

Employment



Reasonable and proper cause for suspension

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In *The Mayor & Burgesses of the London Borough of Lambeth v Simone Agoreyo* [2019] EWCA Civ 322, the Court of Appeal confirmed that suspension of an employee is to be treated like any other alleged breach of the implied term of mutual trust and confidence: the question is whether the employer's conduct, without reasonable and proper cause, destroys or seriously damages the relationship of trust and confidence. Asking whether suspension is a "neutral act" is unlikely to assist in resolving it, because it is a highly fact-specific question.

However, employers will want to know what facts they should take into account when considering whether to suspend an employee.

What is the reason for the proposed suspension? Are there alternatives which would serve the same purpose?

Agoreyo confirms again that suspension must not be a "knee-jerk" reaction: an employer should not assume, even where serious misconduct is alleged, that suspension is necessary (paragraph 99).

The most common reasons given are to protect vulnerable people (for instance, pupils, patients or sometimes fellow employees) or to ensure that a fair investigation can be carried out.

An employer should consider whether there is a real risk to vulnerable people or to the fairness of the investigation. In *Crawford v Suffolk Mental Health Partnership NHS Trust* [2012] EWCA Civ 138, the claimants appeared to have used a method of restraint on a patient which was not permitted in the procedures (though it was similar to one which was permitted). In circumstances where two nurses with unblemished records were facing charges of gross misconduct and a referral to the police, Elias LJ expressed doubt that there was any real risk of repetition.

In addition, those aims may sometimes be served by measures short of suspension. For instance, it may be possible for an employee to work at a different location to avoid contact with witnesses. A doctor might be suspended from clinical practice during an investigation of a patient's death, but be able to continue teaching and research.

What is the employee's side of the story?

It will usually be important to find out what the employee's explanation for their conduct is before suspending.

In *Jahangiri v St George's University Hospitals NHS Foundation Trust* [2018] EWHC 2278 (QB), the defendant had initiated a review into the working relationships between surgeons in the cardiac surgery unit, and had warned surgeons not to obstruct the review. The claimant, a leading heart surgeon, was suspended after she asked her PA to arrange for her to speak with a member of staff. In fact, the claimant's solicitor had advised her to contact the member of staff in connection with disciplinary proceedings against the claimant which were entirely separate from the review. The High Court granted the claimant's application for an interim injunction lifting her suspension. Among many flaws in the defendant's procedure, the court was concerned that there was no evidence the decision-maker had been aware of the

claimant's explanation for contacting the member of staff.

Is suspension provided for under the contract of employment? Are there any specific procedural requirements?

Suspension is a potentially serious step for an employer to take, and it will be particularly important to comply with any procedural requirements. In *Holman v Devon County Council* UKEAT/0127/15 (unreported) 3 March 2016, the council's procedures required the decision to dismiss to be taken by a manager with no previous involvement, and also required alternatives to be considered. These requirements had not been met and the EAT overturned the tribunal's finding that the suspension was not a breach of mutual trust and confidence.

Some professions are also covered by statutory guidance: for instance, schools and colleges may need to have regard to Keeping children safe in education.

How long should the suspension be?

Suspensions should be as brief as necessary given the particular reason for suspension. The suspension should also be kept under regular review. For instance, if the only reason for suspension is that the employee's presence could affect whether witnesses feel able to speak freely and therefore hinder the investigation, then it may be appropriate to lift the suspension once all the witnesses have been interviewed, even if the investigation report has not yet been completed.

Recording and communicating a decision to suspend

A decision to suspend an employee should be carefully recorded, with the reasons for suspension clearly set out. The employee should be informed in writing of the reasons for the suspension and employers should make clear that it is temporary, that it is not a disciplinary sanction and that there is no assumption of guilt.

A previous version of this blog was published on 30 April 2019 by Practical Law Company. This can be viewed [here](#)

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