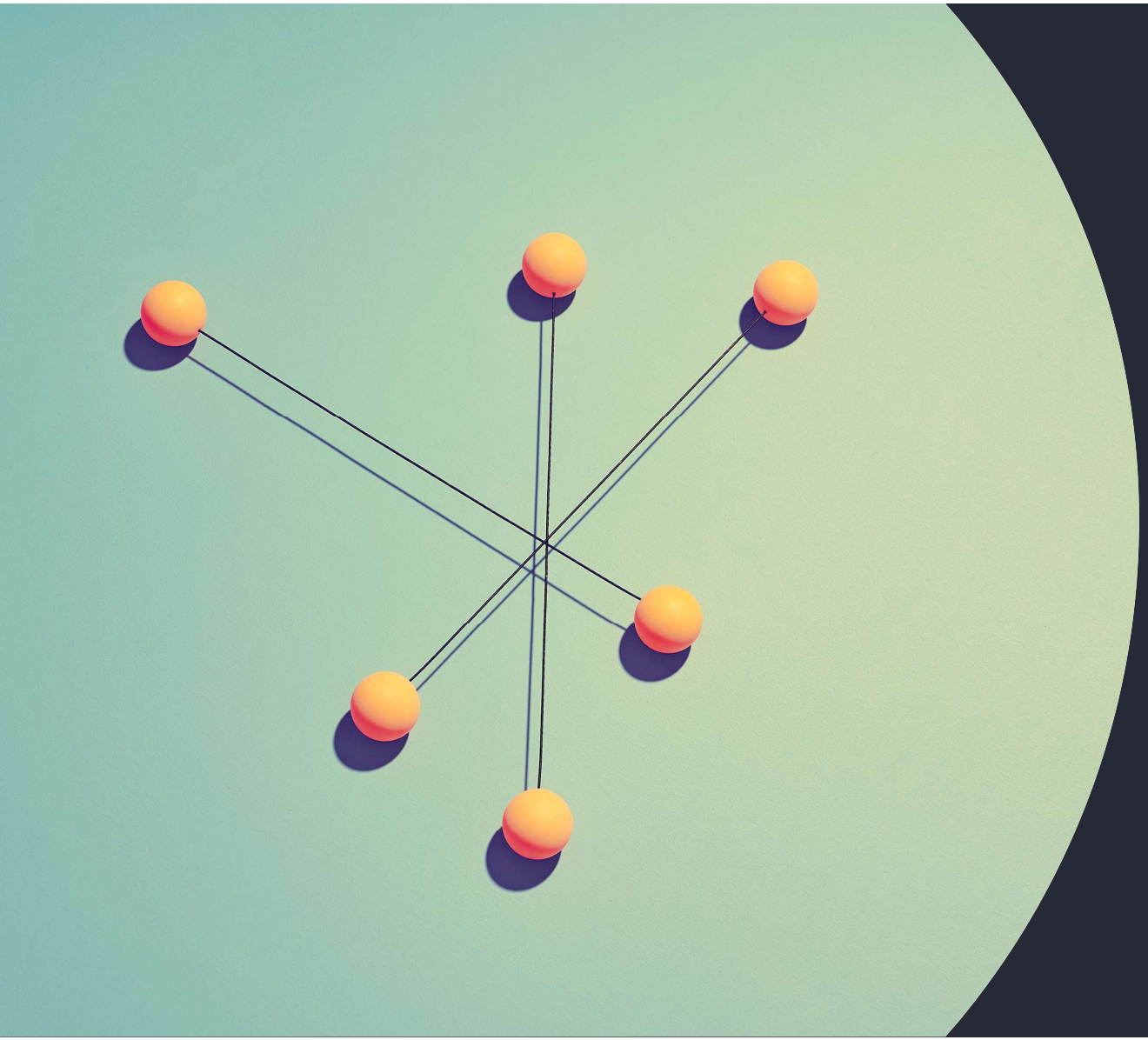


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White Paper Conference

Cultural Misalignment

Presented by: Morag Hutchison

24 September 2026

Cultural misalignment:

When can you act if an employee is difficult, culturally misaligned or a mischief maker but not objectively underperforming?

Preventative Action: Setting your culture



- **Clearly articulate your values and behavioural expectations**

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Informal Action : Attempt to correct behaviour informally



- Gather evidence of behavioural issue
- Have an honest conversation
  - Approach with empathy
  - Provide specific examples
  - Explain impact of behaviour
  - Seek to understand cause
  - Set out expectations
- Follow up

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Formal Action: Address behaviour formally



- Diagnose the issue
  - Performance
  - Disciplinary
  - Relationship breakdown
- Follow appropriate procedure

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Decision Point: Retain or release



- Alternative role
- Dismissal
  - Capability
  - Misconduct
  - SOSR
- Agreed exit

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Conduct : Dismissal for gross misconduct

Serial complainer

Hope v British Medical Association (EAT)

Key Facts

- Accusation against claimant of being “unprofessional and dismissive” in email to line manager led to grievance – not upheld
- Complaint about not being invited to meetings – invited to raise grievance – declined but stated wanted to retain ability to do so later date
- Raised 3x further grievance about deadline/not being invited to meetings/threat of disciplinary – didn’t attend meeting
- Dismissed for bringing “frivolous and vexatious” grievances

Claim

- Unfair dismissal

ET decision

- Reason for dismissal was conduct
  - Multiple informal grievances
  - Being unwilling to progress grievances formally
  - Refusing to attend grievance meetings
- Reasonable investigation and disciplinary procedure carried out
- Not unreasonable to conclude behaviour was vexatious and unreasonable

SOSR : Loss of trust & confidence

Serial complainer

Martin v Devonshire Solicitors (EAT)

Key Facts

- Written grievance in 2008 – harassment/victimisation
- Sick leave – stress – OH reported recurrent depressive illness/paranoid delusions
- Seven further grievances plus tribunal claim
- SOSR dismissal – loss of trust and confidence

Decision

- Dismissal was fair
- Allegation of discrimination and victimisation not upheld

Reasons for dismissal

- Falseness and seriousness of allegations in grievance
- Number and frequency of the allegations
- Refusal to accept outcome of grievance (allegations were false)
- Risk of repetition and further disruptive behaviour
- Cost and time of having to deal with complaints

Practical Takeaway

- Dismissal for raising unreasonable multiple grievances may be fair if employer can demonstrate irretrievable breakdown in relationship
- Dismissal should be regarded as a last resort
- Take care where grievance is allegation of discrimination

SOSR: Relationship breakdown Causing offence

Treganowan v Robert Knee & Co Ltd

Key Facts

- Claimant worked in office with other female colleagues
- Frequently discussed her sex life with co-workers
- Dismissed for SOSR being relationship breakdown

Issues considered

- Evidence discussions created intense friction and alienated colleagues/rendered office atmosphere unbearable
- Took into account impact on how business functioned
- Considered size of business – compact office environment with limited room to reallocate staff

Decision

- Dismissal was fair
- Personality clash or team disharmony can justify SOSR dismissal
- Dismissal should be last resort

Practical Takeaway

- Personality clash causing a toxic, business-damaging office atmosphere can constitute “SOSR” but need to demonstrate last resort
- Risk of discrimination claim if offence caused by conflicting views e.g. gender critical belief

SOSR: Breakdown of trust and confidence

Dismissal on grounds of personality

Perkins v St George's Healthcare NHS Trust

Key Facts

- Employed as Finance Director
- No concerns re technical competence
- Evidence from colleagues highlighting intimidating behaviour, refusal to discuss matters and consensus he should leave
- CEO meeting: asked to resign and refused
- Disciplinary hearing – management style/relationships with external advisors – made accusations against CEO and HRD
- Dismissed summarily on basis could no longer fulfil his role as Finance Director

Decision

- Dismissal fair
- Personality alone cannot be a ground for dismissal
- Impact of personality can be ground for dismissal where actual or potential damage to running of business
- Could be conduct or SOSR – Tribunal's lack of clarity didn't make decision unsafe

Practical Takeaway

- Facts of case are extreme – not lawful to dismiss on low-level personality clashes
- No warning or attempt to resolve in this case only acceptable due to extreme nature of relationship breakdown

When can you act if an employee is difficult, culturally misaligned or a mischief maker but not objectively underperforming?

- You can act at any stage in the employment relationship
- Deal with through informal conversation and/or instigate formal action
- Formal action can be:
  - performance management – “performance” wider than technical performance
  - disciplinary if issue is conduct
  - addressing a relationship breakdown
- If sufficiently serious/not resolved after fair process reasons for dismissal could be:
  - Capability
  - Disciplinary
  - SOSR – relationship breakdown/breakdown of trust and confidence

Take away points

- Set the culture so you have a framework for action
- Attempt to resolve informally if appropriate
  - Gather evidence: specifics not vague generalisations
  - Have an honest conversation: ability to conduct critical conversations is key
  - Take follow up steps
- Move to formal: diagnose the issue and follow process
- Dismissal
  - What is the reason: can plead more than one
  - Was fair process followed
    - SOSR: alternatives/attempts to resolve/reasonable process
  - Consider risks
    - Discrimination/whistleblowing
- Agreed exit
  - Make it attractive
  - What is Plan B

Questions?

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