



Agoreyo

*One of the first employment law issues to be tested in the New Year is the employer's ability to suspend an employee following allegations of misconduct. In late January the Court of Appeal will hear the case of **Agoreyo v London Borough of Lambeth**.*

Ms Agoreyo was a teacher who was struggling to cope with two particularly disruptive pupils. She was suspended following allegations that on three occasions she had used inappropriate force to deal with them – essentially by dragging them out of the classroom. Her view was that she had behaved appropriately and that it was wrong to suspend her – particularly given that she had been asking the headteacher for additional support in dealing with the children. A series of support measures were indeed just about to be introduced when the suspension took place.

When the allegations were made by a colleague who had witnessed the incidents, the headteacher took the decision to suspend Ms Agoreyo pending an investigation and gave her a letter to that effect on the same day. As soon as she received the letter, she submitted her resignation. Because she did not have two years' service, she could not claim unfair constructive dismissal, so instead she brought a contractual claim in the civil courts. Her argument was that the decision to suspend her was a breach of the implied term of trust and confidence.

She lost in the county court, with the judge ruling that the employer effectively had no choice but to suspend her given the nature of

the allegations – but she then brought a successful appeal in the High Court. In January the saga continues, with the Court of Appeal considering the employer's appeal.

This is a difficult case, but one point made by the High Court is surely correct – suspending an employee cannot be described as a 'neutral act'. Attitudes have changed in recent years. It used to be the case that provided the employer continued to pay the employee in full it did not matter if the employee was told not to come in to work. But the development of the implied term of mutual trust and confidence has placed the issue of suspension under new scrutiny. There is now a general acceptance that suspension is extremely stressful and unpleasant for the employee concerned and can have a seriously damaging effect on the employment relationship. If that damage is inflicted without proper cause, then suspension can certainly amount to a fundamental breach of contract.

In analysing the decision to suspend Ms Agoreyo the High Court was critical of the haste with which it was reached. In particular, there was no consideration of her version of the events which led to the decision, nor of any alternatives to suspension.

The employer's letter to Ms Agoreyo claimed that the purpose of the suspension was 'to allow the investigation to be conducted fairly' but it was not clear what would have prevented a fair investigation if she had been allowed to remain in work.

This reference to a fair investigation in the suspension letter caused an additional problem for the employer. Before the High Court they argued that the suspension of a teacher accused of using inappropriate force was a child protection measure. The High Court pointed out that there was no suggestion in the letter that the purpose of the suspension was the protection of children. The alleged misconduct was not of such a nature that there were genuine concerns that Ms Agoreyo was a risk to children.

It is, of course, one thing to tell employers that suspension should not be a knee-jerk reaction to an allegation of misconduct, but in a safeguarding context a school is likely to regard suspension -at least for a short period – as a matter of urgency while the seriousness of the allegation and its implications are assessed. Schools that I have spoken to about this case are distinctly worried at the suggestion that they cannot take urgent action to remove an accused teacher from the premises but must instead embark on a search for alternatives. Apart from anything else, what realistic alternatives are there likely to be for a teacher whose role necessarily involves close contact with children?

Some employers I have talked to take a two-stage approach. When an allegation is initially made, they send the employee home, making it clear that this is a short-term measure to allow a proper assessment of the situation. Discussions are then held internally and with the Local Authority Dedicated Officer when appropriate before a formal decision is taken that the employee needs to be suspended. This way, when formal notification of suspension is given a few days later, the employer can show that it has not made a hasty decision and has done its best to consider any alternatives that there may be.

There is perhaps some sleight of hand here (what is the difference between suspending an employee and sending them home for a few days?) but it strikes me as a smart way of maintaining trust and confidence in what is inevitably a difficult situation. It also ensures that the formal letter of suspension is properly thought out and accurate.

Of course, it is not just at the point of suspension that the employer needs to be careful. The real damage to trust and confidence surely comes when a suspension continues for an extended period of time while the investigation slowly grinds on. The longer a suspension lasts, the harder it is to envisage a smooth and successful return to work if the allegations are eventually rejected. A sense of urgency is vital when an employee is suspended – especially when the allegations involve safeguarding issues.

We will have to wait and see what the Court of Appeal makes of all this – and an eventual appeal to the Supreme Court cannot be ruled out. This is certainly an opportunity for the Courts to lay down some definitive guidance as to when suspension is appropriate and how the employer should go about it. Let us hope that they take proper account of the particular obligations placed on schools to ensure the protection of children and the difficulty of balancing those obligations with the rights of employees accused of misconduct.

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In the SPOTLIGHT

Wow, wasn't 2018 just ace? Well, 2019 will be even better. In 2019 WME will be kicking off with the new and shiny Aspire 2.0! The new version of Aspire has been updated to really help HR colleagues understand Digital Transformation within their organisation and the leading role that HR can play. In addition, Aspire 2.0 will be featuring learning on 'Workforce Planning' which will give delegates the tools, models and strategies to help shape organisations' capabilities. Some of the other HR services that we are also super proud of include our Mediation services and our wellbeing offer on 'Mindfulness'. These positive proactive interventions have received some great feedback on how to manage and support staff.

We are looking forward to 2019 and continuing with the great relationships we have developed with colleagues in the region.

Merry Christmas and a Happy New Year
See you in 2019!

