

## • A HIGH PROFILE REMINDER OF THE IMPORTANCE OF FAIR PROCEDURE IN DISMISSALS

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**Much has been made of the recent Court of Appeal decision relating to the dismissal of Sharon Shoesmith from her post as director of Haringey Children's Services. A post in which she earned £133,000 a year.**

**It is widely reported that she hopes to receive at least £1m in compensation following the judgment.**

The then home secretary, Ed Balls, announced the removal of Miss Shoesmith from her role at a live television press conference, following the death of 'baby P' in Haringey.

Ofsted had investigated and reported on Haringey Children's Services and identified among other failings "insufficient strategic leadership and management oversight".

Although we may yet see an appeal to the Supreme Court by the Secretary of State, the Court of Appeal's ruling has re-asserted some important fundamental lessons for HR professionals and managers.

There was little denial that there were grounds to remove Ms Shoesmith from her post. The appeal has been won on the basis that the dismissal was procedurally unfair. It was found that no proper and fair procedures had been followed, and Ms Shoesmith was essentially sacked without having been given the right to put her case forward.

The argument that it is entirely likely that she would have been dismissed in any event holds little sway. Without proper procedure and the right to reply, the dismissal is unfair. As such, the compensation sought reflects the prospect that Ms Shoesmith shouldn't have been dismissed at all. Whether the level of compensation should be reduced will now be considered by the High Court.

The concept of procedural fairness in dismissals is also an important element of Guernsey's Unfair Dismissal legislation.

In considering whether a dismissal was unfair, the Tribunal in Guernsey will take into account the 'Commerce and Employment Department's Code of Practice on Disciplinary Practice and Procedures in Employment' which states, among other requirements, that:

"Before a decision is made or penalty imposed, the individual should be interviewed and given the opportunity to state his or her case..."

In short, when considering terminating the employment of an individual on disciplinary grounds, no matter how strong those grounds are, a fair and thorough process must be followed.

If your organisation does not have defined disciplinary procedures that comply with Guernsey's procedural requirements, they should consider developing some. That said, a procedure can never effectively deal with every situation that arises. In any more complex situation, seeking legal advice might prevent hasty, and costly, action.

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