

LEGALUPDATE

A DREW & NAPIER PUBLICATION

CASE UPDATE**English Court of Appeal Rules That Company's Investigative Procedures Form Part Of Employment Contract***Michael John Deadman v Bristol City Council [2007] EWCA Civ 822***Executive Summary**

Most, if not all, employers routinely develop and implement rules and guidelines to regulate the affairs of their organisations. These rules and guidelines often relate to matters such as employees' codes of conduct, retirement, retrenchment, health and medical issues, leave benefits, maternity rights, disciplinary procedures and grievance procedures. Some of these rules and guidelines may be couched in language that gives rise to contractual force while others, being more general and diffuse in substance, are not.

This case is illustrative of an instance where an employer's procedure for investigating complaints was found to have been adopted as part of an employee's contract of employment.

Background

The facts giving rise to these proceedings stem from an investigation commenced by the Bristol City Council (the "**Council**") into the conduct of an employee (the "**Claimant**") following a complaint of sexual harassment brought by a female colleague.

The Council had instituted a formal procedure for investigating complaints of this nature, as set out in a detailed document entitled "Procedure for Stopping Harassment in the Workplace". The Council, however, failed to adhere strictly to its procedure in the course of its investigation. In particular, the panel convened to consider the complaint consisted of only two, instead of the requisite three, members. The panel found against the Claimant but the Claimant challenged the decision before the Council's Staff Joint Consultative Committee and was successful in having the decision set aside. However, the question of a fresh investigation by a new panel arose. The decision to re-start proceedings was communicated to the Claimant by a letter left on his desk.

All the above events took a severe toll on the Claimant's health. He was prescribed medication for stress and eventually ceased work permanently as a result of depression.

The Claimant brought an action against the Council to seek redress for his illness, claiming that the Council had, by its actions, breached both its contract of employment with him as well as its duty of care to him at common law.

MAIN OFFICE

20 Raffles Place
#17-00 Ocean Towers
Singapore 048620

t +65 6535 0733

f +65 6535 4906

mail@drewnapier.com
www.drewnapier.com

Co. Reg. No. 200102509E

Decision of the English High Court

The trial judge found that the Council had not acted in breach of its duty of care owed to the Claimant at common law. However, the judge held that the manner in which the Council had conducted the investigation and the manner in which it had informed the Claimant of the renewal of the investigation involved breaches of the Claimant's contract of employment. These breaches led to the Claimant's illness, and accordingly, an award of damages was made in the Claimant's favour. The Council appealed.

Decision of the English Court of Appeal

Claim in contract

The Court affirmed that there is implied in every employment contract terms to the following effect: (a) that neither party would, without reasonable and proper cause, conduct himself in a manner likely to destroy or seriously damage the relationship of trust and confidence between employer and employee; and (b) that the employer would take reasonable care in respect of the health and safety of the employee.

Against this backdrop, the court examined the Council's "Procedure for Stopping Harassment in the Workplace" and "Integrated Equalities Policy".

The latter document set out the Council's aims of challenging discrimination and promoting equality of opportunity. Most of the document was framed in terms of policies and aspirations. It contained a paragraph recognising that harassment of employees and service users was unacceptable and that it was "*important to deal with incidents of harassment positively, quickly and sensitively*".

The court took the view that the "Integrated Equalities Policy" was not a document that "*naturally lends itself to incorporation into the contracts of the Council's employees*". The recognition of the need to deal with harassment positively, quickly and sensitively did not constitute a term in the Claimant's contract of employment. It was simply illustrative of the manner in which the Council expected to conduct its relationship with its employees, both in complying with its contractual obligation not to undermine the mutual relationship of trust and confidence and in observing its duty of care towards them under contract and at common law.

In contrast, section 7 of the "Procedure for Stopping Harassment in the Workplace" set out a formal process for investigating complaints of harassment. An investigation was to be conducted by a panel of three members. It stipulated that, as a minimum, the panel members should read and understand a document entitled "Stopping Harassment in the Workplace Investigation Guide". The procedure expressly excluded any general right of appeal against the panel's recommendations, but did permit either party to appeal if he or she was unsatisfied with the way in which the complaint had been investigated or if new evidence had come to light. An appeal was to be made using the Council's "Grievance Procedure".

The court concluded that, while some parts of the "Procedure for Stopping Harassment in the Workplace" contained little more than statements of policy, other parts were of a more "*detailed and formal nature and ... capable of being incorporated into contracts of employment*". It ruled that it was a term of the Claimant's contract of employment that the Council would follow its published procedure in the investigation of any complaints of harassment made against the Claimant. In his written judgment, Lord Justice Moore-Bick (with whom the other Lord Justices agreed) observed as follows:

"In my view where an employer has published and implemented with the concurrence of employees' representatives formal procedures providing for the manner in which

complaints are to be investigated, it will usually become a term of the contract of employment that those procedures will be followed unless and until withdrawn by agreement. The fact that in this case the procedures were made in the implementation of a non-contractual policy is in my view of no significance. What matters is whether they were in fact adopted as part of the contract of employment, as in my view they were in this case."

Accordingly, the Council was found to have breached the employment contract by convening a panel of two, rather than three, members to carry out the investigation. However, the Court of Appeal held that the damage flowing from this breach (ie. the Claimant's psychiatric illness) was too remote in law to be recoverable in this instance.

Claim in tort

The court affirmed the legal principles applied by the English Court of Appeal in *Hatton v Sutherland [2002] I.C.R. 613* pertaining to the nature and scope of an employer's duty of care to its employees in relation to stress at work. However, on the facts of this case, the psychiatric illness suffered by the Claimant was deemed not to have been reasonably foreseeable as a result of the way in which the Council had conducted the investigation or communicated the need for a fresh investigation. As such, the Council was found not to have been in breach of its duty of care at common law.

Comment

It is common practice for employers to have employee handbooks or manuals. Often, the content of these handbooks and manuals contain a mixture of general aspirations, broad principles and policies, as well as specific procedures, without distinguishing which of these are intended to be contractual obligations, and which are just broad objectives.

This case illustrates that provisions in handbooks or manuals can have the force of contractual obligations. Employment letters frequently refer to such handbooks and manuals. Such references may have the effect of incorporating the handbook or manual as part of the contractual terms. Employers should therefore be careful when making such cross references, and when drafting the content of their handbooks and manuals. Employers should make it clear whether or not a specific provision is intended to have contractual force. If it is intended that any provisions or procedures in the handbook or manual can be changed at the employer's discretion, this should be stated clearly at the outset.

If you would like more information about this case or wish to discuss how it may potentially affect you or your business, please feel free to contact the dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our website), or:

Indranee Rajah, SC
Director (Litigation & Dispute Resolution)
T: +65 6531 4100
E: indranee.rajah@drewnapier.com

The contents of this update are only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of, the information contained in this publication, and does not accept any liability for any loss or damage arising from any reliance thereon.

OUR BUSINESS GROUPS AND PRACTICE AREAS

BANKING/GENERAL FINANCE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

BIOMEDICAL SCIENCES

Lim Wee Hann
T +65 6531 2244
F +65 6535 4864
E weehann.lim@drewnapier.com

Tony Yeo

T +65 6531 2512
F +65 6220 0324
E tony.yeo@drewnapier.com

BUILDING & CONSTRUCTION

Tan Liam Beng
T +65 6531 4139
F +65 6533 3591
E liambeng.tan@drewnapier.com

CAPITAL MARKETS

Sin Boon Ann
T +65 6531 2206
F +65 6535 4864
E boonann.sin@drewnapier.com

CHINA BUSINESS GROUP

David Chin
T +86 21 6335 1628
F +86 21 6335 0638
E david.chin@drewnapier.com

COMPETITION LAW

Andrew Ong (non-contentious)
T +65 6531 4106
F +65 6535 4864
E andrew.ong@drewnapier.com

Lim Chong Kin (non-contentious)

T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

Cavinder Bull (contentious)

T +65 6531 2416
F +65 6533 3591
E cavinder.bull@drewnapier.com

CORPORATE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

OTHER OFFICES

Shanghai Office
#2501 Office Tower
Bund Center
222 Yan An Road East
Shanghai 200002
China
T +86 21 6335 1628
F +86 21 6335 0638
E china@drewnapier.com

Drewmarks Patents & Designs (Malaysia) Sdn Bhd
9th floor
Bangunan Getah Asli (Menara)
148 Jalan Ampang
50450 Kuala Lumpur, Malaysia
T +603 2162 2522/2162 2529
F +603 2162 2804
E drewmark@tm.net.my

PT Drewmarks Konsultama
Correspondence address:
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620
T +65 6531 2503/6531 2504
F +65 6533 0694
E ip@drewnapier.com

DrewCorp Services Pte Ltd
20 Raffles Place
#09-01 Ocean Towers
Singapore 048620
ROC No. 200102492H
T +65 6531 2266
F +65 6533 1542/6533 7649
E services@drewcorpservices.com

CORPORATE INSOLVENCY & RESTRUCTURING

Sushil Nair
T +65 6531 2410
F +65 6532 7149
E sushil.nair@drewnapier.com

Manoj Sandrasegara

T +65 65314156
F +65 65327149
E manoj.sandrasegara@drewnapier.com

EMPLOYMENT & IMMIGRATION

Indranees Rajah, SC (contentious)
T +65 6531 4100
F +65 6532 7149
E indranees.rajah@drewnapier.com

Andrew Ong (non-contentious)

T +65 6531 4106
F +65 6535 4864
E andrew.ong@drewnapier.com

FAMILY & MATRIMONIAL

Randolph Khoo
T +65 6531 2418
F +65 6532 7149
E randolph.khoo@drewnapier.com

FUND MANAGEMENT, REIT & PRIVATE EQUITY

Petrus Huang
T +65 6531 2208
F +65 6533 0694
E petrus.huang@drewnapier.com

Evelyn Wee

T +65 6531 2260
F +65 6535 4864
E evelyn.wee@drewnapier.com

INFO-COMMUNICATIONS, MEDIA & TECHNOLOGY

Andrew Ong
T +65 6531 4106
F +65 6535 4864
E andrew.ong@drewnapier.com

Lim Chong Kin

T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

INSURANCE & REINSURANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

INTELLECTUAL PROPERTY

Morris John (Patents)
T +65 6531 2503
F +65 6533 0694
E mj@drewnapier.com

Edar Singh Gill (Trade Marks)

T +65 6531 2507
F +65 6533 0694
E edar.singh@drewnapier.com

LITIGATION & DISPUTE RESOLUTION

Jimmy Yim, SC
T +65 6531 2504/2505
F +65 6533 3591
E jimmy.yim@drewnapier.com

PROJECT FINANCE

Christina Ng
T +65 6531 2250
F +65 6535 4864
E christina.ng@drewnapier.com

PROPERTY

Chua Bee Lan
T +65 6531 2202
F +65 6535 1952
E beelan.chua@drewnapier.com

SHIPPING & INTERNATIONAL TRADE

Ian Koh
T +65 6531 2436
F +65 6533 3591
E ian.koh@drewnapier.com

TAX, TRUSTS, ESTATE PLANNING & PROBATE

Teoh Lian Ee
T +65 6531 2248
F +65 6535 4864
E lianee.teoh@drewnapier.com

TRANSNATIONAL & CROSS-BORDER WORK

Christina Ng
T +65 6531 2250
F +65 6535 4864
E christina.ng@drewnapier.com