

The right to be accompanied – who can enter the room? | [back to top](#)

A long standing (and seemingly straightforward) right for employees is the right to reasonably request to be accompanied by a companion (a fellow worker or Trade Union Official) when invited to a disciplinary or grievance hearing (s10 Employment Rights Act 1999).

Can employers reject such a request, say where the companion will be disruptive or argumentative?

A recent case confirms not (*Eleftheriou & another v Arriva London North Ltd* (ET/3200593/2014 & ET/3200200/2015)). Two bus drivers facing disciplinary hearings wanted a Mr McConville, an accredited Trade Union representative, to be their companion. However, in the past Arriva felt that he had acted unreasonably (for example talking over others), and they had instructed their managers not to allow him to accompany employees at such hearings.

The bus drivers claimed breach of the right to be accompanied and were awarded two weeks' pay each.

This case is reminder to all those involved in disciplinary and grievance hearings that:

- You cannot deny an employee their choice of companion PROVIDED they are a trade union official or representative or a fellow worker
- The employee does not have to be a member of the trade union to which the official belongs
- The trade union in question does not need to be one that is recognised by you
- Breach of this right not only has a financial impact but can also be a breach of the Acas Code on Disciplinary and Grievance Procedures (and affect the fairness of an unfair dismissal claim)
- There is no general right to bring a lawyer to a disciplinary or grievance hearing. However, there may be circumstances in which this is appropriate where for example:
 - an employee has that right under their contract of employment (eg some NHS doctors)
 - if an employee is disabled, it may be a reasonable adjustment to allow them to be accompanied by someone else (eg a family member or a lawyer)
 - an employee can establish a right to legal representation as a result of the Human Rights Act 1998 and the principle of the right to a fair trial. Practically this would only apply if the outcome of the disciplinary proceedings would have a "substantial influence" on a decision of a regulatory body (or similar) that has the power to bar someone from their profession.

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