

**Bulletin 163**

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## RIGHT TO LEGAL REPRESENTATION DURING DISCIPLINARY PROCEEDINGS

In the recent case of *R (on the application of G) v The Governors of X School and others* the Court of Appeal held that a teaching assistant (G) should have been allowed legal representation during disciplinary proceedings.

Following disciplinary proceedings G was dismissed for kissing a 15 year old boy. As a result of his dismissal the school had to provide certain information to the Independent Safeguarding Authority (ISA) which has the power to add people to a register of those prohibited from working with children.

G brought judicial review proceedings against the governors of the school for failing to allow him legal representation at the disciplinary hearing. He argued that this contravened his right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR). The High Court held that his right to a fair trial had been breached and he should have been allowed legal representation at the disciplinary proceedings. The Governors appealed.

The Court of Appeal decided that Article 6 ECHR gave G the right to legal representation at his disciplinary proceedings. They reached this decision on the basis that the outcome of G's disciplinary proceedings would unavoidably influence whether or not the ISA decided to prevent G from working with children. In turn, this would impact upon his right to practise his profession.

Whether an employee will have the right to legal representation at disciplinary proceedings will depend upon the seriousness of the allegations and whether, if proved, they would deprive the employee of their right to practise their profession. In light of the fact that G was a teaching assistant, the right will not just be available to those employees engaged in traditional professions. It should be construed widely, effectively including those employees for whom the outcome of the disciplinary proceedings could be career threatening.

### ➤ **Practical Tips**

This right only applies to public sector employees for whom the outcome of disciplinary proceedings could be career threatening. In addition, it will not be limited to those who work with children and vulnerable adults.

If you are faced with such a request we would recommend that you seek legal advice and give written reasons for any refusal.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to [helen.calvert@brabnerscs.com](mailto:helen.calvert@brabnerscs.com)

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