



DAC BEACHCROFT

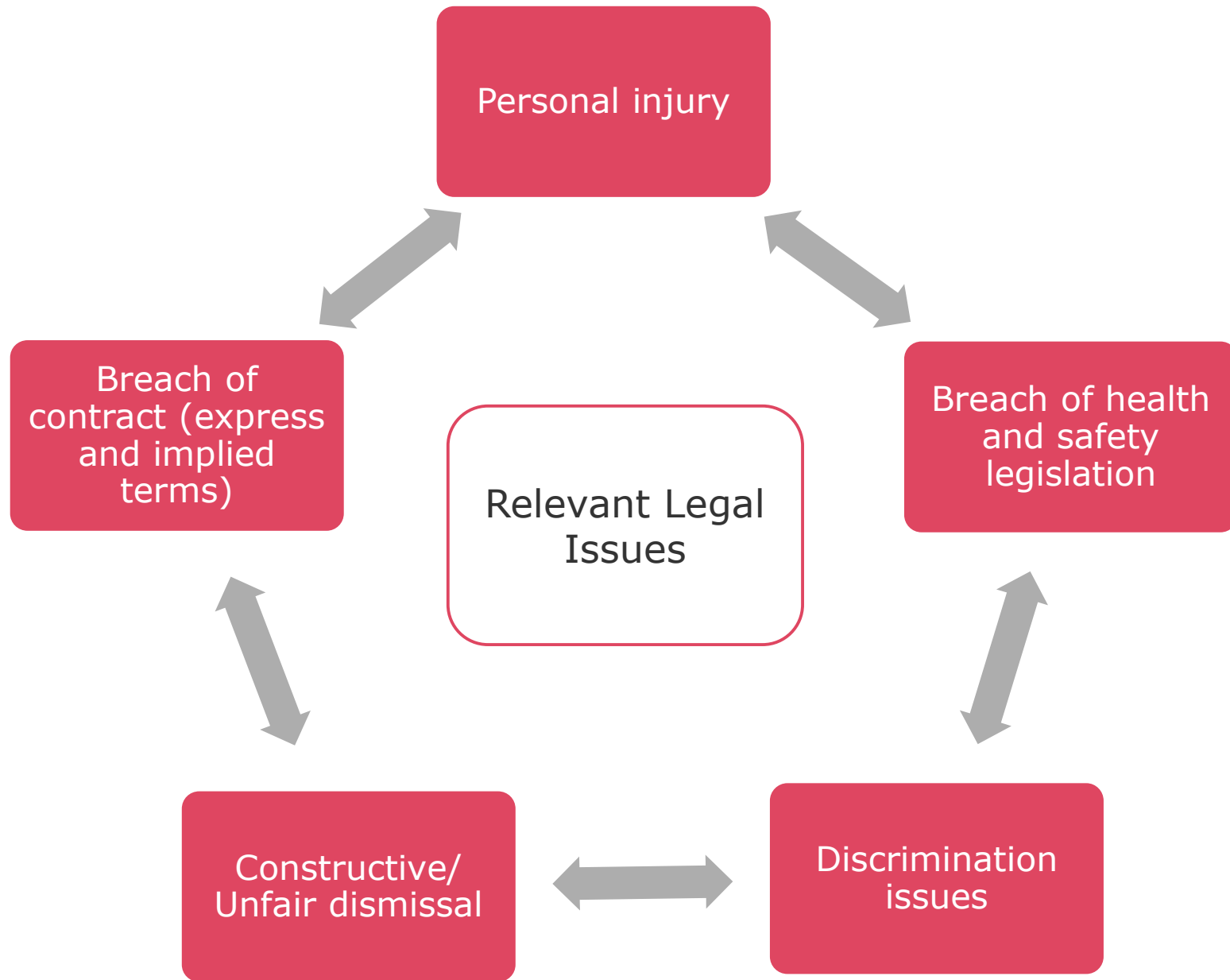
NON-ATTENDANCE AT DISCIPLINARY HEARINGS

6 OCTOBER 2020
Udara Ranasinghe



When is it reasonable to proceed with a disciplinary hearing and decide to dismiss an employee in their absence (e.g. because of repeated non-attendance of scheduled meetings and suspected manipulation)?





GUIDANCE FROM THE CASES

"There will be cases where it is reasonable to proceed in the absence of the employee, for example where she is being difficult or trying to inconvenience her employer."

Stacey J, para. 14, *Talon Engineering Limited v Smith* [2018] 3 WLUK 486

However, do so with caution:

- cases where proceeding with a disciplinary hearing in the absence of the employee is reasonable will be highly fact-specific; and
- reported cases not supportive of employers taking this position.

ACAS CODE OF PRACTICE

The Acas statutory Code of Practice on disciplinary and grievance procedures sets out the following:

- the meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case (para. 11)
- employers and employees (and their companions) should make every effort to attend the meeting (para. 12)
- where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available (para. 25)

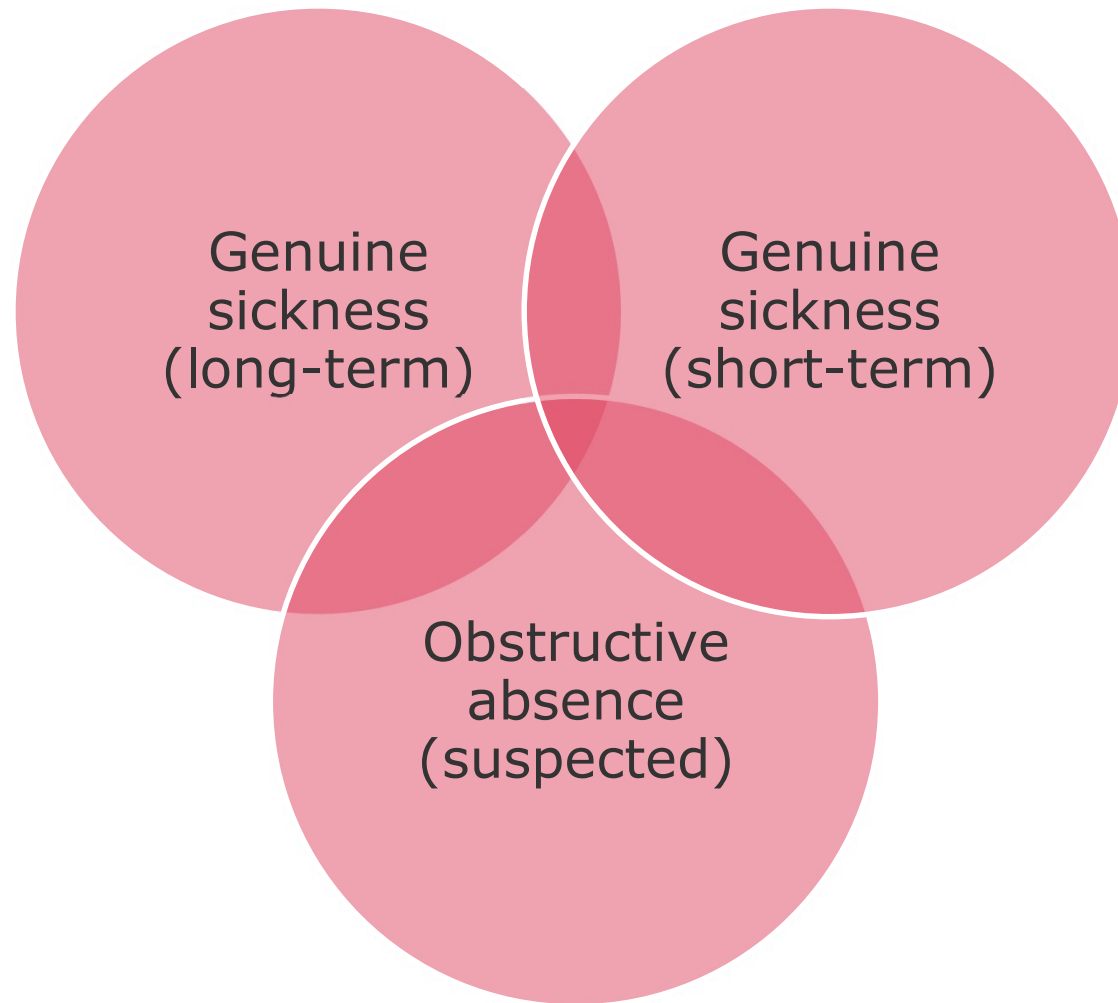
Right to be accompanied

If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed (para. 38)

KEY CONSIDERATIONS

- Factors to consider where an employee repeatedly fails to attend a disciplinary meeting (taken from the non-statutory Acas guide to discipline and grievances at work, p.21):
 - any rules the organisation has for dealing with failure to attend disciplinary meetings
 - the seriousness of the disciplinary issue under consideration
 - the employee's disciplinary record (including current warnings), general work record, work experience, position and length of service
 - medical opinion on whether the employee is fit to attend the meeting
 - how similar cases in the past have been dealt with

SCENARIOS



PRACTICAL SUMMARY

- Be sympathetic to the employee and their situation
- Give warnings and communicate how you are going to proceed
- Make adjustments to the process depending on the facts
- Be wary about holding the disciplinary hearing too quickly
- Consider in the circumstances whether it is reasonable to conduct the hearing with the information you have





[dacbeachcroft.com](https://www.dacbeachcroft.com)



Follow us: [@dacbeachcroft](https://twitter.com/dacbeachcroft)



Connect with us: [DAC Beachcroft LLP](#)

DAC Beachcroft publications are created on a general basis for information only and do not constitute legal or other professional advice. No liability is accepted to users or third parties for the use of the contents or any errors or inaccuracies therein. Professional advice should always be obtained before applying the information to particular circumstances. For further details please go to www.dacbeachcroft.com/en/gb/about/legal-notice. Please also read our DAC Beachcroft Group privacy policy at www.dacbeachcroft.com/en/gb/about/privacy-policy. By reading this publication you accept that you have read, understood and agree to the terms of this disclaimer. The copyright in this communication is retained by DAC Beachcroft. © DAC Beachcroft.