



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

A black banner with a teal header bar. The header bar contains the text 'LEVEN LAW CLINIC' in white, bold, uppercase letters. Below the header bar, the text is white on a black background. It includes the Fife Law Centre logo and tagline, the University of Dundee logo, and details about the Leven Law Clinic. A list of legal areas is provided with teal square bullet points. A small asterisked note is at the bottom right.

 **Fife Law Centre**  
Working for equality and justice in Fife



**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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## Favouring females on maternity leave in redundancy decisions not always the correct thing to do

*Eversheds Legal Services Ltd v De Belin*

Mr De Belin was employed by Eversheds as a real estate associate in Leeds. He was made redundant in February 2009 but claimed he had been unfairly dismissed on the grounds of sex discrimination.

Eversheds had to choose which one of two associates was to be made redundant. In order to make this decision they decided to carry out an exercise where the associates were scored based on their performance. One of these exercises was to measure the length of time taken to undertake a piece of work and get receipt of payment from the client. The other associate, Ms Reinholz, was on maternity leave when these performance scores were carried out and she was given a notional maximum score which meant that she avoided redundancy as this gave her a higher overall score than Mr De Belin.

Mr De Belin felt this was very unfair and raise a grievance suggesting that Eversheds should not have awarded the scores in this way. Eversheds declined the grievance saying that they did not want to risk a sex discrimination claim coming from the other associate.

The Employment Tribunal upheld Mr De Belin's claim that he had been treated less favourably based on grounds of sex. This more favourable treatment was Eversheds decision

to give Ms Reinholz an “unfairly inflated” score for her work assessments, due to her being on maternity leave.

Eversheds appealed the ruling of sex discrimination to the Employment Appeal Tribunal (EAT). In doing so it referred to s2(2) of the Sex Discrimination Act 1975 (now replaced by Equality Act 2010). s.2(2) provided that “no account shall be taken of special treatment afforded to a woman in connection with pregnancy or child birth”.



However the EAT upheld the original decision and the finding of sex discrimination. It held that the special treatment provided by employers for women on maternity leave “cannot extend to favouring them beyond what is reasonably necessary” and should be “a proportionate means of achieving the legitimate aim of compensating her for the disadvantages occasioned by her pregnancy or maternity leave”. The EAT was of the view that this still gave “a wide margin of discretion to employers as to the appropriate special treatment to be accorded to pregnant employees and those on maternity leave, particularly where such advantages are not directly at the expense of their colleagues and do not cause them serious prejudice”.

In Mr De Belin’s case the Tribunal felt that the most appropriate way to score the associates was to base the score at the last date his female colleague Ms Reinholz had worked so as to ensure they were scored on the same basis and the score would reflect their performance and capability, regardless of her absence.

The Tribunal felt that in this particular case the means chosen to compensate Ms Reinholz for the disadvantage was not proportionate and had caused a real injustice to Mr De Belin, as there were other ways of the removing the maternity-related disadvantage.

However, the EAT did uphold Eversheds’ appeal that the figure of compensation was wrong due to the Employment Tribunal failing to take account of the fact that even if Mr De Belin not been made redundant in February 2009 he was likely to have been made redundant a few months later during a further redundancy exercise which took place in September 2009.

The Employment Appeal Tribunal decided that if a benefit given to a woman who is pregnant or on maternity leave is disproportionate then a male colleague who is correspondingly disadvantaged may entitled to claim for sex discrimination. It has been said that by making this decision the EAT is balancing the right of equality between men and women, and the principle of no claims of unlawful discrimination arising out of special treatment given to women who are pregnant or on maternity leave.

This decision will result in employers having to be more careful when making redundancies which involve women who are pregnant or on maternity leave as they will now have to ensure that any special treatment of such women is proportionate to their condition and that they do not seriously prejudice other colleagues in affording more favourable treatment to such women.

*Eversheds Legal Services Ltd v De Belin [2011] UKEAT/0352/10 & UKEAT/0444/10*

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## **Review on Employment Tribunal system underway**

At the start of the year the Government launched a consultation on reform of the employment tribunal system. The, consultation which is being carried out by the Department for Business, Innovation and Skills is examining a variety of proposals which aim to encourage earlier settlement of disputes and a more efficient tribunal system.

The proposals include:-

- Making conciliation through ACAS a mandatory pre-requisite step before any ET claim can be made.
- Giving the Employment Tribunal stronger powers to strike out unreasonable claims.
- Extending the circumstances where deposit orders can be made (currently a Judge can order a party in a Tribunal to a pay deposit of up to £500 where the view is that there is 'little reasonable prospect of success' in the claim/response). The idea behind this is to deter weaker claims.
- Giving Employment Judges powers to sit alone for larger number of cases in the hope that this will facilitate a more expeditious process.
- Introducing charging fees to process claims.
- Extending the qualifying period for unfair dismissal claim from 1 year minimum employment to 2 years.
- Giving the Tribunal powers to impose financial penalties on employers who have breached individual's rights (payable to Exchequer rather than Claimant) as a way to encourage better compliance.

It is hoped that if some of these proposals are taken forward that this will lead to a reduction in the number of cases the Employment Tribunal has to deal with and will also 'weed out' weaker/vexatious claims at an earlier stage reducing costs in the process.



Commenting on the proposals Business Secretary Vince Cable stated of the Employment Tribunals that "They should be a last resort, not the first option considered.

There is a real risk that the fear of tribunals may force worried employers to settle rather than face the time and expense of weeks required to defend themselves.”

Although only at consultation stage if some of the proposals currently being put forward are seen through these will have significant impact on future employment law claims. To view the consultation paper in full please click [here](#)

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## Who is liable for repair costs in tenements?

Tenement buildings are governed by the Tenements (Scotland) Act 2004. The Act has provisions to cover situations which may not be provided for under the owner’s title deeds. It provides for a Tenement Management Scheme which sets out the rules to be followed regarding various issues such as building maintenance and repairs of common areas. If an area needing to be repaired is classed as “scheme property” then all owners will have a say in the decisions about the area and all owners will also be liable to pay a share of the costs.

The Act provides that “scheme property” includes areas which are owned by, or are the responsibility of, 2 or more owners. It also includes the ground on which the building is built, the foundations, external walls, the roof, any gable walls and any load bearing walls, columns or beams. However, it does not include doors, windows, skylights, vents or openings which serve only one flat. It also does not include chimney stacks or flues.

The Act also provides that “maintenance” includes repairs, gardening and cleaning. If the area to be repaired is owned by two or more people, those people will be proportionately liable for the cost of the repairs. Liability will usually be shared equally although exceptions do apply. However, if anything like this occurs then people in tenement buildings should check their title deeds as a first port of call to see if these contain any procedures to follow when dealing with maintenance and repairs issues.



The case of *Hunter v Tindale*, 2011 SLT (Sh Ct) 11, involved neighbours in a tenement building who were in dispute over a pend in the property. A pend is a passageway that passes through a building which has rooms above it. One of the neighbours refused to pay a share of the repair costs to the archway over the pend whilst the others claimed she was liable to do so. The parties were disputing the meaning of “close” under section 29(1) of the 2004 Act. The pursuer was of the view that the definition included a pend and therefore the

neighbour refusing to pay was liable, whereas the defender argued that a pend was not included as scheme property and so she was not liable. Section 29(1) provides that a close is a “connected passage, stairs and landings within a tenement building which together constitute a common access to two or more of the flats”.

The Sheriff Court held that section 29(1) of the 2004 Act should be interpreted as meaning that a close must include a passage with access to 2 or more flats and stairs and a landing. The court felt that the use of “together” suggested that all 3 parts were required for an area to be considered a close. In this case the pend was a connected passage but had no stairs or landings. The pend was also not within the tenement but was in fact a road from the front of the building to give access to the courtyard and premises at the rear. Therefore, the court held the pend could not be considered as a close.

It has been argued that this case focused too much on the meaning of a close and that the parties could have argued with regard to sectors which are also covered under the 2004 Act and are described as “any other 3 dimensional space not comprehended by a flat, close or lift”. Therefore, it may have been shown that the pend was a 3 dimensional space and still could have been considered as scheme property.

Therefore, anyone living in a tenement building should check the provisions of their title deeds to check their position in relation to repairs and maintenance of the building and common areas, including what areas actually are common areas and what areas, if any, they are responsible for. If the title deeds are silent on the matter then parties will have to fall back on the legislation which, as the Hunter case above illustrates, is not always clear cut or straightforward.

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## Compulsory car insurance law for unused vehicles

As of 20 June 2011 a new law has come into force which makes it compulsory for owners to insure their cars even if they are not being used. The registered keeper must now ensure their vehicle is insured at all times.



The penalties for failure to comply with this new law could mean owners have to pay a fixed penalty fine of £100, face court prosecution with a maximum fine of £1000 or face having the vehicle in question seized or even destroyed.

The rule will not however apply to owners whose vehicle is registered with a valid SORN (Statutory Off Road Notice), owners whose vehicles have been kept off-road since before

SORN came into force in 1998 (and are still not being used) or owners whose vehicle has been recorded as stolen or scrapped.

The Motor Insurance Bureau will now be issuing letters to keepers of uninsured vehicles to advise them of what action to take to avoid penalty. It is thought an estimated 1.4 million people are driving on Britain's road uninsured.