

Fife Law Centre

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



Fife Law Centre
Working for equality and justice in Fife



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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

Forthcoming Changes to Debt Arrangement Scheme

The Debt Arrangement Scheme (DAS) is a Scottish scheme which aims to assist people who are unable to pay their debts as they fall due but have a reasonable level of income which would allow them to pay those debts over a longer period of time.



In July 2011 the Debt Arrangement Scheme (Scotland) Regulations 2011 will come into effect which will replace the current system of regulations dating back to 2004.

These allow debtors to consult a money adviser and, provided they meet the criteria for the scheme, to enter into a debt payment programme (DPP). The DPP then allows the debtor to make a single regular payment to a "payments distributor" who then distributes the sum paid over to their various creditors.

The advantage of entering into such a scheme is that, provided the person's debts are being repaid under the programme, they will be protected from enforcement measures by unsecured creditors (e.g. sequestration proceedings or seizure of assets) and against interest, fees and penalties that would otherwise be charged by creditors where a debtor is in default. Creditors must consent to the

programme before the debtor will be allowed to proceed under the scheme (where they do not the DAS administrator can still approve the DPP if it is deemed fair and reasonable to do so).

The main aims behind the scheme are: to allow people to try and resolve their debt problems in a manageable way; to reduce the need for creditors to use litigation as a means of debt recovery and to extend the benefit and improve the quality of money advice to those in need of such a service.

Although the new 2011 regulations will consolidate much of the current regime they will also make some notable changes. These include:-

- Extending the categories of approved money advisers who can give advice in relation to the DAS with the aim of broadening access to such services.
- Allowing debtors to effectively suspend payment arrangements under the scheme for a period of 6 months if they experience “short-term income shock”. This is where a person’s disposable income reduces by 50% or more due to certain circumstances e.g. a period of illness, unemployment, maternity/paternity leave, divorce/separation. According to the Government these provisions are to allow a debtor “breathing space” in such circumstances.
- Extending access by allowing debtors with a single debt to enter the scheme.
- Extending access by allowing couples with shared debts to enter a joint scheme.
- Modernisation of the process through improved and simplified forms and notices and the option of electronic processing to facilitate administration.

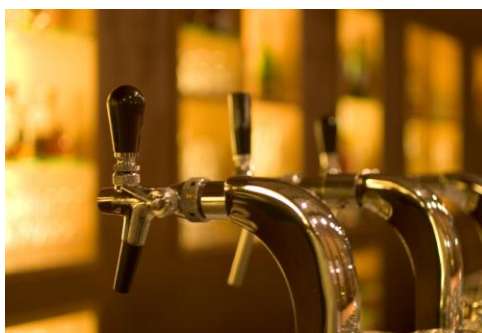
The scheme will continue to be administered by the DAS Administrator (a role undertaken by the Accountant in Bankruptcy) on behalf of the Scottish Ministers.

Since its establishment in 2004 there has been an inconsistent take up of the scheme across Scotland. The new regulations are therefore intended to improve access and encourage greater participation. Although it is evident that there are many people in Scotland struggling with debt issues in the current climate it will be a case of ‘wait and see’ before the impact of the forthcoming changes to the regulations can be fully assessed and whether the aims behind them will be met.

Employee’s Dismissal for Comments on Facebook was Fair

Case Update: Preece v JD Wetherspoons Plc ET/2104806/10

Miss Preece was employed as a Shift Manager at a pub owned by JD Wetherspoons Plc (the “company”). One evening she and a colleague were subjected to verbal abuse and physical threats from a group of customers that they eventually had to ask to leave the pub. One of the customer’s daughter subsequently called the pub four times and was verbally abusive towards Miss Preece about the incident involving her mother.



Later on, while Miss Preece was on still duty she entered into a Facebook conversation in which she and other colleagues at the pub made comments about the customers. This conversation was seen by the customer's daughter who then complained to the company about the inappropriate comments (which included complaints and swearing) that had been made about her mother on the site.



The company had policies in place to deal with such communication over the internet and reserved the right to take disciplinary action against staff where the contents of such communications could "be found to lower the reputation of the organisation, staff or customers and/or contravene the company's equal opportunity policy".

After an investigation and disciplinary hearings held by the company Miss Preece was found to have breached this policy. Her employers found that her actions amounted to gross misconduct and dismissed her on this ground. Miss Preece was aware of the policy and had accepted that her actions were inappropriate but given her clean record, length of time with the company, and the actions of the customers she felt she had been dismissed unfairly and raised a claim at the Employment Tribunal.

In terms of section 98 of the Employment Rights Act 1996 to show that an employee is not dismissed unfairly an employer must show that their response was **reasonable** in the circumstances. The Employment Tribunal was of the opinion that Miss Preece had been fairly dismissed because her comments were in the public domain (despite Miss Preece arguing that she had thought her privacy setting was on at the time), the company had taken her mitigation of the customers actions into account (by acknowledging that she had dealt with the difficult situation in the pub in a professional manner) throughout the investigation and disciplinary hearings, and also by the fact that there had been a period of time between the event with the customers and the Facebook comments Miss Preece had made about them.

This case highlights the ever-increasing impact comments and postings made on social network sites like Facebook or online blogs can have on employment law issues. As long as companies have clear staff policies outlining the consequences of making inappropriate comments regarding the company and associates however then it is likely that employees who breach these policies will find themselves subject to disciplinary action regardless of how good their previous employment record is with that employer.

Regulations Create New Type of Charity Organisation

Milestone regulations which came into force last month are set to extend and simplify legal rights for Scottish charities. The Scottish Charitable Incorporated Organisation (SCIO) Regulations 2011 establish a new type of legal entity for Scottish-registered charities known as a "Scottish Charitable Incorporated Organisation".

The regulations allow a charity to enter into contracts, employ staff and own property in its own name (previously this had to be done through its trustees acting in their own personal capacity). The new entity also provides a degree of protection for trustees by limiting their personal liability.

Previously, a charity had to register as a limited company or similar incorporated body in order to enjoy the same rights as such organisations. However, the new SCIO status which became available on 1 April 2011, is intended to simplify access to legal rights and protection for unincorporated charities. It also means that an SCIO can sue and be sued.



Fergus Ewing MSP, Minister for Community Safety, said the new status had been designed with the needs of charities “at its heart”. He added: “The introduction of the SCIO is a milestone in charity law reform, allowing charities to incorporate without having to register with Companies House or the Financial Services Authority, as well as the Office of the Scottish Charity Regulator.”

Charities must apply to the Office of the Scottish Charity Regulator (OSCR) in order to be granted SCIO status. Regulation is also intended to be simpler as SCIOs will only come under the regulation of OSCR rather than OSCR and Companies House (as is the case for existing charities that are also companies).

Existing charitable companies and industrial and provident societies will be able to convert to SCIO status from 1 January 2012.

Martin Sime, Chief Executive of the Scottish Council for Voluntary Organisations, added: “We are delighted to see the introduction of the SCIO in April. This is a positive development for our sector”. He also went on to state that “After a long battle, we now have a bespoke legal form for charities that gives individuals limited liability and is accessible and suitable for a wide range of organisations.”

On 13 April 2011 OSCR announced that it had granted charitable status to the first SCIO to an environmental community charity known as South Seeds, based in Glasgow. OSCR’s Chief Executive, Jane Ryder, commented as follows:

“Clearly the SCIO provides an attractive option for many existing charities and those new organisations applying for charitable status. We therefore expect to receive a large number of applications in the coming months’.

Legislation Update: Employment Rights (Increase of Limits) Order 2010

This new Order increases the amounts that can be awarded in employment cases. The new rates apply when the relevant event which has given rise to the compensation (e.g. unfair dismissal) occurs on or after 1 February 2011 and include the following:-

- The maximum weeks pay that can be awarded for statutory redundancy payments and in unfair dismissal cases increases from £380 to **£400**. This takes the maximum statutory redundancy payment that can be awarded to **£12,000**.
- The maximum compensatory award for unfair dismissal increases from £65,300 to **£68,400**.
- The minimum basic award of compensation for unfair dismissal on grounds of union membership or activities or redundancy increases from £4,700 to £5,000.



For further details please see the Employment Law Guidance on our website.
