

## Agoreyo v London Borough of Lambeth: suspension can amount to breach of trust and confidence

In the appeal case of *Simone Agoreyo v London Borough of Lambeth [2017] EWHC 2019 (QB)*, the High Court concluded that the suspension of a teacher amounted to a breach of the implied term of mutual trust and confidence.

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<b>Applicable Law</b>	UK (England & Wales)
<b>Topic</b>	<a href="#">Employment, Pensions &amp; Incentives</a> > <a href="#">Disciplinary &amp; dismissal</a>
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### The facts

Ms Agoreyo was a teacher with 15 years' experience at a community primary school in South London. She started work as a Year 2 teacher on 09 November 2012, but was suspended only five weeks later because of the alleged force she used in three incidents involving two particular children. She resigned the same day.

It was acknowledged that the two children had severe behavioural difficulties and, after numerous requests from Ms Agoreyo, the head teacher had agreed to implement additional support. In the interim, two members of staff complained that Ms Agoreyo had used an unacceptable level of force to remove one or other of the children from the classroom on three separate occasions. As a result, Ms Agoreyo was immediately suspended. In its letter suspending Ms Agoreyo, the school stated that "The suspension is a neutral action and is not a disciplinary sanction. The purpose of the suspension is to allow the investigation to be conducted fairly".

The key issue was whether it was reasonable and/or necessary for Ms Agoreyo to be suspended pending the investigation.

### Decision

Following the decision in *Mezey v South West London and St George's Mental Health NHS Trust [2007] EWCA Civ 106*, the High Court held that suspension was not a neutral act because it changes the status quo from work to no work, and inevitably casts a shadow over the employee's competence. The High Court emphasised that this was the case at least in relation to a qualified professional in a vocation, such as a teacher.

Further, the High Court referred to the case of *Gogay v Hertfordshire County Council [2000] IRLR 703*, which emphasised the need to avoid a "knee-jerk reaction" with suspension as the default position without consideration of the alternatives. Given the circumstances, the High Court also considered the statutory

guidance on dealing with allegations of abuse against teachers, which states that suspension must not be the default option and that an individual should be suspended only if there is no reasonable alternative.

In this case, the High Court said that it would have expected at least some observation from Ms Agoreyo before she was suspended - "not a full investigation, but enough to determine whether the potential stigma associated with formal suspension could be avoided". However, Ms Agoreyo was not asked for her version of events prior to the decision to suspend being taken. There was no evidence that consideration had been given to any alternative to suspension, and no reasons were given for why the investigation could not be conducted fairly without the need for suspension.

Accordingly, the High Court held that the suspension was a knee-jerk reaction, adopted as the default position, and therefore amounted to a repudiatory breach of contract. It also held that suspension within a few days of being told that a scheme of support would be implemented, but had not yet been fully implemented, would amount to a further breach.

## Comment

Whilst this case is quite specific on its facts, the decision makes clear that invoking a suspension without due consideration can amount to a breach of contract. The case serves as a warning for employers to avoid against a knee-jerk reaction and illustrates what steps ought to be taken to demonstrate that suspension is reasonable in the circumstances. First, the case suggests that the individual should at least be spoken to and some early investigations undertaken before the decision is made. Second, the rationale should be weighed carefully and any potential alternatives to suspension should be considered. Third, it would be prudent to document the reasons for suspension carefully - and in particular, suspension purely to allow the investigation to be conducted is unlikely to be a sufficient reason.

Interestingly, the High Court was influenced by the potential stigma associated with suspending a qualified professional such as a teacher and the impact on their future career. This, of course, may be applicable to other professionals, such as medical professionals or similar.

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