

Depression not a foreseeable consequence of employer's decision to remove employee from his post

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The Court of Appeal has held that the Foreign and Commonwealth Office's decision to withdraw a Commissioner from office amounted to breach of contract, but that the Commissioner's subsequent development of clinical depression was not a foreseeable consequence of its decision. As such, it was not liable for losses the Commissioner suffered as a result.

In August 2007, Mr Yapp was appointed British High Commissioner in Belize by the FCO. The terms of appointment included the following contractual provisions: (i) FCO could withdraw Mr Yapp from his post where necessary for 'operational reasons'; and (ii) Mr Yapp was entitled to fair treatment.

In June 2008 allegations of sexual misconduct and bullying were made against Mr Yapp. The FCO withdrew Mr Yapp from his post with immediate effect on grounds that his position had become 'operationally untenable' and that the allegations were harming diplomatic relations between Belize and the UK. Mr Yapp was given no notice of the allegations. An investigation was arranged and the FCO stated that, should the allegations be unfounded, it would try to find an alternative role for Mr Yapp.

A disciplinary hearing took place in August 2008. The hearing officer determined that the allegations of sexual misconduct were unfounded, but the allegations of bullying were substantiated. Mr Yapp was given a final written warning and his suspension was lifted in November 2008. However, Mr Yapp was then signed-off work with depression. No alternative positions were found for Mr Yapp and he remained on sick leave until his retirement in January 2011.

Mr Yapp brought claims for breach of contract and negligence

against the FCO in respect of his withdrawal from office and the FCO's conduct of the disciplinary process.

The FCO argued that its immediate withdrawal of Mr Yapp from his post was justified due to its wide discretion to make operational decisions and its need to act quickly in the circumstances. It also argued that, in any event, Mr Yapp's development of clinical depression was unforeseeable and therefore it could not be held liable.

The Court of Appeal held that the FCO's decision summarily to withdraw Mr Yapp before carrying out an investigation or giving him the opportunity to answer the allegations constituted a breach of contract. However, it held that Mr Yapp's development of clinical depression was not reasonably foreseen as he had shown no previous signs of vulnerability to psychiatric injury. The Court noted that there may be situations where the employer's conduct was so severe that even a robust person may be expected to develop psychiatric injury as a result, but this was not such a case.

Yapp v Foreign and Commonwealth Office [2014] EWCA Civ 1512

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