

# Case Focus – Aplin v The Governing Body of Tywyn Primary School – the implications of a poor investigation

Mr Aplin was the head teacher of a primary school and was openly gay. He met two 17-year-old males (still classed as children, by law) on Grindr and the three of them had sex. Read more for the investigation and disciplinary hearing.

28 November 2019

## Background

Mr Aplin was the head teacher of a primary school and was openly gay. He met two 17-year-old males (still classed as children, by law) on Grindr and the three of them had sex.

Following the investigation and disciplinary hearing, Mr Aplin was dismissed for gross misconduct. He appealed against his dismissal (and his employment continued to allow for this process). However, during the course of the appeal process, Mr Aplin resigned and subsequently brought proceedings alleging constructive unfair dismissal and discrimination.

## Employment Tribunal, 2017

The Employment Tribunal (ET) was highly critical of the investigation carried out in the case for three main reasons:

1. the investigating officer approaching the case on the basis that Mr Aplin was a potential danger to children;
2. for drawing selectively on Professional Abuse Strategy Meeting minutes and police material which was not made available to Mr Aplin; and
3. for failing to produce a factual and objective report, instead producing one which included value judgements and hostile conclusions.

The ET was also highly critical of the disciplinary process, and found defects in the appeal process. These, combined with the unsatisfactory investigation report, were held to amount to breaches of the implied term of trust and confidence, entitling Mr Aplin to resign and claim constructive unfair dismissal.

The ET found that the investigation officer had discriminated against Mr Aplin because of sexual orientation, and the Governing Body was vicariously liable for the same.

The ET did not find discrimination on the part of other Local Authority officers involved or the Governors. In respect of the Governors, the ET held that they had effectively abdicated their roles and allowed Local Authority officers to take decisions.

## Employment Appeal Tribunal, March 2019

Following an appeal, the Employment Appeal Tribunal (EAT) upheld the majority of the findings made but held that the question as to whether the Governors had discriminated against Mr Aplin needed to be remitted to the tribunal.

## Employment Tribunal – November 2019

The ET considered whether the Governors' decision to abdicate decision-making responsibility was discriminatory and concluded it was not. The focus had been on the age of the children concerned, and not their gender, and those involved with the process simply wanted to defer to others who were believed to have greater expertise.

However, despite the finding that Mr Aplin could have been disciplined for his admitted conduct, the ET was only prepared to reduce the compensation payable to Mr Aplin by 20% because the sheer number of procedural failings made it extremely difficult to quantify what the prospects of a fair dismissal were. The compensation awarded to Mr Aplin after deductions) was just shy of £700,000.

## Lessons learned

The case highlights the importance of training and experience for those dealing with disciplinary matters. The School was not criticised for taking action per se – and the majority of those involved were found to be concerned about the age of the children involved, not their gender – however, it was the procedural failings along the way (and the initial bias demonstrated) that rendered the process both unfair and discriminatory.

Further, had it simply been the investigation report that had been criticised, and the disciplinary panel had been able to coherently explain both that any subjective comments had been disregarded and the rationale for the decision reached, it would have been considerably easier for the school to argue that Mr Aplin would have been dismissed in any event, reducing compensation considerably.

## Contact

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