



EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998
NOTIFICATION OF ADJUDICATOR'S DECISION

On a complaint of unfair dismissal, suffering a detriment for refusing, or proposing to refuse, to work on a Sunday or failure by an employer to provide a written statement of reason(s) for dismissal, this award, (subject to the rights of appeal to the Royal Court, as set out in the Law), is legally binding and is the final decision of the Adjudicator.

Adjudication Hearing held on 16 February 2006

between

Applicant: Mr Ian Bushby & Respondent: Caxton Holdings Limited

Adjudicator: Mr Peter Woodward

Nature of Dispute:

Mr Bushby claimed that his employer had unfairly dismissed him from his employment on 9 August 2005. Mr Bushby further claimed that he had not been provided with a written statement of reason(s) for dismissal.

Caxton Holdings Limited claimed that the dismissal was due to the gross misconduct of Mr Bushby.

Adjudicator's Decision:

After carefully considering all the evidence of both parties and their submissions, and giving due weight to the size of the company and the available resources to deal with this dismissal, I find that Caxton Holdings Limited failed to demonstrate a fair and objective process for the dismissal of Mr Bushby. I therefore find that the dismissal of Mr Bushby was unfair under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended.

The claim that Mr Bushby did not receive a written statement of reason(s) for dismissal is also upheld.

An application was received from Mr Bushby for the recovery of costs incurred to enable him to attend the Hearing. Having given due consideration to this matter, I decline this application and determine that each party should bear its own costs.

Amount of Award (if applicable): A total of £9,100.00

1. An award of £7,800.00 in respect of unfair dismissal. This being the amount agreed by both parties that Mr Bushby earned in the 3 months immediately preceding the effective date of termination, and in compliance with section 20(2) of The Employment Protection (Guernsey) Law, 1998 as amended; and
2. An award of £1,300.00 in respect of the failure to give a written statement of reasons for dismissal and in compliance with section 22(1)(b) of The Employment Protection (Guernsey) Law, 1998 as amended

NOTE: Any award made by an Adjudicator may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

Mr P Woodward

Signature of Adjudicator:

Date: 24 February 2006

The detailed reasons for the Adjudicator's Decision are available on application to the Secretary to the Adjudicators, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF



EMPLOYMENT PROTECTION (GUERNSEY) LAW, 1998
REASONS FOR ADJUDICATOR'S DECISION

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998.

1. The Claim

- 1.1 The claim was brought by Mr Bushby, against Caxton Holdings Limited, the Respondent, for Unfair Dismissal.
- 1.2 Mr Bushby claimed in his EMPROT 1 (Application Form) that he had been unfairly dismissed and further stated that he had not received a written statement of reason(s) for the alleged dismissal.
- 1.3 Caxton Holdings Limited denied the claim in its EMPROT 2 (Response Form) on the grounds that:
 - a) The company contended that as Mr Bushby was self employed from 1 August 2005 he could not bring a claim for unfair dismissal; or
 - b) if this was not accepted by the Adjudicator, that Mr Bushby had committed gross misconduct on 5 August 2005 and as a consequence was dismissed on 9 August 2005.

2.0 Representatives

- 2.1 Mr Bushby represented himself.
- 2.2 Advocate Mark Ferbrache represented Caxton Holdings Limited.

3.0 Witnesses

3.1 For the Applicant

Mr Bushby
Mr Martin Tanguy

3.2 For the Respondent

Mr Norson Harris
Mr Ian Johnson
Mr Frank Penney
Mr Derek Hardie

4.0 Documents

- 4.1 Documents marked EE1, EE2, EE3 and EE4 were tabled by the Applicant
- 4.2 The Respondent tabled documents, marked ER1

5.0 Findings of Fact

- 5.1 Mr Bushby was employed from 1 April 2003 as the Group Sales Manager following the liquidation of Parallel Print Services Ltd. (PPSL) in March 2003. He did not hold "Office" with, and neither was he a Director of, Caxton Holdings Limited (CHL) in the period 1 April 2003 until 9 August 2005.
- 5.2 In his capacity as Group Sales Manager, Mr Bushby undertook a range of duties including visiting and negotiating business with clients in the Channel Islands and general related administration.
- 5.3 Caxton Holdings Limited provides a range of printed materials primarily to clients in the Channel Islands and currently employs approximately some 20 staff.
- 5.4 After discussion with both parties it was agreed that if an award was made to Mr Bushby it should be based on a monthly gross remuneration of £2,600.00.

6.0 Evidence and Submissions

6.1 Evidence given by Mr Norson Harris, Non-Executive Director of Caxton Holdings Limited (CHL)

- 6.1.1 Mr Harris met with Mr Bushby in January 2003 as PPSL was facing grave financial difficulties. With these difficulties becoming worse by March 2003 it was decided that PPSL was headed for imminent liquidation. Mr Harris then brokered an arrangement with Mr Bushby and a fellow director of PPSL to release them from personal guarantees that had been given to their creditors and established a new company (CHL) which took over the plant and machinery of PPSL.
- 6.1.2 The new company commenced trading on 1 April 2003 with Mr Bushby in the role of expert adviser; however, he was neither a director nor an officer of the new company, his status was that of an employee.
- 6.1.3 Mr Bushby continued in this role into spring of 2005 when, as stated in his Emprot1, he began to give verbal indications of a desire to leave the company and start a new life in France. Mr Harris referred to his letter of 21 June 2005 in which he set out for Mr Bushby the terms on which he thought their employment relationship would end (ER1 Tab 7 refers). Mr Harris stated that he never received from Mr Bushby, a formal response to this letter. On the contrary Mr Bushby had requested that he would like to work as a consultant based in France, which was not a viable option for the company.
- 6.1.4 Mr Harris testified that Mr Bushby, realising that the loss of his expertise was going to be a significant problem for CHL, assisted in the search for his replacement and recommended a local replacement, Mr Dodsworth.
- 6.1.5 Mr Harris stated that he had understood Mr Bushby would be leaving on 31 July 2005. It was in his words a convenient calendar day and, given the earlier discussions with Mr Bushby, was in excess of the three months that he thought necessary for Mr Bushby to stay with the company once he had indicated his desire to leave. Mr Harris acknowledged that Mr Bushby was trying to coordinate his exit from the company with the timing of the sale of his house in Guernsey however the company required that Mr Bushby stated with clear finality when his contract of employment would end.
- 6.1.6 Mr Harris stated that he had prepared the letter of 9 August 2005 (EE1 Page 13 refers), which he had hoped Mr Bushby would sign, and that the content of this letter could be taken as an indication that he was still seeking to resolve any outstanding matters between the company and Mr Bushby; although he also stated that he did not believe that on 9 August 2005 Mr Bushby was still working

under a contract of employment. It was his opinion that they had retained Mr Bushby on a self-employed basis from 1 August 2005 onwards; and this arrangement had been entered into to provide Mr Bushby with a continuing income until his wife's house was sold. Mr Harris repeatedly stressed that he thought the working arrangements with Mr Bushby were on the basis of a gentleman's' agreement and that he was surprised and disappointed that he should be attending this hearing to consider these matters in such a formal setting.

6.1.7 Turning to the assertion by Mr Bushby in his Emprot1 that he had only been informed of the arrival of his replacement (Mr Dodsworth) on 9 August 2005 Mr Harris expressed his disagreement with this statement. In his opinion, Mr Bushby knew full well that he was going to be replaced by Mr Dodsworth and that indeed Mr Bushby had acted as a go-between in the recruitment process of Mr Dodsworth from a local competitor. Mr Harris also stated that Mr Bushby had been inconsistent in his understanding of the notice required to end his employment with CHL; referring to the second paragraph on page 3 of the Emprot1 in which he stated that he only need give 14 days notice.

6.1.8 Mr Harris described how the company took steps to change the role of Mr Bushby in the final two weeks of July 2005. He stated that Mr Bushby had been moved from a "client facing role" during this period and had undertaken other duties, including manual work on site, as evidenced in ER1 Tab 6.

6.1.9 Turning to the investigation into the alleged involvement of Mr Bushby in the golf tournament of 5 August 2005, whilst signed off by his GP as medically unfit to work with an injured wrist, Mr Harris stated that he had contacted the secretary of the golf club on the Monday following the golf tournament. He gained corroboration from the secretary of the golf club that Mr Bushby had played on 5 August 2005.

Cross Examination by Mr Bushby

6.1.10 In response to a question from Mr Bushby Mr Harris agreed that he had never received a written resignation from Mr Bushby. Mr Bushby stated that in their conversations as to his possible leaving date he had indicated that 31 July 2005 was the earliest possible date for his departure from the company. In response to this Mr Harris stated he could not recall the precise words of their discussion however he had always taken the leaving date to be 31 July 2005.

6.1.11 Turning to Mr Bushby's formal request on 2 September 2005 requesting written reasons for his dismissal from CHL (EE1 Page 11 refers) Mr Harris agreed with that he had seen the letter, but that he had not responded to it as he did not believe that Mr Bushby had been an employee when he had a resigned.

6.1.12 Mr Bushby then referred to the draft letter of resignation prepared by Mr Harris on 9 August 2005 and asked why it was such a letter was necessary if Mr Harris did not consider him as an employee but rather as a subcontractor. Mr Harris agreed that the choice of words in this letter was poor, as the letter did not refer to his employment status at that time.

6.1.13 In response to a questioning on the employment status of Mr Bushby after 31 July 2005 Mr Harris stated that the company had accommodated Mr Bushby's request to be self employed as of 1 August 2005 onwards. He stated that Mr Bushby wanted to work on an ad hoc basis and raise periodic invoices for work carried out.

6.1.14 When pressed on the lack of a formal employment contract for Mr Bushby he again stated that he thought they had a gentleman's' agreement.

- 6.1.15 Mr Bushby referred Mr Harris to the Code of Practice (Disciplinary Practice and Procedures in Employment) issued by Commerce and Employment, and in particular to the list of requirements for a disciplinary procedure, as detailed on page 4 of that code. Mr Harris agreed that they had not provided Mr Bushby with any such procedure.

Re-examination by Advocate Ferbrache

- 6.1.16 Mr Harris confirmed that it was the practice of the Managing Director, Mr Johnson to issue contracts in CHL and that the son of Mr Bushby had also been employed on a subcontract basis at the same time as Mr Bushby himself.

- 6.1.17 In response to a question by the Adjudicator neither party could confirm that they had evidence detailing "proof of payment" for sub contract work carried out by Mr Bushby.

6.2 Evidence given Mr Ian Johnson, Director of Caxton Holdings Limited (CHL)

- 6.2.1 Mr Johnson opened his testimony by informing the Hearing that he first became aware, in January 2005, that Mr Bushby wished to leave CHL and move to France. He stated that Mr Bushby committed to give three months' notice so as not to jeopardise the company situation. It was towards the end of March that Mr Bushby informed him that he had acquired property in France, and that he would want to leave on 31 July 2005. He stated that Mr Bushby had clarified that it would be no later than 31 July 2005, and indeed that he could possibly wish to leave a little bit earlier than this date.

- 6.2.2 Mr Johnson stated how critical the expertise of Mr Bushby was to the company in terms of his technical knowledge, administration and, most importantly, because of his knowledge of clients. He was well respected on the island and had local knowledge.

- 6.2.3 Mr Johnson spoke to the fragile nature of the business in early 2003, and that it was only through the joint action of himself and Mr Harris that the company had survived. Indeed their actions had almost certainly ensured that Mr Bushby had avoided personal financial ruin, and that the formation of the new company had given him a continuing livelihood. Mr Johnson spoke of the significant financial injections of new cash, and also the personal arrangements made to assist Mr Bushby through a difficult financial period.

- 6.2.4 Mr Johnson agreed that whilst all other employees of CHL have a contract of employment Mr Bushby was in a different situation and that the deal that had been struck with Mr Bushby was based on trust and mutual confidence.

- 6.2.5 Mr Johnson took exception to the inference in the Emprot¹ that that Mr Bushby was not aware that Mr Dodsworth was going to replace him until 9 August 2005. Mr Bushby had made the initial approach to Mr Dodsworth, and whilst he might have not have been aware of Mr Dodsworth's formal engagement to be employed by CHL, he did know that such discussions with Mr Dodsworth were very well advanced.

- 6.2.6 Mr Johnson agreed that the letter referenced in EE2 (section13) was drafted by Mr Harris and that together with Mr Harris he had hoped Mr Bushby would sign this on 9 August 2005 in the hope that it would draw a line under the ending of any formal relationship with Mr Bushby.

- 6.2.7 Mr Johnson stated that from the middle of July he made arrangements such that Mr Bushby did not have any regular contact with clients, bearing in mind his employment with CHL was coming to an end on 31 July 2005. It was clear in his mind that Mr Bushby was not serving the company as an employee from the first

of August onwards, and that indeed he was working in an informal manner, as had been requested, on ad hoc activities.

Cross Examination by Mr Bushby

- 6.2.9 In response to a question, Mr Johnson stated that every other employee of CHL had a contract of employment, other than Mr Bushby.
- 6.2.10 Mr Johnson confirmed that Mr Bushby had never declined to perform any requested duties before 31 July 2005.
- 6.2.11 Mr Johnson agreed that with hindsight, a formal agreement should have been made with Mr Bushby to document the change in employment status from 1 August 2005.

6.3 Evidence given Mr Frank Penney, employee of Caxton Holdings Limited (CHL)

- 6.3.1 Mr Penney confirmed that his witness statement, which is to be found in tab ER1, section 3, was a true and faithful record of the events leading to a golf competition played on the morning of 5 August 2005. This tournament was attended by both Mr Penney and Mr Bushby. In his statement Mr Penney indicated he had discussed his attendance to this tournament prior to the day of the event with Mr Johnson.
- 6.3.2 Mr Johnson had made it clear to Mr Penney, that due to holiday cover issues, work commitments etc. that he could not permit both Mr Penney and Mr Bushby to attend the tournament at the same time. Mr Penney stated that the arrival of Mr Bushby at the tournament was neither expected nor announced.

Cross Examination by Mr Bushby

- 6.3.3 Mr Penney confirmed that when Mr Bushby met him at the golf tournament, Mr Bushby had stated that although he had been signed off by the doctor, he still wanted to attempt to play.
- 6.3.4 When asked why the issue of staff cover was so critical at the company on 5 August 2005 Mr Penney reiterated his opinion that it was the issue of other staff being on holiday on that date.

6.4 Evidence given Mr Derek Hardie, employee of Caxton Holdings Limited (CHL)

- 6.4.1 Mr Campbell confirmed that his witness statement (Tab 4, ER1 refers) was a true and faithful record of the events leading to a golf competition played on the morning of 5 August 2005; this tournament was attended by Mr Campbell on a scheduled and agreed vacation day.
- 6.4.2 In his statement Mr Campbell confirmed that he saw Mr Bushby playing shots on the 5th hole. He also stated that following the tournament Mr Bushby approached him and stated that he would be telling Mr Harris that he had not played golf that day and that he would appreciate it if Mr Campbell did not mention that he had seen Mr Bushby playing. Mr Campbell replied that he would not mention it, but that he was not prepared to lie if he was asked directly by Mr Harris as to the events of that day.

6.5 Evidence given Mr Ian Bushby

- 6.5.1 Mr Bushby stated that towards the end of April, he had indicated to both Mr Johnson and Mr Harris that he would be leaving the island and his employment,

when both his own house and that of his wife were sold. He confirmed that the sale of his property in Guernsey was agreed on 5 May 2005.

- 6.5.2 Mr Bushby expressed his thanks for the efforts made on his behalf and for the other employees by Mr Johnson and Mr Harris, but he also noted that on many occasions he had been told these arrangements were on a commercial basis. He realised that his guidance and support was extremely valuable during the early days of the new company; but he had been told that he should feel free to grasp any opportunity outside the company if it arose. He felt that he had worked hard for the new management and had responded willingly to their requests.
- 6.5.3 Mr Bushby stated that, although he had recommended Mr Dodsworth as his personal replacement to the directors, contrary to their opinion he had not understood that negotiations were well advanced.
- 6.5.4 Mr Bushby stated that he had never given formal notice to the company of his intention to resign on 31 July 2005, all he had given was an indicated timescale; and that indeed he had given regular (weekly or better) updates on the progress of the sale of his wife's house. He also testified that he had attended his workplace for four working days commencing 1 August 2005, he worked his full normal hours and carried out a range of duties as required by the Directors of CHL. He also testified that it had been agreed that his remuneration would continue unchanged except that it would be paid to him directly in a lump sum, rather than via the company payroll.

Cross-examination by Advocate Ferbrache

- 6.5.5 Advocate Ferbrache asked Mr Bushby how he thought the company could deal with such uncertainty over a flexible leaving date. In response, Mr Bushby stated that the company was able to deal with this; it had asked him to take on projects and other duties, such as the "fit out" of a second works unit, whilst still handling attendance at sales meetings.
- 6.5.6 When asked why he had not signed the letter of 21 June 2005, which had set out in draft terms for his departure from the company, Mr Bushby stated that it raised complex matters and that he was not prepared to accept it or sign it. Furthermore, the letter had arrived in the post, rather than by hand, and Mr Bushby thought that he had made it abundantly clear that he did not wish to end his employment on 31 July 2005.
- 6.5.7 Advocate Ferbrache thought that there was a contradiction in that Mr Bushby was discounting this letter in front of this Hearing yet was relying upon it for his Royal Court pleading. Mr Bushby responded that there were other issues to be considered by this hearing, not only this letter.
- 6.5.8 Advocate Ferbrache drew attention to Mr Bushby that in the final paragraph of his Emprot1 he had referred to his own "wrongdoing" and wondered what this might be. Mr Bushby responded that it had not been sensible to play golf when signed off from work.
- 6.5.9 Advocate Ferbrache also drew attention to Mr Bushby that in the final paragraph of his Emprot1 he had alleged a preconceived plan to replace him. Mr Bushby responded by saying that he did not rely on just that single statement to allege unfair dismissal.
- 6.5.10 Mr Bushby confirmed that he had achieved legal completion on the purchase of his French house on 21 July 2005, but again repeated that there was still the issue of the sale of his wife's house.
- 6.5.11 Mr Bushby confirmed that he had been requested by telephone call on Monday 8 August to attend a disciplinary meeting on Tuesday 9 August 2005. He

confirmed that the allegations included that he attended the Golf Tournament when signed off from work by his doctor, and that he had asked another employee to lie on his behalf.

6.6 Evidence given Mr Martyn Tanguy

- 6.6.1 The Adjudicator considered the evidence given by Mr Tanguy, which related to the change of some dates in his witness statement; however, as both of the dates in question were after the disputed dates of the 'effective date of termination', the Adjudicator has put no weight on this evidence.

6.7 Recall of Mr Johnson

- 6.7.1 Mr Johnson was recalled by Advocate Ferbrache to confirm previous statements that Mr Bushby had ceased to have involvement with sales activities on around 15 of July. Mr Johnson confirmed this and stated that Mr Johnson had been in a workman's clothes undertaking manual tasks on all dates on and after 18 July. Mr Johnson also testified as to client briefings in that same period announcing that Mr Bushby was no longer involved in sales activities.

7.0 Closing Statement by Applicant

- 7.1 Mr Bushby stated that if the testimony of the respondent was to be relied upon then he was the only employee of CHL not to have a contract of employment.
- 7.2 The respondent had not produced any documentary evidence to substantiate an agreed date of termination of the employment contract prior to 9 August 2005.
- 7.3 Mr Bushby repeated his earlier assertion that, contrary to the testimony of Mr Johnson, he was involved in a range of duties until 4 August 2005, including sales support.
- 7.4 Mr Bushby stated that his dismissal had occurred with a total disregard to the Disciplinary Code of Practice, and the recommended procedures contained in this document, and as such should be judged unfair.

7.5 Closing Statement by Respondent

- 7.6 Advocate Ferbrache emphasised the support that had been given by Mr Harris and Mr Johnson when Mr Bushby was confronted with grave financial difficulties in early 2003.
- 7.7 Advocate Ferbrache also stated that the law (the Conditions of Employment (Guernsey) Law) does not require a written contract of employment but only a written statement of particulars of employment.
- 7.8 It was clear to the respondent that Mr Bushby intended to resign on 31 July 2005, why otherwise would Mr Harris have written the letter of 21 June 2005 with the statement that Mr Bushby had already given notice. This letter was also indicative of a non-confrontational approach by the company and that it was a genuine intent to seek a resolution to the uncertainty surrounding the resignation. Further that this letter also indicated continuing financial support for Mr Bushby from CHL that the company did not need to offer. Finally the draft resignation letter prepared for Mr Bushby for 9 August 2005 was also indicative of the company wishing to "draw a line" to end their mutual arrangements.
- 7.9 Mr Bushby had stated that the respondent could not rely upon the letter of 21 June 2005, however it was evidenced in the "bundle" that Mr Bushby wished to rely upon this letter in proceedings before the Royal Court. In the opinion of Advocate Ferbrache Mr Bushby could not reconcile these two positions.

- 7.10 Contrary to prior testimony from Mr Bushby Advocate Ferbrache asserted that there was no dispute between the parties as to the need for certainty of departure date by Mr Bushby, given his key expertise.
- 7.11 There was a direct clash of evidence as to the employment arrangements during the second half of July and into August. Mr Johnson had given clear testimony that Mr Bushby undertook very different duties after 15 July 2005.
- 7.12 If it was concluded by the Adjudicator that employment continued into August then the company was justified in the dismissal. Mr Bushby was instructed not to attend the tournament as he was required for "holiday cover" and chose to disobey this instruction, he played golf when he claimed an "industrial injury", and he asked other employees to tell untruths on his behalf.

8.0 Conclusions

- 8.1 From the testimony given Mr Johnson and Mr Harris it was clearly evidenced that they had ensured the continuation of the business in 2003 when the possibility of total closure was very high, and this included the assurance of a continued livelihood for Mr Bushby.
- 8.2 Testimony also indicated that they had made personal financial arrangements to assist Mr Bushby through a very difficult period.
- 8.3 The company had improved Mr Bushby's pay, over the period April 2003 to August 2005, from £1,500 to £2,600 per month.
- 8.4 The Directors had foregone any personal emoluments from the business since its inception in April 2003, but had awarded a pay rise to the workforce
- 8.5 In the opinion of the Adjudicator the above actions, and other testimony given to the Hearing, are indicative of principled executives attempting to sustain a successful business whilst still having concern as to the welfare and the retention of a skilled work force.
- 8.6 Nevertheless in the particular situation of the departure of Mr Bushby from the company, whilst the company attempted to regularise the situation, notably in the draft letter of 21 June 2005 and in various discussions with Mr Bushby in the period April to July 2005, the situation as of 31 July was one of confusion and misunderstanding.
- 8.7 Whilst Mr Bushby was clearly an employee of the company, and testimony had established he was neither an Officer nor a Director of the Company, it would appear that in some fundamental manner he was not treated as other employees. It was significant that he did not have a written contract of employment and there was little clarity as to how his employment would come to an end within the framework of employment legislation.
- 8.8 The Respondent sought to assert that the employment contract had ended on 31 July, but the evidence and testimony is overwhelmingly in support of a continuing employment relationship being in place until 9 August 2005.
- 8.9 There was an absence of a written employment contract, signed by both parties, indicating the notice agreed between parties to end contract.
- 8.10 Mr Bushby had not submitted a letter of resignation; he had instead indicated a desire to leave his employment when his affairs in Guernsey had been settled.
- 8.11 The letter of proposed agreement on 21 June developed by Mr Harris was not signed by Mr Bushby, and indeed in testimony he stated he was not in agreement with the content.

- 8.12 Mr Bushby continued to work from 1 August 2005 until 4 August 2005, albeit there is a dispute as to the exact nature of the duties undertaken from 15 July 2005 onwards, working regular hours under the direction and control of CHL Directors.
- 8.13 There is agreement by both Applicant and Respondent that pay would continue at current rate into August, albeit paid directly rather than via the payroll, indicating a payment of wages rather than payment for a subcontractor's invoice.
- 8.14 There was no letter of dismissal, instead the Company attempted to gain a signature from Mr Bushby on 9 August 2005 to a resignation letter, clearly indicative that the Respondent believed that there was a contract to be ended on that day; in the event Mr Bushby did not sign this letter.
- 8.15 Testimony from Mr Penney, which was confirmed in the Respondent's closing statement, indicated that a primary reason for company concern over his absence on 5 August 2005 was to ensure "holiday cover" on that day. Again this would seem to be the action of an employer exercising control over an employee and is indicative of a continuing employment relationship into August.
- 8.16 It was not disputed that the company had indicated to Mr Bushby that they did not wish him to attend the golf tournament, however as he was signed off by his GP from 5 August onwards as unfit for work Mr Bushby thought that he could attend this event.
- 8.17 Turning to the second week of August 2005 testimony established that the company did attempt an investigation into the tournament and the activity of Mr Bushby on that day; however from this point on there would appear to have been an almost wholesale disregard of the guidance offered by the Code of Practice (Disciplinary Practice and Procedures in Employment).
- 8.18 The Respondent admitted that there was no disciplinary procedure in place to deal with the alleged misdemeanours of Mr Bushby, and the Respondent conceded that CHL had not taken account of the Disciplinary Code issued by the States of Guernsey. In addition the Adjudicator notes that Mr Bushby was apparently not advised of his right to have a colleague attend the Disciplinary Hearing on 9 August 2005, which given the serious nature of the allegations would seem contrary to the Code of Practice.
- 8.19 The Respondent did not provide any appeal process to their decision, and when requested in writing failed to provide written reasons provided as to reason for dismissal.
- 8.20 Whilst the Adjudicator accepts that a reasonable employer might view the gravity of the alleged offences could amount to gross misconduct it is also noted from testimony that this was a dismissal for a "First Breach" and agreed by the Respondent that it had not been preceded by previous acts of misconduct. It might well be argued, even if there were not major procedural deficiencies in the manner of the dismissal, that the sanction of dismissal was disproportionate.
- 8.21 The Respondent made reference to the relatively small size of the Company and the lack of resources to deal with such issues; however the Adjudicator is guided by the decision by the Bailiff in the Royal Court in 2001 when considering the appeal of Micropublishing Ltd V Solway. In this judgement the Bailiff stated that *"The issue which I have identified namely the need for a clearer and more structured procedure both for initial warning and dismissal procedures has nothing to do with the size of the employer's organisation"*. The Bailiff also stated in his judgment that *"he saw nothing objectionable in the way that the Adjudicator had used the Code of Practice to detect what he perceives as serious shortcomings in the procedure adopted by the employer."*

8.22 Despite an erudite and comprehensive closing statement from Advocate Ferbrache the Adjudicator cannot view this as other than an unfair dismissal within the terms of the Employment Protection (Guernsey) Law 1998 as amended.

9.0 **Decision**

9.1 I believe that, on balance of probabilities, the evidence and testimony demonstrated convincingly that a continuing employment relationship was in place until 9 August 2005.

9.2 After carefully considering all the evidence of both parties and their submissions, and giving due weight to the size of the company I find that that Caxton Holdings Limited failed to demonstrate a fair and objective process for a summary dismissal for gross misconduct. I therefore find that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the dismissal of Mr Bushby was unfair. I also uphold the complaint that the Applicant did not, on written request, receive written reason(s) from his employer for his dismissal.

9.3 I therefore award:

a) £7,800.00 in respect of unfair dismissal. This being the amount agreed by both parties that Mr Bushby earned in the three months immediately preceding the effective date of termination, and in compliance with section 20 (2) of The Employment Protection (Guernsey) Law, 1998 as amended.

b) An award of £1,300.00 in respect of the failure to give written statement of reasons for dismissal and in compliance with section 22 (1) (b) of The Employment Protection (Guernsey) Law, 1998 as amended.

9.4 An application was received from Mr Bushby for the recovery of costs incurred to enable him to attend the Hearing. Having given due consideration to this matter, I decline this application and determine that each party should bear its own costs.

Signature of Adjudicator: .

Mr P Woodward

Date: 24 February 2006