not tried to f***? She does get around!”*
- Dismissed for harassment, breaching clear policy and reputational damage
- Fair dismissal and not breach of ECHR 8 and 10

Smith v Trafford Housing Trust [2012] EWHC 3221 (Ch)

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- Christian employed as Housing Manager
- Posts article about same sex marriage in churches
- Responds to a comment outlining his views
- Demoted by his employer
- Finding of breach of contract – no reasonable expectation of reputational damage



3. Take away tips

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- Take all reasonable steps;
- Have a full set of policies;
- Provide regular training to staff and Update the policies;
- Follow up on grievances;
- Utilise the disciplinary procedure;
- Don't react to a social media post in a knee jerk manner.



Thank you 😊

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