

For fairness and good reason

Allowing staff the right to choose their companion in disciplinary meetings can help employers in the long run, says **Victoria Russell**



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Employees have a right to be accompanied to grievance and disciplinary meetings by a fellow employee or trade union official.

Companions are entitled to put the employee's case, respond to any views expressed and confer with the employee during the meeting. They are not able to respond to questions on the employee's behalf.

Using colleagues as companions can be a difficult scenario, but an employer must not treat them any less favourably because of their involvement. They are also allowed time off work to fulfil these duties.

We have dealt with numerous cases where employees claim to feel uncomfortable when a colleague knows about the contents of a disciplinary hearing so ask to bring an unassociated friend along instead.

This request is more often seen in hearings that contain heightened emotional issues. Sometimes, having a family member present is good for the

employee's well-being.

However, if the employer's handbook contains no provision for non-employee companions to attend disciplinary and grievance hearings, an employer must ensure that they have full information about the proposed person including any legal background they may have before agreeing to the request.

Unequal footing

A legally qualified companion or one who works in human resources effectively means that the employee is professionally advised during the hearing and would put parties on an unequal footing. Having legal representatives at private employer/employee meetings is usually inappropriate.

Another issue that can arise from an unknown companion is that the contents of disciplinary and grievance hearings can contain confidential information and an employer may not want this known to a third party.

If the employer's company policy does not provide for an external individual to attend a disciplinary or grievance hearing as a companion, the employer is not obliged to permit such an attendance.

However, in practical terms, it is advisable to consider each request on its merits as some flexibility on the part of the employer can help them be considered reasonable and could go some way to easing tensions.

If an external companion is permitted, it is best practice to ask them to enter into a

confidentiality agreement with the employer.

The reasonableness of an employee's request for a companion has been considered by the Employment Appeal Tribunal in cases where the employee asked for particular union officials to be the companion but the request was refused by the employer.

As stated, an employee is given the absolute right to choose their companion, save that their companion must be an appropriate union representative or fellow worker as per section 10 of the Employment Relations Act 1999.

However, the Employment Appeal Tribunal has held



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that there is, in fact, no requirement that the employee's choice of companion must be reasonable.

In any event, and with reasonableness put to one side,

the remedy for the breach of allowing the employee the right to be accompanied is to pay the employee compensation as determined by the tribunal, although it is limited to two weeks' pay.

Given the relatively low penalty that can be imposed an employer may decide to refuse the request.

Difficult defence

Despite the low financial risk, it is advisable to try to accommodate the request. If not, the tribunal could draw inferences as to other unreasonable conduct of the employer, which could make any claims harder to defend.

Meetings must be minuted and these notes should be given to both parties to approve. Employers must ensure that proper consideration is given to all issues before issuing any disciplinary sanctions or making any decisions as to a grievance. A full paper trail should be collated at this stage in case it is required in future proceedings.

It is important for employers to be aware that litigation can arise solely out of the employee's right to have their choice of companion.

We consider that offering the employee some leniency in disciplinary and grievance procedures about their choice of companion can assist the employer's position in appearing reasonable and fair.

It should also help to ensure that the real issues of the disciplinary or grievance are kept in focus. **SJ**