



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

The Children's Hearings (Scotland) Bill

This Bill was introduced in the Scottish Parliament in February 2010 and is currently under consideration by Committee (Stage 2). Although much of the Bill re-treads the ground of the current children's hearing law it also makes some important proposals to change the current system with the aim of making it more modern and consistent across the country.



The key principles of the current children's hearing system, which are re-stated in the new Bill are, firstly that the welfare of the child is paramount in any decision taken, secondly; orders should only be made if necessary (idea of minimal state intervention where possible) and finally that the views of the child should be taken into consideration.

At present each local authority is responsible for the establishment and work of a Children's Panel in its area. There are currently therefore 32 separate panels. The new Bill proposes to replace these with 1 single overarching panel to be known as the "Children's Hearing System" (CHS).

Hearings would still take place across the country but these would all fall under the auspices of the national panel, to be led by a National Convenor. The National Convenor would be appointed by the Scottish Ministers and would be responsible for ensuring that children's hearings include both male and female panel members and that wherever practicable these members are from the same local authority area as the child in question. It is thought the aim behind this is to maintain a local connection in cases.

The new Bill also proposes the following changes to the process:-

- It introduces a new ground of referral on the basis of domestic abuse. Where a child has or is likely to have a close connection with a person who has carried out domestic abuse a referral may be made to the CHS under this ground.
- It proposes to extend the current availability of legal aid to both the child and relevant person involved in the case. Relevant person means someone who has parental rights and responsibilities towards the child in question and who is ordinarily in charge of the child. This change follows on from the case of *S v Miller 2001 SLT 1304* where it was held that the unavailability of legal aid by way of legal representation for a child at a hearing was incompatible with Article 6 of the European Convention on Human Rights (right to fair trial).
- At present parents and relevant persons can receive documents relating to cases going through the system. The new Bill also allows for children to receive documents directly. Again this change follows on from case law which has highlighted human rights considerations with the current position.
- The Bill also provides that the Children’s Hearing may choose not to disclose certain information to the relevant person if it is considered that this would go against the interests of the child.

To see the Bill in its current form please go to <http://www.scottish.parliament.uk/s3/bills/41-ChildrensHearing/b41s3-introd.pdf>

Police interviews

Will Supreme Court case lead to system overhaul for Scotland?

A Scottish criminal case which has gone all the way to the UK Supreme Court on appeal may have a huge impact on police questioning of suspects and could lead to a “review of the whole system”, according to Elish Angiolini QC, Lord Advocate.



The UK Supreme Court

The European Court of Human Rights decided in a recent case involving a man jailed in Turkey that the right to a fair hearing in terms of Article 6 of the European Convention of Human Rights required that a suspect should be provided access to lawyer from their very first interview with the police. The Cadder case follows on from this European judgement and challenges whether information obtained from a police interview where there was no lawyer present is contrary to Article 6. Information which was obtained during that interview was led by the prosecution at the trial which led to Cadder's conviction for assault and breach of the peace.

Previous case law in Scotland has ruled that, although it is a fundamental principle that an accused person has access to a lawyer as part of the preparation for his defence in a criminal case, there is nonetheless no universal right to have a lawyer present during police interviews.

The judgement of the Supreme Court is currently awaited however if the appeal is successful it could mean that thousands of cases would have to be reviewed and put a considerable burden on the Scottish Criminal Cases Review Commission.

Employment Law Case Update

Disability discrimination and mental health conditions



A recent case before the Employment Appeals Tribunal has highlighted the difficulties of bringing disability discrimination claims where the individual is claiming discrimination as a result of a mental health condition.

In terms of the Disability Discrimination Act (DDA) 1995 a disability is taken to be a “physical or mental impairment which has a substantial and long term adverse affect on a person’s ability to carry out normal day to day activities”. This general definition is further refined within the legislation.

In this recent case DLA Piper offered the claimant a role as a professional support lawyer with their firm. The claimant verbally accepted the job offer and subsequently disclosed that she had suffered depression in the past. DLA Piper then withdrew their offer of employment citing a recruitment freeze as the reason behind this.

The claimant applied to the Employment Tribunal on the grounds of disability discrimination due to her prior mental health issues. In the first hearing of the case the Employment Tribunal decided that the claimant was not disabled in terms of the DDA. The claimant appealed this decision. The Employment Appeals Tribunal, in considering the appeal, decided to remit the case back to the original Tribunal for re-consideration of the issues raised. It did not however exercise the option available to it of reversing the decision of the first tribunal.

The solicitor acting for the claimant stated that the EAT had missed an opportunity “to tackle the difficulties met in mental health cases in a more meaningful way”. DLA Piper have maintained that they acted appropriately in the matter and that reason the job offer was withdrawn was due to market conditions.

The case has raised the issue of whether, despite a medical diagnosis of a mental health condition like depression, an Employment Tribunal can take the view that someone does not fall within the remit of the disability discrimination legislation when making a claim.

Employment Law Case Update

Surfing the net at work



Innes v Scottish & Southern Energy plc

The Employment Tribunal in Glasgow recently made an award in favour of an accountant who was fired from his job with Scottish and Southern Energy due to his “excessive” use of the internet. The accountant had made a claim for unfair dismissal.

In this case the reason the company gave for their decision to fire the accountant included his internet use and a general “failure to perform his duties”. However, the Tribunal found that the company did not seek appropriate advice from the IT department to interpret the report which showed an unusually high amount of internet use on the part of the accountant.

Scottish and Southern Energy are currently considering whether to appeal the decision.

There are various reasons as to why a dismissal may be considered unfair. This may be because the employer failed to follow the correct procedures or did not have a sufficient reason to dismiss the employee. A claim for unfair dismissal can only be raised by an employee if they have completed one full year’s service with the employer.

Most employers nowadays will have an internet usage policy which their staff should adhere to. This case however highlights how employers ought to fully investigate any suggestions that an employee have been using the internet in an improper or excessive manner at work before taking disciplinary action.

June 2010