

GLASGOW OFFICE

Savoy Tower
77 Renfrew Street, Glasgow G2 3BZ
Tel: 0141 280 0330

LEGAL SPARK 

Mr Gary Smith
GMB Scotland
Fountain House 1-3
Woodside Crescent
GLASGOW
G3 7UJ

Our Ref: DD/0223/2018
Your Ref: Gary Smith

17 December 2018

Dear GMB Scotland

Peter Gregson
GMB Disciplinary Process
Cease and Desist

I refer to my previous letter dated 14 December 2018. I note that I have not received a reply.

As advised, I said that I would write to you regarding the procedural impropriety of your proposed disciplinary against my client.

PROCEDURE – WHAT PROCEDURE?

I have reviewed some of the papers presented by my client. I cannot see from either the GMB rules or the papers authored by you what procedure is being followed here.

In the correspondence dated 10 December 2018 authored by you and sent to my client it states:

Dear Mr Gregson

Disciplinary Process

It appears you were not sent a copy of the relevant appendix relating to the process and procedure to be used at the forthcoming disciplinary hearing. It is now attached.

The procedure must be clear and notified upon all parties prior to any disciplinary. In this case, you have given my client less than a week's notice of the procedure by your own admission in your correspondence dated 10 December 2018.

You also state:

I need to reiterate that the hearing will not be debating any policy matters including IHRA. GMB has a settled policy on IHRA. Any witnesses you call must directly offer evidence or mitigation in relation to the breaches of rule to be considered at the hearing. We have been contacted by individuals who apparently want to act as a witness on your behalf.

Contrary to your belief, my client is entitled to make such representations as he deems appropriate. These can include amongst other things that this policy is wrong, ill-conceived, or contrary to his legal rights. If this forms the basis of any charge against my client, he is entitled not only to challenge that charge, but to state a counter-claim that the policy is discriminatory for example.

Furthermore, I note that you appear to have made this statement as forming part of the process or procedure of the disciplinary against my client. I can find no reference in the rules of the GMB which allow you, as an official of the trade union, to control the procedure in this way.

As a minimum, I would expect the rules to follow the ACAS Code of Practice. This is what a reasonable person would expect. However, in the present case it appears to me that you are making it up as you go along. This is unlawful because it is inherently unfair.

If you intend to take a measure – including a disciplinary – against one of your own members, then you must as a matter of law adopt a fair procedure.

Anyone subject to a disciplinary must be given advance notice of the case against them, be in receipt of all documentation to be considered and have it made clear that they are entitled to be represented in order to state their case.

Another important aspect of fair procedure includes the right to a hearing before an impartial person or tribunal.

In my client's case, you are not an impartial person.

My client is an experienced trade unionist. He has asked me to consider whether you can act in any dual capacity in conducting a disciplinary. It is clear to me that the GMB is a large enough organisation for the roles of investigator, prosecutor and chairman to be separate. In my client's case, you appear to be acting in every capacity; including determining procedure by deciding what my client may, or may not do, as part of the procedure.

You are a member of the GMB regional committee, you have conducted the investigation, you have determined the procedure and you are also prosecuting my client before the same committee. This approach to a disciplinary is inherently unfair and therefore unlawful.

You must state your case clearly and spell out for my client what has he done wrong, what rule(s) have been broken, what sort of action you intend to take and why you are taking that course of action as opposed to any other.

HUMAN RIGHTS AND NON-DISCRIMINATION

In my previous letter, I drew your attention to my client's legal rights (human rights).

He is entitled to express his political views without interference from yourself or the GMB trade union. If you are claiming my client is “racist” as it appears that you are, then where is the evidence to back this statement up?

You must bear in mind that you do not have any jurisdiction to regulate my client’s private life, his political opinions, his religion or philosophical beliefs.

My client holds political and philosophical beliefs regarding the State of Israel, as many people do; that does not make my client a “racist”. It does not even infer, that my client is “racist”.

It is important for you to note that my client’s philosophical beliefs are protected both in terms of the Equality Act 2010 and the Human Rights Act 1998.

For you to present charges against my client, and to seek disciplinary measures against him, you must prove that his beliefs are not worthy or respect in a free and democratic society AND that your proposed measures are a proportionate means of achieving a legitimate aim.

As I understand matters at the time of writing, my client has a Jewish Rabbi giving evidence to support his position. If a Jewish Rabbi is supporting my client, are you also going to accuse the Rabbi of “anti-Jewish racism” too?

There is simply no evidence to bring my client up on charges of “anti-Jewish racism”.

This whole endeavor against my client is farcical.

CHANGE OF VENUE

My client has presented further correspondence to me this afternoon which I find to be truly alarming. Namely that you have, without any consultation, or obtaining my client’s prior consent, moved the venue of this disciplinary to a city centre hotel.

As you should be aware changes in venue cannot be made in any disciplinary matter at such short notice. Similarly, changes in venue cannot be made where there will be prejudice to one or more of the parties to which the disciplinary relates or to any of the parties acting as supporters or due to give evidence.

It is my view that a change in venue, together with the other aspects outlined above, serves no other purpose than to facilitate for you a “kangaroo court” where my client will be denied the opportunity to present witnesses and his supporters denied the opportunity to make representations on his behalf.

My client cannot receive a fair hearing in these circumstances.

As previously intimated, I also require you to cease and desist from all further harassment, victimisation and discriminatory conduct towards my client.

I await your response.

Yours sincerely

Daniel Donaldson
Principal Solicitor
Legal Spark Solicitors and Notaries