



Bulletin 182

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## ARTICLE 6 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND DISCIPLINARY PROCEEDINGS

Article 6 of the European Convention on Human Rights ("Article 6") concerns the right to a fair trial.

The recent High Court decision in *Hameed v Central Manchester University Hospitals NHS Foundation Trust* offers further guidance on when Article 6 will be engaged in disciplinary proceedings.

The case involved a doctor employed by an NHS trust. She was employed for several years before being dismissed for gross misconduct. She sought a High Court declaration that Article 6 was engaged when disciplinary proceedings were brought against her. Her argument was that her case was heard by a panel that, in her view, was not sufficiently independent or impartial. Only one member of the panel was not employed by the Trust.

The High Court dismissed her claim. The court found that a disciplinary finding against her would not necessarily mean she would be unable to work again in the profession. She had been practising for many years without incident and would be able to obtain a good reference from former colleagues and there was evidence that the NHS did occasionally employ qualified practitioners who had been the subject of previous disciplinary findings.

The case reinforces the view that Article 6 will only be engaged in disciplinary proceedings in exceptional circumstances. However the court recognised that this is an issue of considerable importance to NHS Trusts and their disciplinary procedures and has given the employee the right to appeal.

### Practical Tips

Article 6 is only directly enforceable against a public sector employer.

Article 6 is only engaged in disciplinary proceedings where a finding against the employee would seriously affect their future in their chosen profession.

It is likely that increasing numbers of public sector employees will seek to invoke their Article 6 rights in the course of disciplinary proceedings. Employers should have regard to the possibility of challenges from employees when conducting such proceedings e.g. the right to legal representation and should take advice accordingly.

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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