

# Legal representation in student procedures: A contractual right?

28 January 2025  Trish D'Souza

It's highly unlikely any university would want to routinely permit lawyers to represent students in disciplinary or misconduct proceedings. However, case law indicates this is appropriate in certain circumstances and that it may be a breach of the student contract not to permit it.

We're increasingly receiving requests for advice about when it is or is not appropriate to permit legal representation within student procedures upon request, particularly where the student is pursuing a vocational or professional course.

The case of AB v XYZ University has helpfully set out a range of factors for HEIs to think about, to determine when it might be appropriate to permit legal representation.

## What was AB v XYZ University about?

AB (a student) issued a claim against XYZ University, claiming he was entitled to representation at a disciplinary hearing to determine whether he had committed sexual misconduct against a female student of another university. The alleged victim indicated that AB had had non-consensual intercourse with them.

This case serves as reminder that fairness is an element of the student contract and in certain circumstances universities risk breach if they do not seriously consider whether refusing representation would be a breach of fairness.

## Student contract

The relationship between AB and XYZ University is a contractual one. By AB accepting an offer of a place at the university he was agreeing to abide by the university's "Regulations" as part of the student contract.

Those Regulations indicated that a student may be accompanied by a supporter but they could not be represented by them. The Disciplinary Committee upheld the sexual misconduct allegation against AB and AB was excluded from the university.

## Fairness may require legal representation

Any disciplinary or misconduct hearing undertaken by an HEI is subject to the rules of natural justice and therefore must be fair. Generally, the courts have been reluctant to find that there is a contractual entitlement to legal representation simply because disciplinary proceedings have been engaged. However, the court held in AB v XYZ that there could be a right to legal representation if fairness required this.

## What factors do HEIs need to consider?

The court held in AB v XYZ that when considering whether legal representation is required the factors set out in the Tarrant case should be considered. Not all such factors need to be satisfied but enough to demonstrate why it would be fair to permit legal representation. The factors are as follows:

1. The seriousness of the allegation.

2. Whether any points of law are likely to arise.
3. The capacity of the individual to understand the allegations against them.
4. Procedural difficulties.
5. The need to avoid delay.
6. The need for fairness between the student and those making the allegation.

## AB entitled to legal representation

In applying the above factors, the court concluded that AB was entitled to legal representation as the allegation against him involved serious criminal conduct which had the potential to cause AB to be excluded from the university.

Also, procedural difficulties may arise regarding how AB would put questions to the alleged victim during the disciplinary hearing. A legal representative could act as a buffer between the alleged victim and AB. Lastly, effective chairing of the hearing would prevent the alleged victim being intimidated by the legal representative.

## When it's good practice to permit legal representation for students

In its 'Good Practice Framework: Disciplinary procedures', the Office of the Independent Adjudicator (OIA) warns HEIs "It is good practice for providers to permit legal representation in complex disciplinary cases, or where the consequences for the student are potentially very serious".

This should mean, in practice, that where a number of the Tarrant factors are satisfied, HEIs may need to permit legal representation as this would be fair, in line with the rules of natural justice and Article 6 of the European Convention on Human Rights. This may be necessary in the following types of cases involving:

- Factually complex matters.
- Serious sexual misconduct.
- Serious criminal conduct.
- Fitness to practise proceedings.

With each of the above, there is a high risk that a student may be removed from a course, excluded from an HEI or prevented from practising a profession.

In those circumstances, based on AB v XYZ it would be fair to permit legal representation upon request. The risk of not doing so may cause an HEI to act in breach of the student contract, particularly if the court held that legal representation was a contractual right.

However, it's reassuring that the OIA, and even the courts, do not consider that legal representation is required in every disciplinary matter as the OIA considers this to be not "necessary, appropriate or helpful" in every case.

## Further information

[OIA Good Practice Framework: Handling Complaints and Academic Appeals](#) →

[OIA Good Practice Framework: Disciplinary procedures](#) →

## Contact

Trish D'Souza  
Legal Director



trish.d'souza@brownejacobson.com

+44 (0)330 045 2193

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