



InBrief – Investigations and Representation

KEY CONTACTS

If you require advice or further information, please contact Barry Crushell, Carmel Byrne, or your usual Aperture Partners contact.



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In a recent decision in the case of *Lyons v Longford Westmeath Education*, the High Court held that the right to fair procedures and natural justice, which includes the right to legal representation during meetings and the right to cross-examine witnesses, applies at the preliminary investigation stage of a workplace investigation process, where the matter is sufficiently serious, that the outcome may ultimately warrant serious sanction or dismissal.

Two further decisions of the High Court on the issue of fair procedures during a workplace investigation have recently been issued, supporting the proposition that employees may be entitled to legal representation when the investigating body are empowered to make a formal determination that may lead to serious sanction or dismissal.

E.G. v The Society of Actuaries in Ireland was a case involving an allegation of professional misconduct made against the applicant, a member of the Society of Actuaries in Ireland.

N.M. v Limerick and Clare Education and Training Board concerned an application by a teacher for an injunction to restrain the continuation of any investigation or disciplinary process by the respondent in respect of allegations of sexual harassment and unprofessional conduct made against him.

It was held in both cases that, if a workplace investigation has the potential to result in the making of an adverse finding or the imposition of serious professional sanctions against the employee under investigation, that employee should be afforded fair procedures and natural justice appropriate to a formal disciplinary inquiry, which may include legal representation.

However, if a workplace investigation is merely a fact gathering exercise to determine if there are grounds for a disciplinary inquiry, and will not lead to a determination or the imposition of sanctions upon the employer, the right to legal representation is not automatic.