

Chapter 7: Unfair Dismissal

Question 1

Sarah is a primary school teacher in a school that has recently been rated as 'Inadequate' by OFSTED. She has worked at the school for two years, including one year as a probationary teacher. She currently teaches in the infant department. Sarah was in the top of her class during her PGCE and came to the school with outstanding references from her tutors.

The OFSTED inspectors raised a number of concerns in their report including inadequately prepared classes, poor quality teaching, and a lack of leadership at all levels in the school. The Headteacher, with advice from the local council's HR department, has decided that poorly performing teachers should be placed on a Performance Improvement Programme ("PIP"). Sarah's immediate line manager, Jess (who is head of the infant school), placed Sarah on a PIP. This caused Sarah considerable distress. The OFSTED report commented positively on 'the work of a newly qualified infant teacher', which could only be Sarah. The OFSTED inspector also praised Sarah's lesson when it was being observed. Sarah believes that Jess does not like her and wants rid of her. In previous planning meetings in the infant department, Jess has dismissed many of Sarah's ideas as being 'too much work' and regularly comments about how Sarah's enthusiasm for the job will soon go when she has more experience.

Sarah has found the targets set in the PIP to be unrealistic and last week asked to meet with the Headteacher to share her concerns. During this meeting, Sarah confided in the Head that she has received no mentoring from Jess, that Jess is frequently under-prepared for lessons, and that when Jess told Sarah to observe one of her lessons to 'see how it is done', Sarah saw children frequently misbehaving. The Head told Jess of Sarah's concerns after the meeting. Both Jess and the Head agreed that Sarah was the wrong fit for the school and that she was a trouble-maker. Jess met with Sarah this morning to tell her that the PIP was not working and that she was to be dismissed with notice. Sarah is devastated and feels that she is being treated as a scapegoat.

Commentary

At the heart of this question lies the law on unfair dismissal on grounds of capability. Capability dismissals fall into two categories – ill health or performance. In this case it is the latter and you are being invited to consider whether the dismissal is fair in the circumstances. There can be some overlap between the conduct and capability grounds for dismissal where the performance is sloppy due to an employee's lack of application or laziness although that does not appear to be the case here. This question is further complicated by what appears to be an unfair process – a performance improvement plan that gives no genuine time to improve, and an overall concern that Sarah is being edged out of her role. Discussion of the procedural elements that should have been followed in addition to considerations of substantive fairness should form the bulk of your answer.

Question 2

As it currently stands, the unfair dismissal regime offers an insufficient deterrent to an employer who wants to dismiss an employee for no good reason.

Critically consider this statement.

Commentary

This broad question can be answered in number of ways. You may choose either to agree or disagree with this statement. You will need to show that you have a good understanding of the general law of unfair dismissal together with the issues of substantive and procedural fairness. However, an answer that merely recounts the law of unfair dismissal is unlikely to score highly. Instead you must explore the effectiveness of the legal provisions by reference to the case law and any relevant academic authority.

Question 3

Seamus is employed as a supervisor in the accounts department of a large company. He has been with the company for ten years. He has a reputation for being lazy but nothing has ever been done about this. Last month Bob, the accounts director, discovered a serious error in the quarterly accounts prepared by Seamus. Seamus said that this must have been an oversight. Bob has concerns about how able Seamus is to perform his role but has been advised by HR that this is a one-off mistake and should be treated as such. Seamus receives a first written warning for the incident.

Last week the company's auditors conducted a routine visit. They discovered that the 'oversight' is actually masking regular withdrawals of cash from the company's accounts. The police have been called and have informed Bob that it is likely that Seamus will be charged with fraud. Bob wants to dismiss Seamus immediately.

Advise the company.

Commentary

Although relatively short, this problem question raises a tricky issue of workplace behaviour that lies at the boundary of misconduct/lack of capability. What appears to have been a one-off mistake follows long-standing laziness (which has never been addressed). More worryingly however is the discovery of potential fraud, which would amount to misconduct. The examiner is asking you to explore whether it is possible to dismiss immediately given the likelihood of criminal charges. In such a case the employer would still be expected to come to its own conclusion about the alleged misconduct by following a fair procedure, although the police findings would no doubt be considered as part of any investigation. You will be expected to have a solid grasp of the case law and legislation pertaining to misconduct dismissals.