

**Court of Appeal finds that bringing disciplinary proceedings was not a breach of the employer's duty of care**

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**Court of Appeal finds that bringing disciplinary proceedings was not a breach of the employer's duty of**

# care

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The Court of Appeal has held that an employer did not breach its duty of care when it brought disciplinary proceedings against an employee suspected of giving a falsely positive reference about a former colleague. Whilst the allegations were not ultimately upheld, the decision to suspend was within the employer's range of reasonable decisions.

Dr Mian worked for Coventry University as a senior lecturer in the Health and Life Sciences Faculty. One of her colleagues, Dr Javed, asked Dr Mian to provide a reference for a new job he had obtained with Greenwich University. However, shortly after Dr Javed commenced his new role, Greenwich University contacted Coventry University, expressing a concern that Dr Javed's performance did not correspond with the reference. It transpired that the reference contained a number of inaccuracies and overstated Dr Javed's qualifications.

Coventry University launched a preliminary investigation and discovered that Dr Mian had been asked to provide the reference. Having searched Dr Mian's computer, three draft references for Dr Javed were found, all of which were misleading and similar to that provided to Greenwich University. Consequently, Dr Mian was invited to a preliminary meeting to discuss the University's findings.

Dr Mian agreed that she had been a referee for Dr Javed but denied writing the reference which was given to Greenwich University. In respect of the draft references, which had been located on her computer, Dr Mian claimed that Dr Javed had

given them to her but that she did not use them when preparing the reference. Indeed, she alluded to the possibility that Dr Javed intercepted her post (the request for a reference coming in the post via her pigeon hole) and changed the reference she provided. Instead, Dr Mian claimed she had written a shorter reference, but she had since deleted it. During the meeting, Dr Mian also stated that Dr Javed had intimidated her into providing the reference but she did not report it at the time.

On conclusion of the preliminary meeting, Coventry University considered there was a case to answer for gross misconduct and commenced disciplinary proceedings. As such, Dr Mian issued proceedings for breach of contract and/ or negligence, asserting that the University's decision to begin disciplinary proceedings without further investigation was a breach of its duty of care and had caused her foreseeable psychiatric harm.

The Court of Appeal dismissed the claim. It found that the University's decision to commence disciplinary proceedings had been within the range of reasonable decisions an employer could take and therefore not a breach of duty on the basis that: (i) the false references were located on Dr Mian's computer; (ii) it was unlikely that Dr Javed could have intercepted Dr Mian's post from a staffed office; and (iii) there was no evidence to support any ill-feeling between Dr Mian and Dr Javed. It found that it was legitimate for the University to go forward to a disciplinary hearing to consider the evidence on both sides.

*Coventry University v Mian [2014] EWCA Civ 1275*

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