

## BREACH OF A CONTRACTUAL DISCIPLINARY PROCEDURE MAY LEAD TO DAMAGES FOR FUTURE LOSS

In the case of *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2010] EWCA Civ 571, the Court of Appeal confirmed that an employee may be able to recover damages for the loss of future employment prospects where the dismissal for misconduct would not have happened if the employer had followed an express contractual disciplinary procedure.

Previous case law provided that an employee cannot claim for a breach of the implied term of trust and confidence in relation to the manner in which they are dismissed (See *Johnson v Unisys Ltd* and *Eastwood v Magnox Electric plc*). This is because to do so would circumvent the provisions regulating the right to compensation for being unfairly dismissed under the Employment Rights Act 1996, which impose a cap on the right to compensation for unfair dismissal (currently £65,300).

The Court of Appeal held in *Gunton v Richmond upon Thames LBC* that, where an employer failed to follow a contractual disciplinary procedure the employee's damages for wrongful dismissal could include not only contractual notice but an additional sum to cover the period the employment would have continued (the "Gunton extension").

### Facts

Dr. Edwards was a consultant with the respondent Trust and was dismissed for gross professional and personal misconduct. Dr Edwards issued proceedings for breach of contract and claimed that he should be entitled to damages for:

- His notice period
- A *Gunton* extension and
- Continued employment as the Trust should have dismissed the allegations against him (and would have done so if they had followed the contractual disciplinary procedure).

A District Judge upheld the Trust's application to strike out Dr Edwards' claim for damages other than those relating to his notice period. However, this was overturned by the High Court which held that Dr Edwards was also entitled to damages relating to the length of time it would have taken the Trust to carry out the contractual disciplinary procedure, in line with *Gunton*. The High Court rejected Dr Edwards' argument that he should be given the opportunity to prove that he would have been exonerated had the disciplinary proceedings been properly carried out.

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## Court of Appeal Decision

Dr Edwards' appeal was upheld by the Court of Appeal.

As the appeal resulted from the Trust's application to strike out part of Dr Edwards' claim relating to the correct limit on compensation, the following facts were assumed:

- The Trust had failed to follow the contractual disciplinary procedure
- Had the correct procedure been followed, there would have been no findings of misconduct against Dr Edwards and
- Consequently he would have continued to work for the Trust until retirement.

## Practical Tips

- Employers should consider carefully before making a disciplinary procedure contractual. A non-contractual procedure is likely to carry less weight but may result in reduced liabilities for an employer and gives the employer more flexibility
- Where the disciplinary process is contractual employers should follow it to the letter
- In appropriate cases employers should consider the option of a binding compromise agreement to eliminate the risk of a future claim.

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.

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