

Monday Morning Dispatch

YOUR WEEKLY EMPLOYMENT LAW NEWSLETTER FROM CHADWICK LAWRENCE

Coming
up this
week...

Welcome back to the MMD - we hope you had a good summer!

- Sam & Nils explore improvements in visa processing times and review a controversial unfair dismissal case on 'eye rolling'.
- Daniel breaks down the implications of when a client insists on the dismissal of an employee.
- We take a closer look at the Barclays unfair dismissal case following sexual harassment allegations.
- We've released our Autumn Seminars & Events Programme - register below!

The Legal Alternative Podcast



14. UK Visa Processing Time Improvements & Is Eye Rolling a Fair Case of Constructive Dismissal?

Welcome back to the Legal Alternative. This week, Sam & Nils discuss recent updates in employment & regulatory law, including improvements in visa processing times and a significant tribunal case regarding constructive dismissal due to sustained hostile treatment. They also delve into a recent Court of Appeal ruling on data protection claims, clarifying compensation for non-material damages.

14. UK Visa Processing Time Improvements & Is Eye Rol...



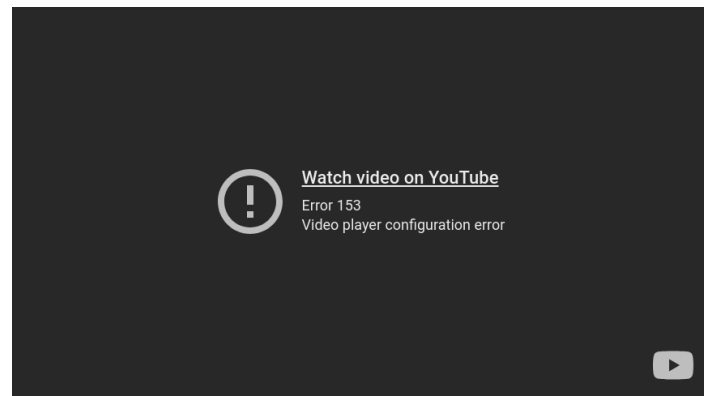
The Media Hub



Client Pressure to Dismiss

In this video, we discuss the implications of a client insisting on the removal or dismissal of one of your employees. We pick up on the requirement to undertake a persuasion exercise with the client and exhaust all other alternatives prior to taking a decision to dismiss.

🌐 Client pressure to dismiss



In the News



Unfair Dismissal: A Case Study in Procedural Failures



A recent employment tribunal decision has found that Barclays Bank acted unfairly in its dismissal of Omar Nayfeh, a financial advisor based at the bank's Glasgow branch, following several allegations of sexual harassment.

Background

Omar Nayfeh was employed by Barclays from 6th August 2015 until his dismissal for gross misconduct on 22nd July 2024. The dismissal followed allegations that, in November 2023, Nayfeh made a series of sexually inappropriate comments to a younger female colleague, which she stated made her feel "vulnerable" and "ill". The remarks allegedly included references to anal sex and inappropriate questions such as:

- "If I show you my willy, will that make us friends?";
- "What's the youngest a 40-year-old can go with?"; and
- Encouragement to buy "sexy underwear from Victoria's Secret."

These comments were said to breach Barclays' bullying and harassment policy, outlined in *The Barclays Way*, which promotes a "no tolerance" approach to bullying, harassment and bias.

The female colleague reported the incident to her line manager, Margaret Brown, prompting an internal investigation led by operations leader Kay Sedgwick. Sedgwick interviewed Nayfeh and several colleagues, including Brown, who recalled Nayfeh once saying he was "surprised" he hadn't been referred to HR before for some of the things he had said. Another female colleague reported that Nayfeh had joked, "I miss the days when we could hit women," after she declined to make him a coffee.

During the investigation, the alleged victim disclosed that a medical condition sometimes affected her concentration, causing her to "zone in and out" of conversations. Nayfeh denied all allegations, calling them "ridiculous".

Despite his denial, it was concluded that Nayfeh was likely to have made these comments. The matter was then referred to a disciplinary hearing.

Disciplinary Process and Appeal

The disciplinary hearing, chaired by operations leader Joanne Dooley, took place on 1st March 2024. After initially being accused of three inappropriate comments during the investigation meeting and disciplinary hearing, Nayfeh later received an outcome letter, a whole four months after the hearing, which detailed two additional allegations.

Nayfeh's appeal contained concerns about procedural failures and, as a result, that the case against him had been founded on mere probability. Barclays Vice President Ryan McGee heard his appeal on 3rd September 2024, which was ultimately rejected on 5th December 2024. McGee upheld the dismissal, citing the seriousness of the comments as justification, despite the absence of any previous disciplinary warnings on Nayfeh's record.

Tribunal Findings

The disciplinary process was found to be "seriously flawed" by Judge Whitcombe. Key issues included:

- Nayfeh was not informed of all five allegations prior to the outcome letter and was denied a fair opportunity to respond.
- Dooley admitted that Nayfeh would not have known about the two additional allegations until receiving the outcome.
- Dooley also relied heavily on Sedgwick's interview notes rather than conducting her own interviews, contrary to Barclays' own code of conduct, which allows for adjournments to gather further evidence.

- Dooley's assessment of Nayfeh's credibility was criticised, particularly her focus on his "demeanour".
- The tribunal found that the disciplinary hearing tested Nayfeh's credibility more rigorously than that of the accuser, despite both of them being central witnesses.

Judge Whitcombe emphasised that investigators must give equal weight to evidence that may support innocence as they do to evidence suggesting guilt. He also criticised the delay in issuing the outcome letter, describing it as "unnecessarily and unfairly delayed" as well as being difficult to follow.

Outcome and Compensation

While Nayfeh admitted to making a comment similar to, "What's the youngest a 40-year-old could go with?", the tribunal found he had not made the other alleged remarks. As a result, his compensation was reduced by:

- 15% for contributory fault, acknowledging the inappropriate comment he did make.
- 50% under the Polkey principle (*Polkey v AE Dayton Services Ltd 1987*), as the Tribunal accepted that the remarks were still likely to have warranted dismissal, even if Barclays had followed correct procedures.

Key Takeaways

This case serves as an important cautionary tale for employers:

- While sexual harassment is a serious issue and must be addressed with the gravity it deserves, this should always be balanced with procedural fairness.
- Specifically, employers must ensure investigations are thorough, evidence is properly gathered, and employees are given a fair chance to respond.
- Decisions should be made in a timely manner and be based on fact rather than on assumptions or impressions.

Upcoming Events



Seminars & Events Autumn/Winter 2025

Your Practical Guide to Managing a Sickness Absence



TIME

8:30 AM - 10:30 AM

LOCATION

Chadwick Lawrence Wakefield Office, WFI 2DF



🌐 Your Practical Guide to Managing a Sickness Absence

Employment Law and Recruitment Market Update *with Hays*



TIME

8:30 AM - 10:00 AM

LOCATION

Chadwick Lawrence Wakefield Office, WFI 2DF



Mock Tribunal Event: Reasonable Adjustments & Flexible Working



TIME

8:30 AM – 12:00 PM

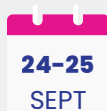
LOCATION

Weetwood Hall Estate, Leeds, LS16 5PS



Mental Health Awareness Sessions

Mental Health Training



We're partnering with Tailored Learning Solutions to offer two day, in person, accredited Mental Health First Aid courses at our Wakefield office.

Accredited by [MHFA England](#)® and the [Royal Society for Public Health](#), MHFAiders will improve knowledge and develop skills to support someone who may struggling and what to do with crisis support.



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For questions, feedback, article ideas, or story contributions, email boxhr@chadlaw.co.uk and we'll be in touch.

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