

Poor Attitude

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- What is 'Poor Attitude'?
- Disability
- Case Study: Dismissing an employee with a poor attitude
 - Informal
 - Formal
 - Alternative
- Questions

What is Poor Attitude?



*According to research carried out by the Centre for Effective Dispute Resolution, rather than address a problem with their team at work:
35% of managers would rather parachute jump for the first time than address a problem with their team at work
27% would rather shave their head for charity*

1. Length of Service?

< 2 years – dismiss as per contract
> 2 years – fair reason for dismissal
and/or fair procedure

2. Extent of the need to act
quickly?

Some initial thoughts

2. Company's Appetite for Risk?

Is a textbook legal approach
commercially attractive?
If not, willing to pay?

4. Are there any Commercial Risks of dismissing them?

Restrictive covenants, client
relationships?

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- Another reason for the poor attitude?
 - Occupational health or any other medical evidence?
 - Reasonable adjustments
 - Disability is not an excuse for poor performance or conduct
 - Case Law
 - City of York -v- Grossett

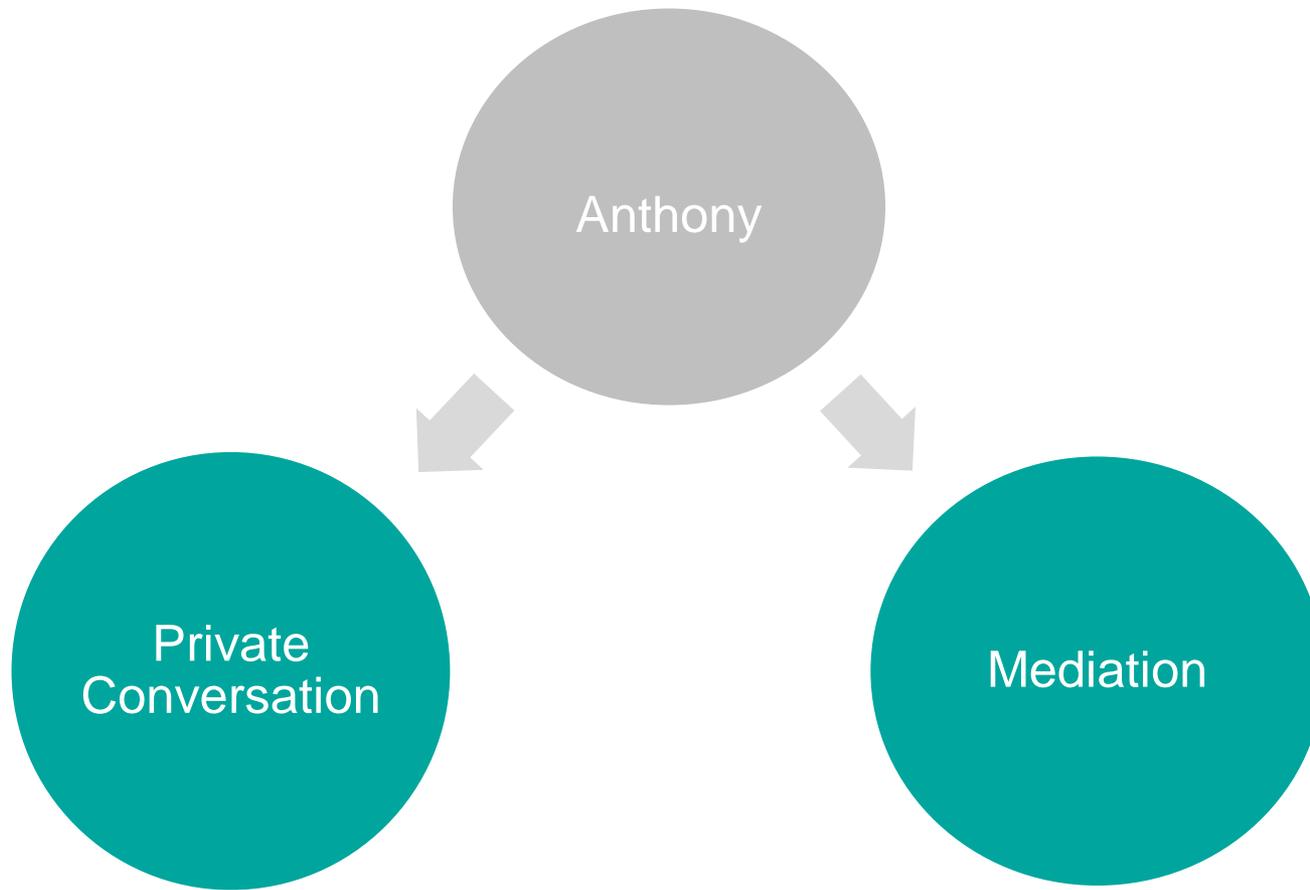
Case Study – Anthony

- Employed for more than 2 years
- Appears fit and well
- Technically sound
- Persistently poor attitude
 - Relentlessly negative
 - Short fuse



Manager Bill would like to ‘Nip this in the bud’

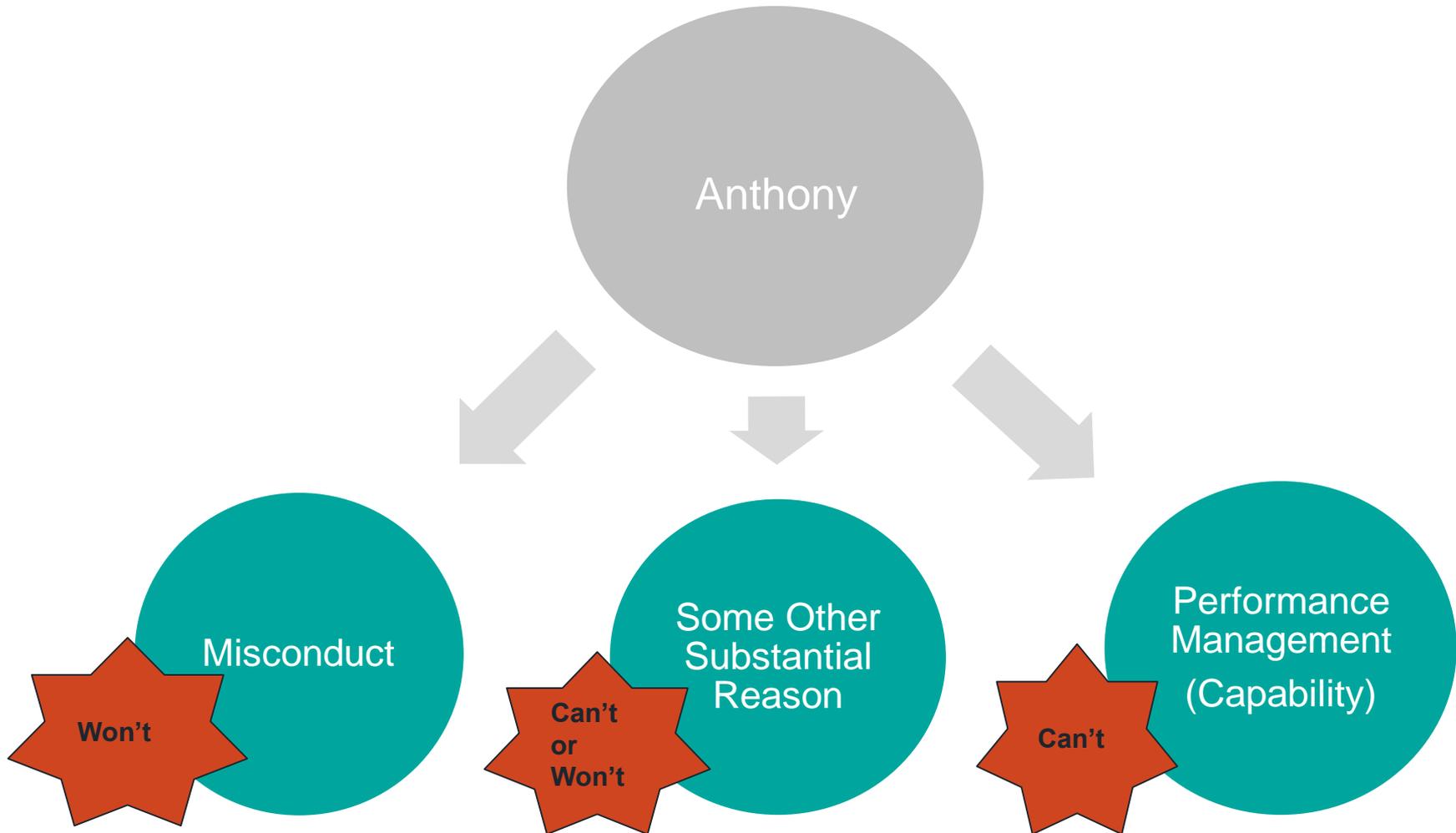
Options for Addressing Poor Attitude – Informal





- Anthony's poor attitude continues despite informal attempts to resolve.
- Manager Bill says it has now become impossible to manage Anthony, and he wants to know what steps need to be taken to remove him from the team.

Options for Addressing Poor Attitude – Formal

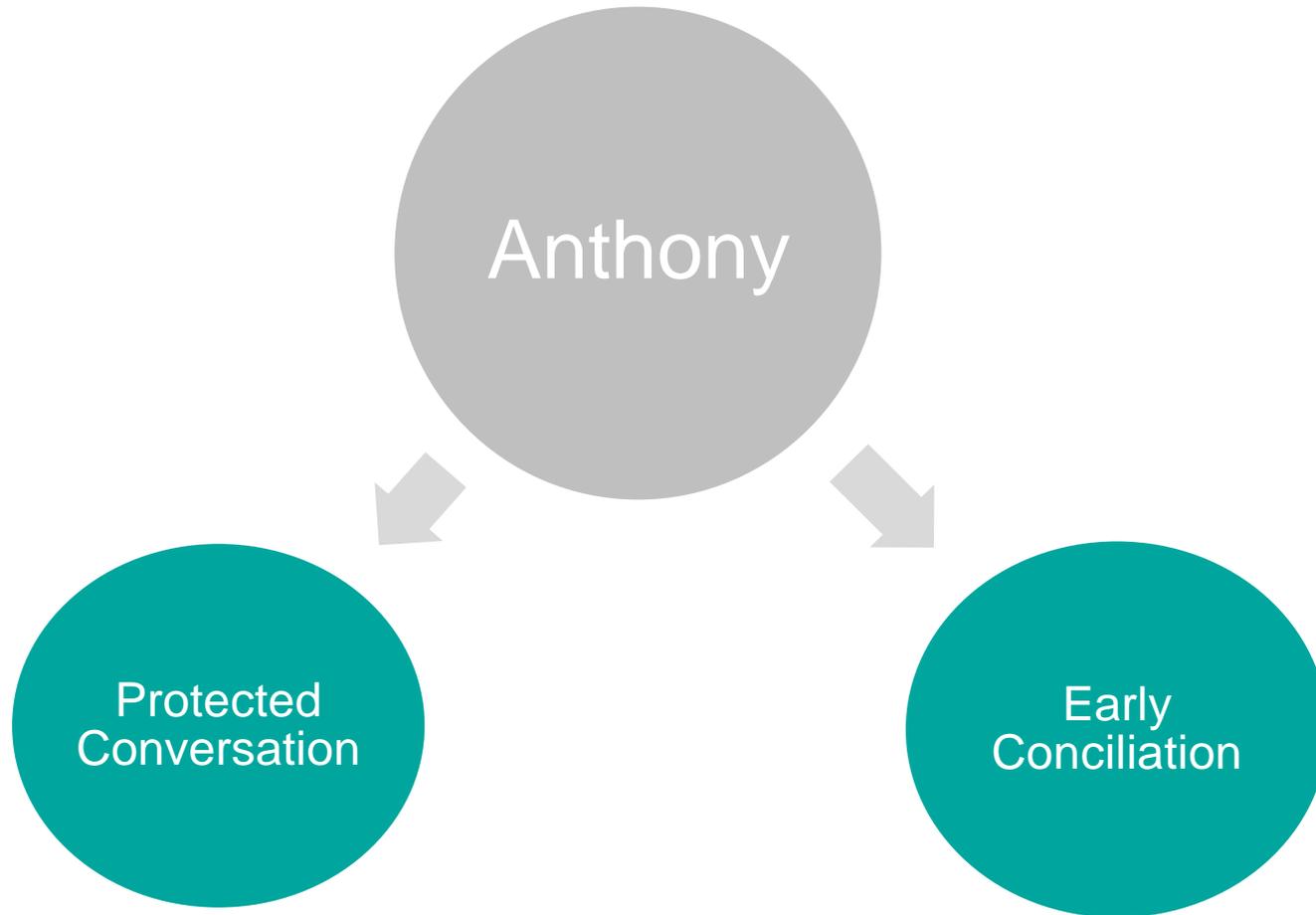


- Misconduct examples - failure to follow reasonable management instruction, rudeness and bad attitude
- Serious enough to amount to gross misconduct?
- Employer must show:
 - Fair reason; and
 - Fair procedure
- Follow Acas Code in relation to disciplinary and grievances
- Check company policy and follow internal procedures
- Consider notice to be given

- Poor Performance examples – inflexibility and failure to establish good working relationships
- Employer must show:
 - Reasonable belief; and
 - Reasonable investigation
- Given chance to improve – i.e. warnings, reasonable timescales, support and training, review progress
- Poor performance hearing
- Decision to dismiss – consider alternative employment

Some Other Substantial Reason (“SOSR”)

- No statutory definition of SOSR
- SOSR examples - pressure from third parties and breakdown in trust and confidence
- Company must follow fair procedure i.e. meetings, appeals
- Case Law – Reason for dismissal must:
 - be substantial not frivolous or trivial; and
 - justify the dismissal



- Offer of settlement as opposed to a process which could result in dismissal
- Can take place at any point
- ‘Without prejudice rule’ and ‘pre termination negotiations’
- Risks:
 - Only applies to ‘ordinary’ unfair dismissal claims
 - Not always protected i.e discrimination or breach of contract claim
- Practical steps
- Be aware of notice periods being triggered

- Process to help resolve workplace disputes without the need to go to the Employment Tribunal
- Extends period in which employee can bring a claim
- Acas Early Conciliation mandatory process before filing a claim
- In practice, can just be a tick-box exercise for a Claimant's claim

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