

Legal Update

Dismissal of head teacher for failure to disclose potential safeguarding risk was fair

July 2016

In the case of *A v(1) B Local Authority (2) C Governing Body of School* (which will be of interest to schools, local authorities and other bodies concerned with safeguarding issues) the Court of Appeal decided that a head teacher had been fairly dismissed for failing to disclose to the school authorities her relationship with a person convicted of making indecent images of children.

It was held that her omission constituted gross misconduct because, as a head teacher with safeguarding responsibilities, she should have realised that she had an obligation to inform the school so that any appropriate protective steps could be taken.

The facts

Teacher X was employed as a head teacher at a primary school from September 2009 until her dismissal in May 2011. She had a 23 year unblemished record of teaching in primary schools.

She was in a 'close personal relationship' with IS, a male who was convicted in 2010 of making indecent images of children by downloading them onto his computer. While X and IS were not 'partners' and did not live together, they had been on holiday together, had a joint bank account, co-owned a house and occasionally shared the living space in that property.

At the time, the school was a maintained school and the governing body was accordingly under a duty to safeguard and promote the welfare of pupils. X did not inform the governing body of her relationship with IS or of the criminal conviction. She stated that after seeking advice from various quarters, including the CAB and the Probation Trust, she was under the impression that she was not obliged to make a disclosure. She argued that she had exercised her professional judgment and should not be punished because the school did not agree with her 'reasonable stance'.

Nothing in the school's policies or procedures explicitly stated that a teacher must disclose the conviction for sexual offences of a partner or associate. However, the school's disciplinary rules stated expressly that a 'failure to report any matter which the employee [was] under a duty to report' would be regarded as 'neglect of duty' and a potential disciplinary offence.

X was dismissed for gross misconduct on the basis that she had failed to disclose to the school her relationship with IS and his conviction.

The decision

The employment tribunal found that the dismissal was fair in principle, but was rendered unfair by procedural deficiencies in the investigation and appeal. To reflect this, compensation was reduced to zero. The Employment Appeal Tribunal agreed with this decision.

X appealed, arguing that there was no proper evidence to suggest that she was under a duty to disclose the information.

The Court of Appeal rejected her arguments, holding that she should have realised that her association with IS posed an increased risk to children and that she had a duty to inform the school of that risk so protective steps could be taken. Her evidence was muddled regarding the advice she had sought and the guidance she had received. However, at least some of the organisations she had consulted had steered her in the direction of disclosure.

Importantly, X had numerous opportunities during the disciplinary process to reconsider her position and accept her error, but failed to do so. This apparent lack of insight and understanding of the school's safeguarding concerns was a key reason for her dismissal.

X also attempted to argue that her dismissal was an interference with her right to a private life under Article 8 of the ECHR. The Court of Appeal gave this point relatively short shrift and stated that any interference would have been justified in the interests of safeguarding children.

What does this mean for me?

This is in many ways a reassuring decision for schools as it suggests that teachers, especially those in senior roles, should be constantly and implicitly mindful of safeguarding concerns.

In this case, there was some dispute about whether there was a self-evident duty to disclose, given that the association between the head teacher and convicted person fell short of a co-habiting partnership. Unless an obvious close connection (such as marriage or cohabitation) exists it would be best practice to set out clearly in the course of disciplinary proceedings exactly why any such association poses an increased risk to children. For example, in this case, the close personal relationship between X and IS might arguably have afforded X easier access to school premises or to information about pupils and their activities.

It is also important to take care not to conflate the fact that a member of staff is involved in a relationship that creates risk and a failure to disclose that relationship or risk. The Court of Appeal stressed that it was not inevitable that X should be dismissed because of her association with IS. Rather her handling of the situation was a serious conduct issue.

Similarly, in the recent case of *Pendleton v Derbyshire County Council* the EAT held that the dismissal of a primary school teacher, who refused to terminate her relationship when her husband was convicted of making indecent images of children, was unfair. This was partly because the school could not show that dismissal was due to the teacher's own conduct or 'some other substantial reason that would justify terminating her employment'.

Comment

Where there has been a failure to disclose information regarding risk, the important question to ask is whether a reasonable person with knowledge of all the facts would consider that a duty to disclose existed. This will largely depend on the specific circumstances of the case including the nature and proximity of the relationship between the teacher and the individual who poses risk.

However, this case stresses that safeguarding of children will always be paramount and strongly suggests that a teacher will be expected to report any serious or ongoing issue.

If you are considering the dismissal of a teacher or other member of staff for safeguarding reasons it is advisable to take specialist advice at an early stage.

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