



Welcome to the April 2011 edition of Fife Law News. This newsletter has been sent to you as a supporter of Fife Law Centre.

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## LEVEN LAW CLINIC

Fife Law Centre is pleased to now offer a drop in clinic facility at the Adam Smith College Levenmouth Campus on Tuesday and Wednesday afternoons (1.30pm-4.30pm)\*.

The Law Clinic will be operated in conjunction with Dundee University Law Student Clinic and aims to allow persons to seek initial advice in areas of unmet legal need including:

- HOUSING LAW
- CHILDREN'S RIGHTS
- EMPLOYMENT ISSUES
- SMALL CLAIMS/SUMMARY CAUSE ACTIONS

\*subject to availability

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### The new Domestic Abuse (Scotland) Bill

The Scottish Parliament has approved new legislation which creates a specific type of interdict relating to domestic abuse.

Presently, when an interdict for harassment is breached, the only remedy lies in the civil courts, but the Domestic Abuse (Scotland) Bill passed on Wednesday will make it a criminal offence to breach a 'domestic abuse interdict'.

Rhoda Grant MSP, who introduced the bill, admits there is much to do in order to protect people from domestic abuse. However, she added: “Every journey begins with one small step and I believe that this bill will be a step in the right direction. It will ensure that vital protection is available to all victims of abuse and will show that we still take domestic abuse seriously in Scotland.”



The Bill will amend the Protection from Harassment Act 1997 to allow judges to sentence those who breach a domestic abuse interdict to as much as five years in prison.

However, concerns have been expressed by the Law Society of Scotland, who fear that wide-ranging language used in the bill, (such as making it applicable to all people in an “intimate personal relationship”) could give rise to unjust treatment. Lesley Dowdalls, of the Society’s Family Law Committee, said: “This is an important measure which underlines the fact that domestic abuse should not be tolerated in our society.” “Nevertheless, we continue to have some reservations about whether the legislation will give rise to problems of interpretation.” “While the society understands that this definition is intended to cover less formally recognised relationships such as marriage and cohabitation, it feels this could prove problematic due to its subjectivity without a reference to length of relationship”.

It is also to be noted that other more fundamental parts of the Bill, including scrapping the need for assessing the financial eligibility of domestic abuse sufferers for legal aid for such interdicts were dropped from the Bill.

Accordingly, although the Bill can be viewed as a welcome step in the fight against domestic violence, there are evidently still issues which will require to be addressed and further clarified in the future.

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## **Assessment of homelessness applications**

*Case Review: Pieretti v Enfield LBC [2011] H.L.R 3*

Mr and Mrs Pieretti had applied to register as homeless after being told they were being evicted from their private rented accommodation. When filling out the application forms Mr Pieretti had mentioned he had depression and his wife had severe arthritis. The Council had also sent a form to their GP who had confirmed the couple's health conditions. However, the couple's application was declined on the basis that they had intentionally made themselves homeless. The private landlord had confirmed to the Council that the couple were being evicted due to non payment or delayed payment of rent.



Mr and Mrs Pieretti argued that the reviewing officer had breached the duty of authorities under s49A (1) (d) of the Disability Discrimination Act 1995 (the "1995 Act") because when carrying out their functions an authority is required to have due regard to the "need to take steps to take account of disabled persons' disabilities".

The case went to court and Lord Wilson held that s49A of the 1995 Act was applicable to individual cases and that it would be "wrong, in the light of s49A (1), to say that [the reviewing officer] should consider disability only if it is obvious". It was held that the reviewing officer should have made further enquiries into the couples alleged disability to see if it was relevant to their applications and so had failed in their duty under S49A(1)(d). This seems to go against the decision in the case of *Cramp v Hastings* where it had been said that the courts should be hesitant to criticise decision makers for failing to make enquiries where "the appellants ground of appeal relates to a matter which the reviewing officer was never invited to consider, and which was not an obvious matter he should have considered".

As a result of this case local authorities will now have to take steps to take account of any disabled persons disabilities when making decisions regarding homelessness under part 7 of the Housing Act

1996. The Equality Act 2010 is set to replace the s49A provision in the 1995 Act but it is believed that the principles within the judgment of this case will still apply.

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## **Court calls harassment of credit card debtor a ‘form of torture’**

*Case Review: Harrison v Link Financial [2011] EWHC B3*

In this case Mr Harrison (“the claimant”) entered into a credit card agreement with MBNA. The debt with MBNA was then assigned to Link Financial (“Link”). The claimant ran into difficulties meeting the payments due under the agreement. Upon being threatened that action would be taken against him by Link the claimant took pre-emptive action and lodged a claim against Link asserting that he was not liable for the debt that had accrued under the agreement on the grounds that MBNA and Link had breached the Consumer Credit Act 1974.



The claimant asserted, amongst other things, that MBNA and Link had failed to provide him with Terms and Conditions of the agreement or with a signed copy of the agreement; that they had failed to comply with the default notice requirements of consumer credit regulations and that they had failed in their duty to give information to him about the status of the ongoing credit agreement (in terms of s.78 (1) of the 1974 Act).

Furthermore, the claimant asserted that the harassment he had received from MBNA and Link about the outstanding debt was so severe as to “disentitle” them from being able to recovery any monies due under the agreement.

Much discussion took place in the judgement about the various documentation issued by MBNA and Link to the claimant and whether this sufficiently complied with the regulations. The representative

for Link argued that Terms and Conditions “would have” been sent out to the Claimant given that this was what the company were required to do but was unable to provide definite evidence that this had in fact been done nor did they present evidence of the company’s system for doing this or how it was implemented.

Although the judge stated that he could see “no good reason why the Claimant simply stopped paying MBNA” he was nonetheless bound to apply the statutory regime in the matter. Given the evidence before the court it was concluded that, on the balance of probabilities, the Terms & Conditions of the agreement were not sent to the claimant with the offer or application and accordingly there was a breach of s.62 and 63 of the 1974 Consumer Credit Act. The failure to provide Terms & Conditions at such stages though can be later remedied in terms of the legislation. The judge however found that the creditor the s.78 duty to give information to a debtor under a running-account credit agreement had been fulfilled.

Whilst acknowledging that “the vast majority of consumers do not read the small print of their agreements” the judge noted that if there was a clear failure to supply the correct documents that he would expect a reduction in the sum recoverable by the creditor although not a total elimination of the debt.

In this case however one of the interesting factors in the judge’s consideration of the case was the harassment experienced by the claimant when payment demands were being made on him by Link. The judge took the view that Link’s actions constituted a “form of torture oppressively frequent in amount” and that there was “no excuse for such conduct of which it must be supposed the sole purpose must have been to make the Claimant’s life so difficult that he would come to heel”.

On this basis the judge proceeded to dismiss the counter-claim made by Link for the outstanding debt and ruled that although the claimant was not required to make any further payments towards Link he would not be able to recover sums that he had already paid to the company.

This case shows how creditors will have to give careful consideration the manner in which they pursue debtors for outstanding monies and also shows how debtors themselves can be pro-active in taking action even where a debt is due by them if the actions of the creditors can be called into question.

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