Watch out: a duty to conduct disciplinary proceedings reasonably?

By Matthew Curtis
3PB Barristers

Woodhead v WTTV Ltd & Anor | [2025] EWHC 1128 (KB)

In *Woodhead* the High Court upheld the claimant's claim against his employer in negligence, based on the manner in which his employer conducted disciplinary proceedings. This unusual case holds some important learning points for those involved in or advising on disciplinaries and other internal procedures that may give rise to significant mental distress.

Relevant facts

The Claimant was the Managing Director of the first Defendant. On 28 November 2019 he was called into a meeting where he was told about complaints of sexual harassment that had recently been made against him. The complaints related to events in 2017/2018. He was required to respond to the complaints there and then, in a lengthy meeting. He was then suspended while further investigation took place.

His employment terminated by reason of redundancy on 8 May 2020 (he had been given notice of termination on 8 November 2019, before the allegations came to light).

The Claimant alleged that the disciplinary process was deficient in various ways, and that this caused him psychiatric injury. He succeeded with his negligence complaint – the Court dismissed a claim for misuse of private information ('MPI') and in the circumstances did not need to consider his breach of contract claim.

What duty does an employer have?

The relevant duty of care in this case was that the employer will not in the course of an individual's employment expose them to an unreasonable risk of foreseeable psychiatric injury arising from employment.

Four key elements to this (taken from the convenient summary at paragraph 25 of the judgment) are that:

1) Claims for psychiatric injury arising from employment will not succeed unless it was reasonably foreseeable that the employee bringing the claim could suffer an injury to health attributable to stress at work (per *Hatton v Sutherland* [2002] ICR 613);

2) Reasonable foreseeability depends on what the employer knew or ought reasonably to have known;

3) An employer may assume that an employee will withstand the usual pressures of a job '*unless he knows of some particular problem or vulnerability*';

4) The employer will only be in breach of duty when it fails to take the steps that are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the cost and practicality of preventing it and the justifications for running the risk.

How did the employer get it wrong in this case?

The High Court was critical of the employer's approach in four respects:

1) The initial '*fact-finding*' meeting on 28 November 2019 was *"very badly handled"*. The Claimant was not given any written details of the complaint, the meeting lasted several hours and it was conducted as an investigatory meeting rather than one where the Claimant was simply informed of the existence of the complaints and suspended (with a later meeting to go through the detail and for him to respond to the allegations). A key issue appears to have been the nature of the complaints and the distress it caused the Claimant. (The judgment describes how *"[the Claimant] was confronted with allegations that were both serious and intimate, and expected to respond to them without notice. There was no reason why matters had to be dealt with this way… it was not the approach to be expected of an employer acting reasonably")*

2) Very shortly after the meeting on 28 November, the employer decided that some of the allegations would not be pursued in a disciplinary process; out of five allegations the employer had decided that two would not be pursued and one would only be pursued in part. This was not communicated to the Claimant at any point; instead he was repeatedly asked for his account for all five allegations.

3) The employer attempted to pursue the disciplinary process whilst the Claimant was on sick leave, in circumstances where there was no urgency.

4) In April and May 2020 the employer attempted to require the Claimant to undergo an Occupational Health assessment when it was *"entirely pointless"* as the information from the Claimant's treating doctors made plain that he was not fit for work or to particulate in the disciplinary process.

The Claimant's employer accepted that from 4 December 2019 it had the required knowledge of foreseeable risk of harm to the Claimant's health from stress at work as a result of the disciplinary procedure.

The judge's findings on liability

The claim relating to the first flaw identified above failed as the Court found that it occurred before it was reasonably foreseeable that the Claimant would be at risk of harm from the disciplinary procedure.

The court found that the other points amounted to breaches of the employer's duty and that item 2 had materially contributed to the Claimant's psychiatric harm for which the employer would be liable to compensate him. The harm was contributed to by the Claimant feeling '*unheard*' during the process; as supported by the expert evidence. The Judge found that this was indivisible from the other psychological injuries, so the Claimant would be compensated for the whole of his psychological harm subject to a further hearing on quantum.

Learning points:

- Employers should bear in mind the duty to take reasonable steps not to cause reasonably foreseeable psychiatric harm at work.
- This is particularly important when an employee is about to be, or has, been exposed to a significant stressor such as disciplinary proceedings involving serious allegations.
- Where the duty arises, employers will need to balance the needs of the company in continuing with the disciplinary process (and the needs of the complainant in having the complaint resolved) against the needs of the employee. Bearing in mind the fourth element identified at paragraph 25 of the judgment, if employers adopt a similar approach to reasonable adjustment cases then they won't go far wrong.

Other point of note – private information in disciplinary proceedings

The Claimant also brought an unsuccessful claim that the disciplinary process (both the original complaint and the pursuing of the process) involved MPI.

Whilst the Court accepted that private information was involved, it found that the disclosure and use of the information was justified – the original complainant disclosed the information for the limited and specific purpose of making a complaint under the employer's "Protecting a Respectful Working Environment" policy; and the employer's use of the information was justified – in the disciplinary proceedings the employer was pursuing a legitimate objective in a proportionate way.

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Matthew Curtis

Barrister
3PB Barristers

01865 793736
matthew.curtis@3pb.co.uk

3pb.co.uk