

# External consultants who undertake Grievances and Disciplinaries are likely agents

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## [Handa v The Station Hotel \(Newcastle\) Ltd & Ors \[2025\] EAT 62](#)

### Facts

The Claimant ('C') made a number of allegations of financial impropriety relating to the running of his employer's (R1's) hotel business. Separately a number of grievances were raised against C by other employees alleging bullying and harassment.

R1 engaged an independent HR consultant to investigate those grievances (R4). Some of the grievance allegations were upheld by R4 and in consequence C was suspended and a disciplinary process embarked upon.

R1 engaged a further independent HR consultant (R5) who conducted the disciplinary hearing. Further to the recommendation of R5, C was dismissed by R1.

C presented whistleblowing detriment claims (pertaining to his suspension, removal of his directorship and dismissal) and claimed unfair dismissal on both an ordinarily unfair (s.98 ERA 1996) and automatically unfair (s.103A ERA 1996) basis. C pursued claims against both R4 and R5 arguing that they were acting as agents for R1 in respect of the dismissal.

### ET Decision

The ET struck out the claims against R4 and R5 on grounds that C's claims had no reasonable prospect of success in light of the fact that it was held there was no agency relationship between the HR consultants and the employer.

The ET focused on the common law agency principles as set out in *Reynolds on Agency* and **MOD v Kemeih** and the ET held that for there to be an agency relationship something over and above the mere provision of services under a contract would be required and that it is the fiduciary nature of the relationship that creates agency.

In the present case the ET held there was incontrovertible evidence that R4 and R5 were operating under a contract for services with R1 and that C had no reasonable prospect of establishing that a fiduciary relationship existed with R4 or R5 acting on behalf of R1, putting R1's interests above their own, as opposed to them acting on their own behalf providing a service to R1 for its benefit.

## EAT Decision

The EAT examined whether R4 & R5 acted as agents of R1. It concluded that while the ET did err because it was arguable that they acted as agents in respect of their investigative and reporting functions, there was no arguable basis for them being co-liaible as agents for the dismissal itself and accordingly the ET's decision to strike out the claims against R4 & R5 was ultimately upheld.

The EAT found that the mere involvement of R4 and R5 in the chain of causation leading to a dismissal did not establish agency liability. In this case it was clear and accepted by all parties that whilst R4 and R5 had made recommendations to R1, neither of them had made the decision to dismiss nor had they been involved in the other alleged detriments of suspension and removal of C's directorship.

Of greater importance / interest, the EAT's key finding of note is found in para 68 in which it was stated:

*In summary, within the context of an employment relationship, where the complaint relates to the conduct of someone acting on behalf of an external provider, the material issue is whether the services that they are contracted to provide relate to a significant aspect of the employment relationship, rather than some other aspect of the employer's business or activities. Taking that approach, someone who incidentally comes into contact with employees in the course of providing a contracted service to their employer, which is itself unrelated to an employment relationship, is unlikely to be regarded as an agent for these purposes. **But I do not see why a person who is retained to carry out an employment-related procedure, such as a grievance or disciplinary investigation, could not be regarded as the employer's agent in the course of carrying out those functions.** (emphasis added)*

## Guidance / General Points of Note from EAT

In sum therefore whilst ultimately not material on the facts of this case, the EAT did find that the ET had erred in respect of its findings in respect of agency and the following bullet points can be extracted and are worthy of note:

- Whilst the common law concept of agency is to be applied, that concept falls to be applied by ETs in the particular and peculiar context of an employment relationship and its dynamic nature remaining cognisant of the underlying purpose of relevant legislation. Therefore, agency concepts in employment law may differ from commercial contexts;
- Whilst the power to affect the putative principal's legal relations with third parties is one of the hallmarks of agency, it is not *an essential* requirement in every type of case;
- Likewise, the existence of a fiduciary duty was by no means an *essential* characteristic of agency;
- Being an independent contractor *does not preclude* someone from being an agent, but the factors that make them independent contractors are relevant in determining agency status;
- a person who is retained under a contract of services to carry out an employment-related procedure, such as a grievance or disciplinary investigation, could be regarded as the employer's agent in the course of carrying out *those* functions;
- Even if respondents acted as agents in carrying out specific tasks, this does not automatically make them liable for actions *outside the scope* of those tasks.

## Conclusion

These findings underscore the complexity of establishing agency within employment contexts, emphasising the importance of authority, control, and the scope of functions in determining agency relationships.

Practitioners, including external consultants, who act for employers in disciplinary and grievance procedures should especially take note of their potential individual liability as agent for their actions / decisions. Ensuring they clearly limit the remit of their involvement to recommendations as opposed to decisions can afford some protection as was the case in Handa, but it will be difficult to limit / exclude liability entirely as clearly certain actions / decisions will need to be taken as part of the role undertaken.

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