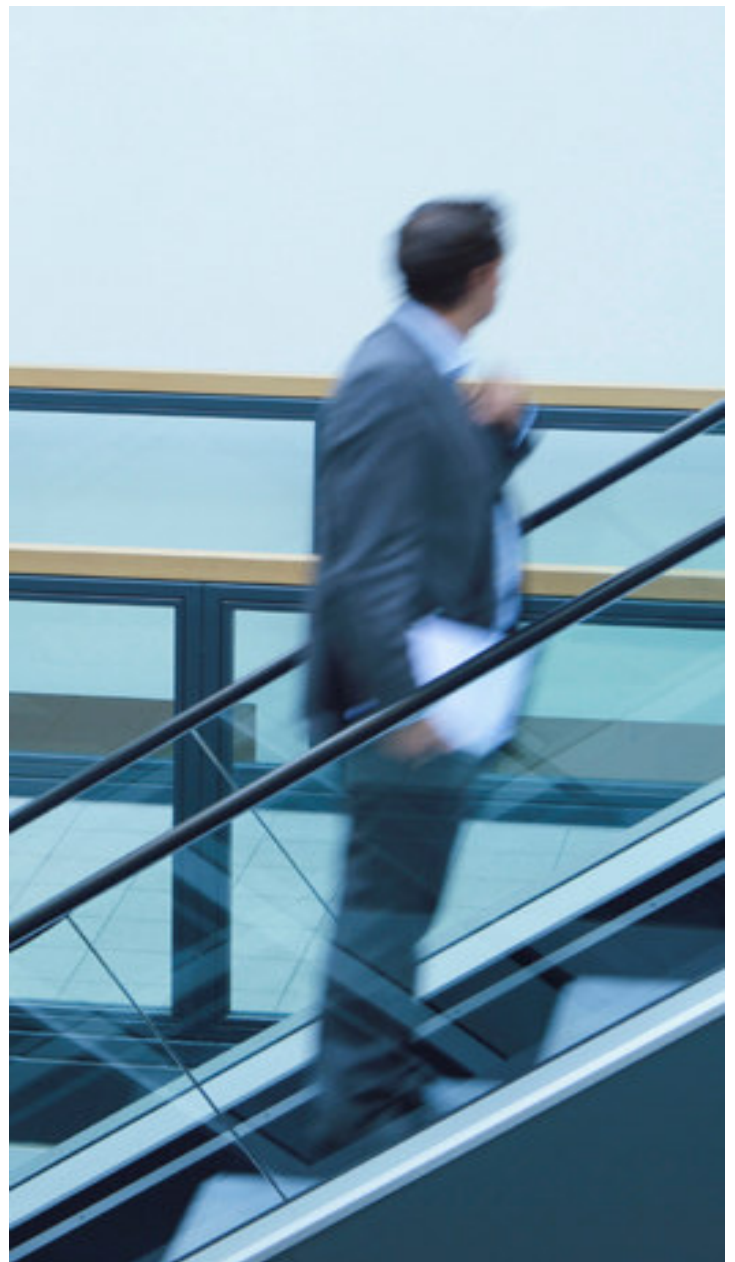


Stop Press

Employment

Regina (G) v Governors of X School



Court of Appeal rules that an employee is entitled to legal representation at disciplinary and appeal hearings

The Court of Appeal has handed down its decision in the case of Regina (G) v Governors of X School. The case, which was originally heard in the High Court in March 2009, involved a teaching assistant who was dismissed from his employment after being accused of alleged sexual misconduct with a 15 year old male pupil. As a result of the allegations the school instigated its internal disciplinary procedures and subsequently dismissed the employee for gross misconduct. The school's disciplinary committee then referred the matter to the Secretary of State for Children, Schools and Families, who under S.142 Education Act 2002 had the power to prohibit the employee from working with children in educational establishments. At his disciplinary and appeal hearings the employee requested that his solicitor represent him. On both occasions the request was refused, with the employee being told that he could only be represented at the internal hearings by a fellow colleague or trade union representative. As a result the employee brought judicial review proceedings challenging the school's decision not to allow him legal representation at a disciplinary or appeal hearing.

The Court of Appeal, has ruled that the employee was entitled to legal representation at the internal disciplinary and appeal hearings, on the grounds that a Claimant should be afforded an opportunity to be legally represented at internal hearings, in accordance with Article 6 (Right to a Fair Trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms, where the result would determine the Claimant's right to practise a profession. In reaching its decision the Court of Appeal agreed the following:

1. The right to practise a profession was a "civil right or obligation;"
2. an Independent Safeguard Authority (ISA) listing would fundamentally limit the employee's ability to practise his profession; and
3. the school's internal process would have a "substantial influence or effect" on the decision-making of the ISA in barring the employee from practising his profession.

This note does not constitute legal advice but is intended as general guidance only

If you would like further information on this or any other related matter please e-mail us at employment@druces.com or telephone us on 020 7638 9271 and ask for Charles Avens or any of our Employment Principals.