

12CP

BARRISTERS

EMPLOYMENT

FACT 7

MISCONDUCT DISMISSALS

Where the conduct of the employee is the reason for the dismissal the following important points arise from the cases. This Fact Sheet should be read in conjunction the Fair Dismissal Fact Sheet.

BHS v Burchell [1978] IRLR 379: The employer must establish that:

- ⇒ He had a genuine belief in the employee's guilt;
- ⇒ there were reasonable grounds for his belief;
- ⇒ he had carried out a reasonable investigation.

HSBC v Madden [2000] ICR 1283: The function of the Tribunal is to decide:

- ⇒ whether the investigation is reasonable in the circumstances;
- ⇒ whether the decision to dismiss, in the light of the result of that investigation, is a reasonable response.

Sainsbury v Hitt 2002 EWCA CIV 1588: The range of reasonable responses test (or to put another way, the need to apply the objective standards of the reasonable employer) applies as much to the question whether the investigation into the suspected misconduct was reasonable in all the circumstances, as it does to the reasonableness of the decision to dismiss for the conduct reason.

Remember if you are in any doubt seek advice at the earliest possible point. It is relatively easy to fix things prior to dismissal but much more difficult once the decision has been made!