

Evidence of guilt not always required for fair dismissal

This case offers particularly helpful guidance for employers when being faced with employees who are suspected of criminal wrongdoing, albeit care should always be given to ensure allegations are clearly defined and considered on their own merits.

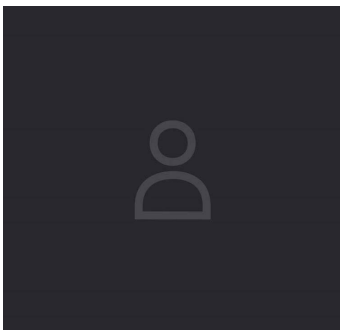
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In *L v K* a teacher was arrested following the discovery of indecent images of children on his home PC. His son, who also had access to the computer, was also arrested but charges against both of them were ultimately dropped. Following an investigation, the teacher was dismissed by the school. The fact that he may have downloaded the images gave rise to a safeguarding concern as well as a risk to the school's reputation and a breakdown in relationships.

The teacher brought a claim for unfair dismissal, but this was rejected by the Employment Tribunal (ET). A subsequent appeal to the Employment Appeal Tribunal (EAT) held that the dismissal was unfair because the grounds for dismissal (particularly the concerns regarding reputational risk) had not been put to the teacher clearly. However, a recent Court of Session hearing has now concluded that evidence of guilt may not always be required when establishing a fair reason for dismissal. Nor does the employer need to expressly refer to reputational risk during the disciplinary process - particularly if the alleged wrongdoing is such that there is a clear and genuine risk to the employer's reputation.

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