

Client confidentiality clauses in settlement agreements

Can confidentiality provisions in settlement agreements be disapplied for Enhanced Criminal Record Certificate purposes?

The recent case of *C v T Borough Council (2014) EWHC 2482 (QB)* concerned a teacher who entered into a settlement agreement (formerly termed “compromise” agreements) to terminate his employment following letters of professional advice and a final written warning concerning his inappropriate use of force in his dealings with pupils. The agreement included a reference to be provided to third parties. The reference referred to the professional advice and written warnings. On the application of the police for information for a new Enhanced Criminal Record Certificate (ECRC) a designated officer of the local authority provided a chronology of the disciplinary proceedings not realising that the ECRC would reproduce the chronology. The former employee’s claim was that the chronology had caused him to lose his employment with another school and caused him continuing loss until he was able to persuade the police to withdraw the items in his ECRC.

The High Court considered that the term providing for a reference to “any third party” in the agreement meant any potential future employer and the agreement did not therefore require the local authority to decline a request from the police or anyone else concerned with safeguarding issues or limit itself to the contents of the agreed reference. Although the agreement included a term that it contained the entire agreement between the parties, this did not preclude implying a term in appropriate cases. However, the suggestion of an implied term that the local authority would exercise reasonable care and skill when making statements to the police and that any such statement would be in the spirit of the reference was rejected. This would have meant the local authority could not have cooperated with such a body.

It was further held that given the subject matter of the disclosure and that the safety of children was at stake, the local authority would have been neglecting its duty, and its actions would have been void if it had modified what it considered to have been an appropriate response to the police in order to reflect a private contract. The local authority owed no duty of care to the Claimant.

In the light of this case it will be sensible for settlement agreements to specify clearly that the terms of agreed references relate only to prospective employers and do not prevent them in exercising their safeguarding obligations.

For further information on employment law issues, please contact:

Jane Klauber

Partner

+44 (0)20 8394 6483

Jane.Klauber@russell-cooke.co.uk

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