

“Employers should check their policies and procedures to ensure that they comply with this ruling.”

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Legal representation for employees at internal hearings

The High Court has decided that in certain circumstances, an employee has the right to be represented by a lawyer at internal disciplinary hearings, not just a workplace colleague or union official.

This is important for employers and employees with "vulnerable" clients, patients or pupils or anyone working in a regulated area.

Facts

G was employed as a music assistant at a school. It was alleged that he kissed a 15 year old boy. After disciplinary proceedings G was dismissed. The school had a duty to report G to the Secretary of State for Children Schools and Families to decide if he should be entered on the register of those who are unsuitable to work with children.

Legal Issues

G asked at the internal disciplinary hearings to be represented by his legal representative. The school refused.

G argued that he had been denied the right to a fair trial (in breach of Article 6 of the European Convention on Human Rights or ECHR) when the school did not allow him to have legal representation at the internal hearing.

In the judicial review the High Court held that:

- the school was required to have regard to Article 6 of the ECHR;
- the internal disciplinary and appeal procedures should be viewed as part of the same procedure as the Secretary of State's procedures relating to entry onto the register of those unsuitable to work with children;

- considering the gravity and the serious consequences of a potential dismissal, the school should have allowed G to be represented by his legal representative and not just a trade union representative or fellow worker;

- the school's disciplinary process and the Secretary of State's barring process are both part of a single non-criminal process and, although G was not accused of criminal offences, the consequences of the allegations were so severe that G was entitled to extra protection under the ECHR to protect his right to a fair trial;

- the ability to claim unfair dismissal in the employment tribunal would not be an adequate alternative remedy.

The school has been granted permission to appeal to the Court of Appeal. So has G, who lost a separate argument that the internal disciplinary proceedings amounted to a "criminal" charge.

Action required

Employers should check their policies and procedures to ensure that they comply with this ruling.

What next?

There must be many cases where an employer's decision following allegations being made may have very serious consequences. It is very likely that this case (if upheld on appeal) will be extended to cover private sector employees where allegations of dishonesty or serious personal misconduct may have serious consequences.