

No right to legal representation in disciplinary hearing

G had been employed by a school as a sessional music assistant. In October 2007, the parents of a 15 year old boy who had been doing work experience at the school made a complaint to the head teacher that G had kissed their son and had sent him text messages which appeared to indicate that they had formed a sexual relationship.

G was suspended and disciplinary proceedings were commenced. A separate police investigation was also ongoing. G initially refused to attend early investigatory meetings on the advice of his solicitor that he should not do so until the police concluded their investigation. He did however provide written statements in which he denied the allegation of forming an inappropriate relationship with a child.

G requested that he be allowed to attend the disciplinary hearing with a legal representative. This request was refused. G did attend the hearing but refused to answer questions on the grounds that the hearing was unfair. G was dismissed. He appealed and again requested the right to legal representation. He also commenced judicial review proceedings arguing that the dismissal was unlawful as the disciplinary hearing had breached his Article 6 right to a fair trial under the European Convention on Human Rights.

G succeeded in the High Court and it was ordered that the disciplinary case be heard again by a differently constituted disciplinary committee and G be allowed to attend with legal representation. The school appealed but the original decision was upheld by the Court of Appeal. The school appealed again to the Supreme Court.

The court considered the procedure used by the Independent Safeguarding Authority, to whom a referral could be made. The procedure included an independent assessment of the evidence. ISA caseworkers may also request information or evidence from other authorities when making a decision. Both parties agreed that the civil right at issue was G's right to practice his profession as a teaching assistant and to work with children generally. The right did not extend to the right to stay in a specific job.

G argued that the disciplinary procedure would have a significant effect on the subsequent ISA proceedings and therefore Article 6 issues arose in both proceedings.

The Supreme Court (by a majority) held that the ISA procedure was sufficiently separate from the employer's internal disciplinary procedure and it was clear the ISA would form its own assessment when they were notified of disciplinary action and dismissals. This was possible even though the ISA would not generally hold an oral hearing. Employers are likely to welcome this decision, which reduces the procedural obligations in disciplinary hearings where an ISA referral may result if the allegations are upheld. However, employers should continue to ensure that they follow a fair and reasonable procedure even in cases of serious misconduct.

R (on the application of G) v The Governors of X School [2011] UKSC 30

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