

# **EMPLOYMENT DISPUTE CASE REVIEW & STRATEGIC LEGAL ANALYSIS (CONFIDENTIAL CLIENT)**



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# EXECUTIVE SUMMARY

This comprehensive 14-page case review and legal analysis played a critical role in securing a successful appeal outcome for our client in a complex employment dispute. The document meticulously examines the case facts, relevant employment legislation, and key legal precedents, providing a thorough breakdown of the strengths, weaknesses, and potential risks involved.

Prepared with precision and strategic insight, this analysis was actively used during the appeal proceedings to inform legal arguments and guide decision-making. As a result, the client won the appeal, overturning previous unfavourable decisions and achieving a just resolution.

All sensitive information, including client and company names, has been fully anonymised to maintain confidentiality (GDPR 2018) while showcasing the depth of legal expertise and practical application. This case exemplifies our commitment to delivering detailed, actionable insights that drive successful outcomes for our clients.

This case review and analysis is provided for informational and illustrative purposes only. It is based on a real legal matter with all client and company details redacted to protect confidentiality. The analysis does not constitute legal advice and should not be relied upon as such. Outcomes in legal disputes can vary depending on individual circumstances.

## Statement of Truth:

We confirm that the facts and analysis contained within this document are a truthful and accurate representation of the case as presented at the time of the appeal. All information has been verified to the best of our ability, and the client acknowledges and agrees with the findings and conclusions set forth.

**Ashley Kaungwa**  
Founder of Regulex Partners

**Date Uploaded: 14/06/2025**



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# CASE REVIEW AND ANALYSIS

Client v. Company

20/02/2025

## **Confidentiality Notice:**

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## INTRODUCTION

An independent review of the dismissal of Client has been assessed under the Employment Rights Act 1996, ACAS Code of Practice and NMC Guidelines to obtain an impartial perspective on the conduct of the investigation and dismissal by Company. The purpose of this review is to provide an objective evaluation of the investigation, disciplinary process, and dismissal decision to determine its fairness, adherence to legal frameworks, and procedural integrity. While this document does not serve as formal legal advice, it is intended as a supplementary aid for any relevant parties reviewing this matter.

## CASE BACKGROUND

It is alleged that on the 24/12/2024, Client had committed gross misconduct to the degree of breach of NMC guidelines under the lucidities that he:

- I. Was asleep whilst on shift; during the incident that led to physical conflict.
- II. Produced poor documentation of the incident that had to be authenticated by a manager.
- III. Breach of NMC Guidelines.

An investigation was launched on 31/12/2024 by Company to which this periodised 18 days (31/12/2024 to 17/01/2025). A Notice of Investigation was indicated on the 31/12/2024 detailing from Company to Client a date of 9am on 02/01/2025. On 14/01/2025 a Notice of Disciplinary was sent out to which the hearing was set for 16/01/2025 to give Client the opportunity to relay the version of events before making the final decision. 17/01/2025, Client was cited the maximum penalty of Dismissal without notice or further warning.

Client appealed on 22/01/2025 to which he asserted grounds of:

- I. Unfair Process: Insufficient notice, denial of the right to be accompanied, potential GDPR breaches, and procedural inconsistencies in the disciplinary hearing.
- II. Harsh Outcome: Lack of prior concerns and failure to consider alternative disciplinary actions.
- III. Incomplete Evidence Consideration: Denial of CCTV footage, potential data protection violations, and missing policy documentation.
- IV. Potential Discriminatory Basis: Allegations of racial bias, citing similar treatment of other Black colleagues and issues surrounding his annual leave dispute.

The scope of this review includes: the review of the dismissal process. Legal and policy considerations, Findings and Analysis to which a recommendation will be concluded based on the merits of each argument in terms of logic, evidence and decisiveness of evidence.

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## REVIEW OF DISMISSAL PROCESS

Company follows the ACAS Code of Practice, which classifies workplace misconduct into two primary categories: minor misconduct and gross misconduct. Minor misconduct generally warrants informal resolution or progressive disciplinary actions, whereas gross misconduct is considered a serious violation that may justify immediate dismissal without notice. The key question here is whether the disciplinary action taken against Client was conducted lawfully and in line with ACAS procedural requirements.

In this case, Client was dismissed without notice on the grounds of gross misconduct for allegedly sleeping at work. The Employment Rights Act 1996 s.86(6) stipulates this as a widely recognised rationale for summary dismissal, provided that a fair and just disciplinary process has been followed. Thus, the fundamental issue does not lie in the legality of the dismissal itself, but rather in whether the disciplinary process adhered to procedural fairness and ACAS guidelines.

### Investigation Process and Procedural Fairness

ACAS mandates that all investigations must be conducted fairly and thoroughly to establish an objective understanding of the facts before proceeding with disciplinary action (Employment Rights Act 1996 s.98(4)). The length of an investigation should correspond to the severity and complexity of the allegations. In Client's case, the investigation lasted 18 days. Given the nature of the alleged misconduct and the necessity of gathering sufficient evidence, this duration appears reasonable within ACAS guidelines.

A critical factor in any investigation is the level of employee cooperation. Client fully complied with the investigative process, which is a fundamental expectation under ACAS and Company principles. A recurring procedural concern is the pattern of insufficient notice provided for both the investigatory and disciplinary hearings. Client was notified of his investigatory meeting on 31/12/2024, with the meeting scheduled for 02/01/2025, allowing only three days' notice, including a national holiday (New Years Day). Whilst investigatory meetings are outside The Formal Disciplinary Process documented in the Company Investigations Policy, it is good practice to allow reasonable time for an employee to prepare a response. Similarly, Client was informed of his disciplinary hearing on 14/01/2025, with the hearing scheduled for 16/01/2025 providing only two days' notice. This raises concerns regarding compliance with Section 4.4 of the Company Investigations Policy, which states that before any disciplinary meeting, the employee must be:

- **Given a reasonable opportunity to consider their response to the allegations**
- **Offered the opportunity to be accompanied by a work colleague or a trade union representative**

The limited timeframe may have impeded Client's ability to adequately prepare his defence or secure appropriate representation, calling into question whether the process adhered to principles of fairness.

ACAS guidance states that employees should be given a reasonable opportunity to consider their response and arrange for a representative if they wish. Allegedly, Client did request to have a representative present, but Company refused, asserting that the hearing would proceed as scheduled. This refusal raises significant procedural concerns. While under the Disciplinary Meeting notes stated that Client ultimately agreed to continue without a representative, the refusal itself could be perceived as limiting his ability to present a full defence.

### **Disciplinary Procedure and Employee Rights**

Under ACAS guidelines, an employer must only initiate formal disciplinary action if there are clear grounds to do so. In Client's case, pictorial CCTV footage allegedly showing malpractice provided Company with sufficient justification to escalate the matter to a formal hearing. It is important to note that even where there is strong evidence, the disciplinary process must be conducted in a way that is procedurally sound and fair.

Before any disciplinary hearing, employees must be provided with a written notice outlining the allegations against them, along with a summary of the evidence being used, copies of relevant documents, and any witness statements. Client was given this information, but the short timeframe between notification and the hearing itself raises concerns about whether he had sufficient time to prepare a defence.

One of the most crucial rights under ACAS is the right to be accompanied during a disciplinary hearing. Employees are entitled to bring a trade union representative or a colleague to support them (Employment Relations Act 1999 s.10(1)). If the chosen representative is unavailable on the scheduled hearing date, the employer should make reasonable accommodations to reschedule (Employment Relations Act 1999 s.10(4)). In Client's case, this did not happen. It was alleged that he was denied more time to find a representative. While he later stated in the hearing that he was willing to continue, the refusal to reschedule remains a procedural weakness that could undermine the perceived fairness of the process.

The disciplinary process at Company follows a structured escalation system: first, a written warning, then a final written warning, followed by dismissal, and in cases of severe misconduct, dismissal without notice. Given that sleeping on duty is explicitly categorised as grounds for immediate dismissal, Company was within its rights to proceed directly to termination without notice.

### **Appeal Process and Procedural Delays**

Employees dismissed through a formal disciplinary process have the right to appeal (ACAS s.7). ACAS recommends that appeals should be arranged within five working days of receiving the employee's request. This is also written clearly in the Company Investigations Policy. (5.10) Client submitted his appeal on 22/01/2025, but the appeal was not acknowledged, responded to nor arranged until 11/02/2025 - a delay of nearly three weeks to which the recommended dates of appeal was outside the five working day policy. An update of the appeal had to be prompted by Client's Union Member via email. While there is no strict legal requirement for appeal hearings to be held within a set timeframe, ACAS emphasises that they should be conducted without undue delay. The extended gap between Client's appeal request and the hearing could be considered procedurally unreasonable.

The appeal hearing was heard and chaired by Jane Doe who was not involved with the original case adhering to ACAS guidelines.

## **FINDINGS & ANALYSIS**

This section provides a comprehensive examination of the evidence gathered related to the dismissal case, evaluating the arguments and substantiation put forward by Company against Client's appeal. The analysis will cover the key legal and procedural aspects of the case to determine whether the dismissal was fair. Specifically, the employer's compliance with evidence-gathering requirements under Employment Rights Act 1996, s.98 concerning the fairness of dismissal will be assessed. The disciplinary hearing procedures will also be reviewed in light of Employment Relations Act 1999, s.3 which guarantees the employee's right to be accompanied by a colleague or union representative during the process. Furthermore, the employer's adherence to General Data Protection Regulation (GDPR) requirements will be examined, ensuring compliance with Article 5 (principles relating to the processing of personal data) and Article 6 (lawfulness of processing) when handling sensitive employee data.

The ACAS Code of Practice on Disciplinary and Grievance Procedures (2015) will be referenced to determine whether the employer followed best practices, particularly in areas such as conducting a fair investigation, providing adequate notice, and allowing the employee the opportunity to respond to allegations. Additionally, this section will analyse both the employer's and the employee's arguments to assess whether the dismissal process adhered to procedural fairness, including the employee's right to appeal.

The findings will aim to determine if the dismissal was lawful, fair, and consistent with both employment law and the Company's internal policies, ultimately evaluating whether the disciplinary action taken was justified.

### **Preliminary**

The investigatory meeting conducted on 02/01/2025 with Client was intended to gather factual information regarding the incident that took place on 24/12/2024, not to initiate disciplinary action. This was explicitly stated in the letter sent to Client, which confirmed that the investigation was aimed at obtaining more details about the incident and not assuming guilt. The meeting was attended by HR, and Client as the employee involved.

### **Panel and Meeting Structure**

The letter notifying Client about the meeting did not specify the names of the individuals attending the investigatory meeting, nor did it formally outline a panel. Under the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015), it is not a strict requirement to inform an employee about the composition of the panel for an investigatory meeting. However, it is considered best practice to include this information in advance to ensure transparency. While the failure to do so in this case is not necessarily a breach of formal procedure, it may lead to confusion or ambiguity. Additionally, although the meeting was not a disciplinary

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hearing, the structure of the meeting could benefit from clearer communication of the roles of the attendees to avoid potential concerns about impartiality.

### **HR's Role and Potential Bias**

Under the meeting transcript, they were 3 people in attendance.

Client – Denoted as [CL].

HR – Denoted as HR.

During the investigatory meeting, HR acted as HR representatives. However, their role in the meeting could be seen as unclear due to the perceived dual involvement of both individuals in questioning [CL] as there was no indication of roles in notification letter received by [CL] or on the transcript. Under ACAS guidelines, it is recommended that one person conduct the questioning to avoid confusion or the perception of bias. This ambiguity raises concerns about whether the questioning may have been perceived as overly aggressive or leading. If both individuals were questioning [CL] simultaneously, this could create the appearance of a "ganging up" situation, which may have influenced [CL]'s responses.

Further, HR's failure to clearly distinguish between their roles could also suggest a lack of transparency in the investigatory process, leading to potential questions about fairness in the procedure. The investigation should aim to be neutral, but the presentation of HR as a joint entity, rather than identifying individual roles and responsibilities, risks undermining this neutrality.

### **The Evidence and Its Introduction**

A critical issue in the investigatory meeting was the introduction of photographic evidence (CCTV footage) showing [CL] allegedly "looking asleep" during the incident. This evidence was presented during the meeting without prior notice in the invitation letter, which only stated that the purpose of the meeting was to gather information regarding the incident. According to the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015), it is a best practice for an employer to inform an employee of the nature of the allegations and provide the opportunity to review any evidence beforehand. By failing to disclose the CCTV evidence in advance, the employer may have violated the expectation of fairness in the investigatory process.

The Police and Criminal Evidence Act 1984 (PACE), while primarily concerned with criminal investigations, sets out general principles regarding the handling of evidence in any investigative process. PACE s.67 outlines that the suspect should be given the opportunity to review evidence that may be used against them. Although this is not a criminal case, the spirit of PACE 1984 can be applied in the context of employment law to ensure that an employee is not ambushed by new evidence in a meeting without prior knowledge. The failure to inform [CL] about the photographic evidence beforehand undermines the fairness of the process and potentially violates the principles of due process.

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Moreover, the introduction of this evidence during the meeting created a situation where [CL] was forced to defend himself against an accusation he was not previously informed about. [CL] denied the allegation that he was asleep but conceded that he might have "dosed off" during the shift. While [CL]'s response was reasonable, HR's decision to present the evidence without prior disclosure could be seen as prejudicial, as [CL] was not given the opportunity to properly prepare a defence.

### **Conclusion of the Meeting**

Despite these issues, the investigatory meeting itself appeared to remain professional, with HR emphasising that no assumptions of guilt were being made. [CL] was asked relevant questions regarding the incident and his observations, and there was an opportunity for him to explain his side of the story. However, the failure to disclose the evidence beforehand and the lack of clarity regarding the roles of the HR representatives raises concerns about procedural fairness and transparency.

In summary, while the meeting was structured as a fact-finding exercise, the introduction of evidence without prior notification, along with potential concerns about the questioning process, could lead to questions about whether the employer adhered to the best practices outlined in the ACAS Code of Practice and PACE.

The disciplinary hearing held on 14/01/2025 involved Client, with HR representatives in attendance. The purpose of this hearing was to address concerns regarding [CL]'s conduct during his shift, specifically his alleged failure to engage during a critical incident. However, the proceedings demonstrated significant flaws in both the evidentiary handling and the clarity of roles, which raise serious questions about the fairness and legality of the process.

Client was duly notified about the hearing in advance. The letter detailing the nature of the charges was comprehensive, yet it failed to adequately differentiate the roles of those leading the meeting. HR was listed as HR representatives, but their individual roles, whether they were responsible for questioning or mediating the meeting, were not clarified. This lack of transparency is concerning, as it can create ambiguity in the process, making it seem more like an interrogation than a fair, objective hearing. The ACAS Code of Practice underscores the importance of clarity in communication, particularly regarding roles, to ensure a transparent process that respects the employee's rights.

## Panel Composition

The panel consisted solely of HR, both from the HR department. While it is legally permissible for the same individuals to conduct a disciplinary hearing, the absence of an independent third party raises concerns about impartiality. For procedural fairness, the ACAS Code of Practice advises that a neutral third party be involved in disciplinary proceedings to prevent any potential bias. In this case, the lack of an independent figure could be seen as a limitation in ensuring an unbiased and objective evaluation of the evidence and the employee's defence.

## Evidence Presentation

One of the most significant issues in the hearing was the presentation of evidence, particularly the photographs showing Client in various positions during the incident. Although the photographs were referenced during the hearing, the lack of clarity in the evidence raises doubts about the strength of the case against Client. Specifically, the images depicted Client with his eyes closed, but it is impossible to definitively conclude from these photos whether he was asleep, blinking, or simply resting. The timestamps between each image suggest that the alleged period of Client's inattention spans over a half-hour, during which his posture remains largely unchanged. Such circumstantial evidence, without any corroborating video footage or additional testimony, fails to meet the standard of proof required in a disciplinary process.

According to the Employment Rights Act 1996 and the ACAS Code of Practice, employees are entitled to clear and transparent evidence during disciplinary proceedings. The lack of conclusive proof of Client's inattentiveness raises questions about whether he was truly negligent during the incident. Given the circumstantial nature of the evidence, Client should have been afforded a more thorough opportunity to challenge the photos and provide a clearer context for his actions during the shift.

## Timeline of Evidence

The photographic evidence was presented in a series of images that, though timestamped, failed to conclusively demonstrate Client's alleged failure to engage. Below is a timeline summarising the key images, along with their respective timestamps:

Timestamp	Description of Image
03:05:26, Tuesday	Client is seen slumped in a chair holding a device. Resident A and Resident B are seated next to each other at a table. The image does not provide definitive proof of Client being asleep.
03:30:43, Tuesday	Another image with Client in a similar posture, eyes closed. However, it's unclear if he is sleeping or just resting. His body remains rigid.
03:33:22, Tuesday	Client's eyes are closed. The pixelation of the image makes it difficult to determine if his eyes are merely closed or if he is asleep.

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03:37:53, Tuesday	Client appears to have his eyes closed, but again, the image fails to provide conclusive evidence of sleep. His body remains in a relaxed posture, not consistent with someone deeply asleep.
03:43:43, Tuesday	A clearer image showing Client with his eyes closed. This could suggest sleep, but again, there is no definitive proof.
03:43:52, Tuesday	Similar to the previous image, Client's eyes are closed, but the picture fails to demonstrate that he is asleep.
03:44:02, Tuesday	A confrontation begins between Resident A and Resident B, with Resident B standing up and Client intervening to restrain Resident A's hands. This is the first clear point of action.

Despite these images, the evidence remains inconclusive. The lack of clarity in the photographs and the absence of additional corroborative evidence mean that the allegation against Client is based on speculation rather than fact.

### **Legal Considerations**

The Employment Rights Act 1996 sets out the framework for fair disciplinary proceedings in the workplace. It is vital that employees are given clear notice of the charges against them, the evidence supporting those charges, and the opportunity to challenge that evidence. In this case, the photos presented as evidence were ambiguous and did not provide sufficient clarity to justify the severity of the disciplinary action. Furthermore, the Human Rights Act 1998, particularly Article 6 (right to a fair trial), protects individuals from unfair treatment in legal and disciplinary proceedings. Client's right to a fair process appears to have been compromised by the unclear presentation of evidence and the lack of a neutral party in the hearing.

The ACAS Code of Practice also emphasises that disciplinary processes must be conducted fairly and transparently, with clear roles for all parties involved. The ambiguity surrounding the roles of the HR representatives and the insufficient clarity in the evidence provided suggests that the disciplinary process may not have fully adhered to these principles.

### **Documentation**

The issue of Client's documentation was also addressed during the hearing. HR raised concerns about the absence of a body map to document any physical injuries sustained by Resident A. While it is evident that Client did not meet the expected standards for record-keeping, the absence of this map alone does not justify the severe disciplinary action taken against him. The Nursing and Midwifery Council (NMC) Code of Conduct stresses the importance of accurate and clear documentation in healthcare settings. However, the penalty imposed on Client should be proportional to the nature of the failure, and the absence of a body map does not appear to warrant a termination.

## **Appeal Analysis of Client**

Client lodged an appeal and complaint on the 22/01/2025 regarding the outcome of a disciplinary hearing held on 16/01/2025. His appeal is based on several grounds, which include claims of an unfair process, an overly harsh outcome, the failure to consider relevant information, and allegations that the dismissal was racially motivated. Each of these points has been reviewed, considering the relevant laws, best practices, and procedural fairness.

### **I. Unfair Process**

#### **Insufficient Notice**

Client argues that he was not given sufficient notice of the disciplinary hearing. The notice provided was only three days in advance, including a national holiday, which Client believes does not align with the expected five working days as per ACAS guidelines and best practice.

The Employment Relations Act 1999 s.10, states that an employee has the legal right to be accompanied at a disciplinary hearing. Providing adequate notice is essential to allow the employee time to arrange for representation. While the three-day notice may be considered unfair, especially given the national holiday, this issue does not render the hearing invalid. Nonetheless, it would have been more appropriate to allow for five working days to ensure that Client had ample time to prepare and secure representation.

#### **Denial of the Right to Be Accompanied**

Client asserts that his legal right to be accompanied, as outlined under Employment Relations Act 1999 s.10, to which he was allegedly denied. He requests reasonable grounds for this denial to be articulated.

It is crucial that employers provide an opportunity for the employee to be accompanied at a disciplinary hearing. However, Client has not yet provided clear, articulable reasons to support the claim that this right was specifically denied. While the issue of process is concerning, it is not decisive enough to form a conclusion at this stage. The appeal should consider whether Client was explicitly told that representation was not allowed, and whether this impacted his ability to participate fairly in the proceedings.

#### **Disciplinary Hearing Panel Composition**

Client challenges the composition of the panel, stating that a management representative should have chaired the hearing and that the context of the allegations should have been considered when assigning the chair. Specifically, Client points out that none of the panel

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members are registered nurses and thus may not have been equipped to assess clinical practice standards.

While it is not a legal requirement for a disciplinary hearing to be chaired by management, ACAS guidelines recommend that disciplinary hearings be conducted by a competent and unbiased panel. Ideally, those involved should have relevant knowledge or qualifications related to the allegations. In this case, the panel's lack of clinical expertise is a point of concern, but it does not necessarily invalidate the process. Nonetheless, for future hearings, it would be beneficial to ensure that the panel has members with the necessary expertise, especially when clinical judgments are involved.

### **Breaches in GDPR**

Client asserts that the photographic evidence used in the disciplinary hearing poses potential breaches of General Data Protection Regulation (GDPR), which, if found to be the case, would render the evidence inadmissible. Furthermore, Client requested CCTV footage, which was declined, potentially infringing upon his rights under GDPR.

While the images were presented to Client as evidence, there is a concern about the legality of using these photographs if they were obtained in breach of GDPR guidelines. If Client's image was captured by CCTV and he requested access to it, the data controller must adhere to the Data Protection Act 2018, which requires that CCTV footage be kept for a reasonable time (a minimum of two months) and provided upon request within one month. If Client's request for CCTV video footage was denied unjustifiably or was not provided in compliance with the regulations, it could be considered a breach of GDPR, undermining the credibility of the disciplinary process.

### **Undefined Roles of the Chair, Minute Taker, and HR**

Client asserts that the roles of the chair, minute taker, and HR representatives were not clearly defined during the disciplinary hearing.

This point is valid. The ACAS Code of Practice emphasises that disciplinary proceedings must be fair, and clear roles should be established to avoid confusion. The lack of defined roles can lead to ambiguity and potentially undermine the process. It is recommended that future hearings clearly outline the responsibilities of all involved parties to ensure transparency and consistency.

## **II. The Outcome Was Too Harsh**

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Client contends that the disciplinary outcome was excessively harsh, particularly because there were no previous concerns about his conduct. He also argues that if a breach of GDPR is found, all allegations should be dismissed.

In accordance with Employment Rights Act 1996, employers have the right to dismiss employees without notice if the investigation is thorough, fair, and the decision is proportionate. While the absence of prior concerns is noteworthy, it does not automatically negate the validity of the decision. However, the fairness of the dismissal could be questioned if it is determined that due process was not followed, or if there was a breach in GDPR.

### **III. Information Not Considered**

Client claims that the failure to provide him with CCTV footage and the lack of transparency regarding the footage's availability is a significant issue. He also requests further information, including the name of the registered data controller and a copy of the data protection policy.

Client's claim regarding the denial of CCTV footage must be considered within the framework of GDPR. If the footage was available but not provided to Client, this could constitute a violation of his rights under data protection regulations. Additionally, Client's request for further documentation is valid; employers are required to provide employees with access to their data and information related to disciplinary investigations.

### **IV. Racial Discrimination Allegation**

Client asserts that the dismissal was based on his ethnic background, claiming that similar disciplinary actions have been taken against other black colleagues. He also raises concerns about being denied annual leave allocations, which he was questioning at the time.

This allegation requires a thorough investigation. Discrimination based on race or ethnic background is prohibited under the Equality Act 2010. If Client can demonstrate that his treatment was discriminatory, this could be grounds for further action. However, this claim would need to be substantiated with clear evidence of similar treatment of other black colleagues and how this correlates with his own disciplinary action.

## **CONCLUSION**

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The disciplinary process involving Client demonstrates significant procedural flaws that raise serious concerns about fairness and transparency, both in the investigation and the hearing.

- **Procedural Fairness and Transparency:** The lack of prior disclosure of key evidence, such as photographic images and the failure to clarify the roles of HR representatives, created an environment that undermined transparency. These procedural errors are compounded by the fact that the photographic evidence presented was inconclusive, making it difficult to establish Client's alleged negligence.
- **Panel Composition:** The absence of a neutral third party in the disciplinary panel, along with the lack of clinical expertise among the HR representatives, further diminished the fairness of the hearing. While the presence of HR representatives is legally permissible, the ACAS Code of Practice encourages the inclusion of a neutral third party to ensure impartiality. The lack of seniority in the hearing is also a potential issue.
- **Evidence and Legal Considerations:** The photographs presented as evidence did not conclusively prove Client's alleged inattention or failure to engage during the incident. The circumstantial nature of the evidence, without corroborating video footage or witness testimony, weakens the case against him. Additionally, there were concerns regarding the potential breach of GDPR in the handling of photographic and CCTV evidence, which may further undermine the disciplinary process's legitimacy.
- **Right to Be Accompanied and Insufficient Notice:** The three-day notice for the disciplinary hearing, including a national holiday, falls short of the general ACAS guideline of providing five working days' notice. Additionally, concerns about Client's right to be accompanied remain unresolved. These issues highlight potential violations of Client's rights under the Employment Relations Act 1999, though further clarification is needed regarding whether this denial of accompaniment affected the fairness of the hearing.
- **Racial Discrimination:** Client's claim of racial discrimination in the disciplinary process must be thoroughly investigated. If substantiated, this would constitute a violation of the Equality Act 2010. The allegations of disparate treatment of black colleagues could suggest an underlying issue of racial bias, which warrants further scrutiny.
- **Documentation and Procedural Errors:** Client's appeal was unnecessarily delayed for 3 weeks until Client Union Member intervened to prompt a response. Upon receipt of the appeal on 11/02/2025, the employer suggested scheduling the hearing for either 19/02/2025 or 21/02/2025 - both of which were outside the employer's standard 5 working day policy for response timelines. These delays, which were contrary to the employer's own procedures, negatively impacted the perception of fairness and undermined the credibility of the process, even though they did not directly affect the substance of the appeal.

## RECOMMENDATIONS

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- **Improvement in Evidence Handling:** Future disciplinary hearings should ensure that all evidence is disclosed well in advance, allowing the employee adequate time to review and challenge it. Clear, unambiguous evidence should be presented, and where circumstantial evidence is used, there should be supporting testimony or video footage to strengthen the case.
- **Clear Role Definition and Panel Composition:** The roles of HR representatives and any other involved parties should be explicitly defined and communicated in advance to avoid confusion. The inclusion of a neutral third party with relevant expertise in clinical matters should be considered for future disciplinary hearings, particularly when the allegations concern professional conduct in a healthcare or clinical setting.
- **Adherence to Procedural Timelines:** The employer should adhere strictly to its own procedural timelines, ensuring that adequate notice is given for hearings, and that employees are allowed sufficient time to prepare. The five-day notice period recommended by ACAS should be followed to ensure fairness.
- **Addressing Racial Discrimination Allegations:** The claim of racial discrimination should be independently investigated. If it is found that Client was treated unfairly because of his ethnicity, appropriate steps should be taken to rectify the situation, including reviewing the handling of previous disciplinary cases involving black colleagues.
- **Improvement in Data Protection Practices:** The employer must ensure that all evidence used in disciplinary hearings, including CCTV footage, is handled in full compliance with GDPR regulations. The denial of access to CCTV footage should be investigated, and if the footage was available but withheld improperly, it should be made accessible to the employee as part of the appeal process.
- **Provide Fair Opportunity for Representation:** The employee's right to be accompanied should be respected and ensured during disciplinary hearings. Clear guidelines should be established for employees to bring a representative, and any reasons for denying this right should be communicated clearly and fairly.
- **Proportionality of Disciplinary Actions:** In cases where an employee's conduct is being questioned, the severity of the disciplinary action should be proportional to the nature of the misconduct. The absence of previous concerns about Client's conduct should be taken into account, and the penalties should be reconsidered in light of the procedural flaws identified in this case.
- **Enhancing Documentation Practices:** The employer should improve its documentation practices to ensure that all incidents are fully and accurately recorded, especially in healthcare settings where the NMC Code of Conduct is applicable. However, in this case, the absence of a body map documenting injuries does not appear to justify the severity of the disciplinary action against Client.

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