

Right to be accompanied: EAT confirms no request means no statutory duty

In *Wolfe v Taka Mayfair Ltd*, the Employment Appeal Tribunal (EAT) has considered whether the right to be accompanied at a meeting applies where an employee is not aware of the meeting's purpose and does not make a relevant request.

The right to be accompanied applies to disciplinary and grievance meetings under Section 10 of the Employment Relations Act 1999 (ERA 1999), where the worker reasonably requests to be accompanied at the hearing. The employer must permit the worker to be accompanied by a trade union representative or a fellow colleague, and the employee has the right to rearrange the meeting by up to five working days in order for the companion to be available.

This case considered, for the first time, how this right may apply where an employee has not requested a companion because they did not understand the true purpose of the meeting. Below, we explore what this means for employees and employers going forward.

What happened in this case?

Mr Wolfe was employed as a Head Sommelier and Manager at Taka Mayfair for a month between December 2022 and January 2023. At the end of a shift, he was called into a meeting without notice and dismissed. He brought a claim in the Employment

Tribunal for unfair dismissal, disability discrimination and a failure to pay notice pay.

In May 2023, Mr Wolfe applied to amend his claim to include (among other matters) a complaint that he was denied his right to be accompanied under Section 10 ERA 1999. The employer argued that it was a performance review meeting and therefore Section 10 did not apply, but the Tribunal agreed that for the purposes of the amendment application they would take Mr Wolfe's case at its highest as this would be a question for later evidence.

However, the Tribunal considered that the Section 10 right was not engaged because Mr Wolfe had not made any request to be accompanied. Mr Wolfe had admitted with "*commendable honesty*" that he had made no such request, and the Tribunal determined that this was fatal to his application.

Mr Wolfe appealed to the EAT on the basis that the employer had failed to make him aware of the purpose of the meeting in advance, and that he had not appreciated during the meeting that he might be dismissed. He claimed that, as a result, he was denied the ability to exercise his right under Section 10 and that once he did become aware (i.e. when he was dismissed), it was too late to request a companion.

The core of Mr Wolfe's argument was that, as a matter of principle, it should not be right that an employer can avoid the Section 10 right being triggered by hiding the true purpose of a meeting from the employee. He believed that this would be a loophole in the legislation that Parliament could not have intended, and that employees should not be required to second-guess the purpose of the meeting or ask their

employer about it in advance, risking retaliation. He argued that these points were particularly notable given the imbalance of power between the employer and the employee at the types of meetings covered by Section 10.

Mr Wolfe made three additional arguments to support his case:

- He argued that Section 10 required an employee to 'reasonably' request a companion, and therefore there was a parallel obligation for the employer to act reasonably (which they would breach if they withheld the true nature or potential outcome of a meeting).

- He referred to the ACAS Code of Practice on Disciplinary and Grievance Procedures (**ACAS Code**), which required an employee to be given sufficient information about any alleged misconduct and its possible consequences ahead of a disciplinary hearing, along with sufficient detail about the meeting (including their right to be accompanied).

- He relied on the Human Rights Act 1998, stating that Section 3 required the Tribunal to give effect to the ERA 1999 in a way which was compatible with his Convention rights.

What was decided?

With regard to the main point of Mr Wolfe's appeal, the EAT considered that the obligations on an employer under Section 10 only arose if the circumstances under Section 10(1) were met; if they were not, then the employer had no obligations under the statute. As a result, if the employee did not reasonably request to be accompanied at the hearing, the employer's obligations did not apply and the employee cannot make a relevant complaint.

The EAT noted that it was open to an employee to request representation during the meeting when the purpose became apparent, even if this had not occurred to them before. This would then arguably trigger the employer's duty to permit it and allow an adjournment to allow the companion to attend.

Regarding the additional points made by Mr Wolfe, the EAT found that:

- There was nothing in Section 10 to impose a general obligation on employers to act reasonably, and whilst legislation must be interpreted purposively in line with Parliamentary purpose, the wording was unambiguous and it was essential to the employer's obligations that the employee had made a request. This may sometimes be a point of dispute, but in this case Mr Wolfe had been clear that no request had ever been made. There was therefore no room for any other interpretation or application of the relevant section. The EAT noted that

Parliament had not included any proactive obligation on the employer to notify employees of their rights or any provision addressing the employee failing to understand the purpose of the meeting.

- Whilst the ACAS Code stated that the employee should always be informed of their right to be accompanied, this was only guidance and had no statutory force. It did not mean that any requirement of the ERA 1999 should or could be disapplied.
- There was nothing to support Mr Wolfe's case that an expanded interpretation of Section 10 was required to comply with his rights to a fair trial under the Human Rights Act 1998. The level of 'reading in' that would be required to align with his argued case was beyond what the EAT would have the power to do.

Mr Wolfe's appeal was therefore dismissed.

What does this mean for employers?

This decision confirms that the requirement for an employee to make a request to be accompanied under Section 10 ERA 1999 is

a strict gateway question; if no request has been made, the right does not arise and there is no obligation on the employer under that Section to bring this to the employee's attention.

However, employers need to be careful not to see this as giving permission to conceal the purpose of a meeting from an employee. An employer failing to explain the purpose of a meeting, give sufficient notice of the meeting and notify the employee of their right to be accompanied will all be highly relevant to whether a dismissal is unfair overall. Such actions are also likely to breach the ACAS Code, meaning any compensation awarded to the employee could be uplifted by up to 25%.

Employers should therefore ensure that they provide employees with sufficient notice of meetings and their associated rights, giving them reasonable time to prepare and source a companion. They should also take any request to be accompanied seriously, even if it is made during the relevant meeting (which may need to be adjourned as a result).

For employees who are facing a meeting with their employer, the decision emphasises that they must make an express request to be accompanied in order to be protected. They should be mindful that the employer may deny this request if the meeting is not for disciplinary or grievance purposes, but if that appears to change at any time (including during the meeting) the request should be renewed.

[Wolfe v Taka Mayfair Ltd](#)

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