

## Disciplinary procedures for staff



Have you lost trust or confidence in a member of your staff? If so, think carefully before you dismiss them!

The Employment Appeals Tribunal (EAT) has confirmed that it is not enough for there just to be a breakdown in trust and confidence making someone's employment untenable; an exploration of the facts is needed too.

The case concerned a deputy head teacher who was friends with a fellow teacher who had been arrested for possessing indecent images of children. The deputy head was later suspended for maintaining this friendship and, following a disciplinary procedure, was dismissed.

The school had dismissed the deputy head on the grounds of a lack of trust and confidence. They categorised it as a "some other substantial reason" dismissal, one of the five potentially fair reasons for dismissal in employment law.

The EAT was in no doubt that the school had lost trust and confidence in

the deputy head but went on to say that this was not enough. What actually happened in the lead up to her dismissal was more important than the loss of trust and confidence in itself. In this case the school had suspended the deputy head for something that had previously been permitted by them, she had received no warnings that she was no longer allowed to be friends with the fellow teacher, there had been flaws in the procedure leading up to her dismissal, and the school had failed to comply with the ACAS Code of Practice on disciplinary and grievance procedures.

A genuine reason for dismissal could still be deemed unfair simply due to the surrounding circumstances of the disciplinary process and dismissal. Past cases confirm the dangers of even just suspending teaching staff too quickly, for example, as a "knee jerk" reaction to an allegation, that this careful approach needs to be extended further to the lead up to a dismissal itself.

*Governing Body of Tubbenden Primary School v Sylvester UKEAT/0527/11*

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## Snow days

**If staff cannot make it to work because they need to look after their children when schools are closed because of snow days, it can have a knock on effect on the running of your own school, college or university.**

**There is no obligation to pay those members of staff if they have not carried out any work that day (unless there is a contractual provision stating otherwise). Employees do, however, have the right to take unpaid leave to look after a dependent in these circumstances.**

**Do also consider the more practical implications of a policy to not pay staff - where they are unable to attend work through no fault of their own, staff morale can suffer.**

## Staffing Regulations

**A new Regulation 8A in the School Staffing (England) Regulations 2009 is now in force.**

**From 10 July 2012 the governing body of a maintained school is to:**

- **confirm whether teaching staff at that school have been the subject of capability procedures within the last two years; and**
- **give details of those capability procedures if there are any, and if asked to do so by the governing body of another maintained school or an academy trust if a member of teaching staff has applied for a teaching post with them.**

## New statutory guidance on school exclusions



Following new legislation in the Education Act 2011, a different procedure for school exclusions exists from 1 September 2012.

New guidance for this legislation explains how all Independent Appeal Panels will be replaced by Independent Review Panels. The powers of the panel have been limited in that they can no longer order a reinstatement of the excluded child. However, they can do the following:

- uphold the decision of the governing body;
- recommend that the governing body reconsiders the decision; or
- direct the governing body to reconsider its decision

A direction to reconsider, rather than just a recommendation to do so, will be limited to circumstances where a panel decides that the school has acted illegally or irrationally, or where there have been significant flaws in procedure. If the governing body is directed to reconsider and does not reinstate the excluded pupil, the panel may order a readjustment in the school's budget. In the case of an academy, the panel may order a maximum payment of £4,000 to the Local Authority to put towards the costs of alternative provisions being made for the pupil.

Head teachers, governing bodies and Local Authorities must have regard to and follow the guidance. We recommend that exclusion policies are checked and adjusted accordingly.

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## Teacher loses £5m claim after accident on school trip

Whilst on an activities week with secondary school pupils, Mr Blair-Ford, a teacher in Kent, and his colleagues took part in a "mini Olympics" on the final evening.

One of the games involved the students and teachers throwing wellington boots as far as they could. To make the game more fair, the teachers had to throw backwards through their legs. Unfortunately, Mr Blair-Ford lost his balance during the game. His head hit the ground first with no way of breaking his fall.

The teacher fractured his neck and is now paralysed.

Mr Blair-Ford and his legal team claimed that by not carrying out an assessment of the risks there had been a failure in the duty of care towards the teacher.

However, Mr Justice Globe rejected the claim. He stated that: "extremely sad though it may be, this was a tragic and freak accident for which no blame can be established". This was a case where the likelihood of such an accident happening was, at the most, a mere possibility and could never have been in the mind of a "reasonable man"; the accident could not have been foreseen or prevented.

For advice on personal injury claims please contact Nadina Edmondson on 01245 453827 or email [nadina.edmondson@birkettlong.co.uk](mailto:nadina.edmondson@birkettlong.co.uk)

## Changes to vetting and barring, and CRB checks

**The vetting and barring scheme and CRB checks are being scaled back to "common sense levels". This follows the Government's plan to reduce the burden on schools, colleges and**

**universities whilst still ensuring a high standard of safeguarding for children and vulnerable adults.**

**Changes set out in the Protection of Freedoms Act 2012 include:**

- **The Criminal Records Bureau and the Independent Safeguarding Authority will be merged to form the Disclosure and Barring Service. The DBS will be operational from December 2012.**
- **Changes which are specifically in relation to vetting and barring:**
  - **there is a new definition of "regulated activity", limiting what will be classified as such;**
  - **the controlled activity category will no longer exist; and**
  - **registration and continuous monitoring will not be introduced as previously suggested.**
- **A new test is to be applied by police before they can include information on an enhanced CRB check:**
  - **CRB checks may be made on 16 year olds or older;**
  - **a new test is to be applied by police before they include information on an enhanced CRB check;**
  - **CRB checks are to be provided to the applicant, rather than the employer, to give the applicant the opportunity to check for and dispute any inaccuracies before the certificate is disclosed to a prospective employer; and**
  - **CRB certificates will be continuously updated and transferable between employers.**

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