

UPDATE

# The importance of a fair and thorough disciplinary process

Update prepared by Carla Benest (Partner, Jersey)

---

The importance of a fair and thorough disciplinary process has once again been highlighted in the recent case of *Mrs Samantha Price v Jersey Women's Refuge*. The applicant was employed as a Deputy Manager of the Jersey Women's Refuge. Following an external review of services, an investigation was carried out into the applicant's behaviour.

---

The Jersey and Employment and Discrimination Tribunal (the **JEDT**) found that the procedure was fundamentally flawed. Whilst the JEDT recognised that the respondent provided an invaluable service to the Island, it could not simply absolve itself of its obligations under the Employment Law. In respect of the investigation, whilst it had been well intentioned, the manner in which it was conducted meant that it was aimed at identifying a negative impression of the applicant and it failed to actually determine whether the allegations were genuine. The disciplinary hearing was also flawed as the allegations against the applicant were not clear and were largely historical, the panel indicated that they would come back to the applicant with clarifications in respect of outstanding issues which they failed to do and the panel failed to keep notes of their deliberations. The panel itself was an informal executive sub-committee which was formed to manage the process. However, the wider committee which consisted of experienced individuals who could have provided invaluable insight and independence were not included. The JEDT therefore found that the decision to discipline the applicant was unreasonable and fell outside the band of responses of a reasonable employer.

The JEDT was also critical of the process following the disciplinary hearing. The appeal chair was not independent and had been involved in the decision to keep the matter from the wider committee, the decision to carry out an investigation and the decision to hold a disciplinary hearing. The JEDT commented that the appeal chair 'wore too many hats' which was clearly inappropriate and could not be considered as constituting a fair procedure. Following the appeal hearing and the outcome being upheld, the applicant raised a grievance. The JEDT commented that the respondent's reaction was to ignore the applicant.

Taking all of these points into consideration, the JEDT subsequently found that the respondent's behaviour had amounted to a fundamental breach of contract. Considered objectively, the respondent's behaviour throughout the process was such as to undermine the trust and confidence that must exist between employer and employee. The applicant did not delay in responding to that breach by resigning and the JEDT therefore found that the applicant had been constructively unfairly dismissed by the respondent. In addition, the JEDT found as a matter of fact that the behaviour of the respondent amounted to a fundamental breach of contract. As a consequence, the dismissal amounted to wrongful dismissal.

The message to reiterate is that where employers are carrying out a disciplinary or grievance process, it should be fair, thorough and impartial. As part of an employee investigation, the employer should aim to seek out the truth rather than information which supports its existing view or the conclusion it wishes to reach. An employer should document the process at every stage and ensure that the individual who hears an appeal has no prior involvement in the matter to ensure independence and fairness.

## Contacts

---

**Carla Benest**

Partner, Mourant Ozannes

Jersey

+44 1534 676 076

[carla.benest@mourant.com](mailto:carla.benest@mourant.com)

---

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED

[Document Reference]