

Fife Law Centre

Welcome to the July 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



UNIVERSITY OF
DUNDEE

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

Protection from Harassment - what qualifies as a “course of conduct”?

Marinello v City of Edinburgh Council [2011] CSIH 33

The Protection from Harassment Act 1997 allows victims of harassment to obtain non-harassment orders with a view to preventing further incidents and also to obtain civil remedies such as damages for anxiety or financial loss caused as a result of such harassment.



Mr Marinello was employed by City of Edinburgh Council as a Community Service Assistant. The role required him to supervise offenders who were sentenced to community service. During 2004 and 2005 he was subject to verbal abuse and criticism from his superiors which resulted in him being off on long term sick leave from 2005 with a depressive disorder. In 2007 a further incident occurred when Mr Marinello encountered one of his senior colleagues whilst walking down a road. The colleague in question was driving a van and

proceeded to drive it straight towards Mr Marinello whilst making a rude gesture towards him.

Mr Marinello then brought an action under the Protection of Harassment Act 1997 seeking damages for the harassment he had endured. Under section 8 of the 1997 Act a person “must not pursue a course of conduct which amounts to the harassment of another”. Due to the time constraints involved in such actions if the last incident concerning the van was not considered as part of a “course of conduct” Mr Marinello would have been too late in bringing his action.

However, the Court of Appeal held that when dealing with the 1997 Act the courts should look at the course of conduct as a whole rather than considering the incidents relied on individually. The court held that although 17 months had passed between the previous incidents and the last incident relied on it could not automatically be excluded as forming a part of a “course of conduct”. The court also took the view that, although Mr Marinello’s employment was often held in public places the fact that the last incident was in a public place and others were in the work place was of little significance and that Mr Marinello, although on sick leave, was still an employee of the Council.

The decision in this case means that employers should be aware, and make employees aware, of the possibility of incidents being retrospectively considered as amounting to a course of conduct. Employers should also remind staff that when a person is on sick leave they are still an employee and conduct towards them should be in keeping with company policies on behaviour towards staff.

Employers’ duty of care extends to references and other communications

A recent case before the High Court in England found that employers owe a duty of care to former and future employees in relation not only to references but also to other communications made by an employer about an employee.

In *McKie v Swindon College*, [2011] EWHC 469 (QB), an art historian worked in various educational institutions. He left work at Swindon College for a job at Bristol City College and thereafter he gained a post at the University of Bath. He received an excellent reference from Swindon College but 6 years later was dismissed from the University of Bath on the basis of communications made about him by Swindon College. Mr McKie raised an action for damages.



The reason for dismissal was the content of an email sent by human resources at Swindon College which mentioned that, with regard to Mr McKie, there was “very real safeguarding concerns for students” and that there had been “serious staff relationship problems” while he had worked at the college. On the basis of the evidence presented before it the High Court suggested that the statements made within the email were untrue.

The court held that although an employer owes a duty of care when providing a reference to both its former employee and to the recipient of the reference, they also owe a duty of care in relation to other communications between an employee’s former and future employer. The court said that Swindon College **did** owe a duty of care to Mr McKie as it was foreseeable that the email was likely to cause loss or damage to him and that although 6 years had passed there had been a close and direct relationship between Mr McKie and Swindon College and also that it was fair, just and reasonable to impose such a duty of care. The court also said that the email had breached this duty of care particularly as the author did not know Mr McKie personally, had never worked with him and had relied on comments made by other colleagues. The court was also of the view that the procedure in relation to preparing and sending the email was unfair and breached the duty of care owed to Mr McKie.

The decision in this case, although not binding in Scotland, may lead to employers having to take more care when commenting on former employees whether or not in relation to a reference. Where an employer feels it is important to voice such concerns they must ensure there is a fair procedure in place to confirm the accuracy of the statements being made.

Pilot scheme in England tests new ways of dealing with domestic abuse

A pilot scheme aimed at finding new ways to tackle domestic violence has recently got underway in England.

Under the scheme Domestic Violence Protection Notice and Orders (DVPN/DVPO) can now be issued against perpetrators of domestic violence who present a continuing threat to their victim. Police will also now be able to take the decision to legally ban a violent partner from their own home even if they have not been charged with an offence.



This is to allow victims of domestic abuse time and space to make arrangements and decisions about how they can get away from their situation and get support. Often it is the

victim who is forced to flee the family home to escape domestic violence incidents and this can put them in an even more vulnerable position.

The trial project, which is already underway with several police forces in England, will last for an initial period of 12 months. The results will be assessed by the Home Office before a decision is made on future action.

According to Detective Sergeant Sharon Avery, a police officer who is co-ordinating the scheme, "This new pilot seeks to redress the balance by placing the requirement to leave the home on the person using the violence rather than the victims of that violence".

Although as yet there is no such scheme in place north of the border it will be worthwhile looking to the results of the English pilot to see whether such orders or something similar could be brought into force in Scotland.

Proposals for new 'Clare's Law' under consideration

On a similar note, proposals are currently being considered by the Home Secretary, Theresa May for a so-called 'Clare's Law' to be put in place which would allow people to check if their new partner had a history of domestic violence and for the police to release certain information about this to them (subject to certain safeguards and guidelines).

The aim is to reduce the number of deaths resulting from domestic violence by making people better informed about new partners and their violent past.

Hazel Blears MP, who is launching the proposal, stated "By changing the law we can empower women so that they can take informed action about their relationship and give them the chance to protect themselves".

The full details of such proposals still have to be worked out but it is thought that they would operate along lines similar to the well-known 'Sarah's Law' relating to information on child sex offenders.