



Freeneys Williams

## Freeneys Williams Ltd.

<http://www.freeneyswilliams.com>

### The Disability and Equality Agenda e-bulletin – April 2009

For information about how Freeneys Williams Ltd can help your organisation achieve the disability and equality agenda please contact [enquiries@freeneyswilliams.com](mailto:enquiries@freeneyswilliams.com)

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#### 1. **Another EAT case follows Malcolm**

In [Stockton on Tees Borough Council v Aylott](#), the EAT has handed down a second judgment confirming that employment tribunals should follow the approach to a comparator set out in *Malcolm v London Borough of Lewisham*, and not that in *Clark v Novacold*. The case followed the approach in *Malcolm* but made it clear this did not herald the end of protection for disabled employees. At para.13 of the judgment:

"In our judgment this conclusion need not leave disabled people who are disadvantaged for a reason relating to their disability but treated in the same way as non disabled people without the possibility of redress. Although they may not now be able to establish that they have been discriminated against for a reason related to their disability within the meaning of Section 3A(1), they may be able to establish discrimination by the employer's failure to make reasonable adjustments under Section

3A(2) and 4A. An employee who is not able to drive because of his disability who is disciplined for frequently arriving late for the night shift would not be able to establish discrimination for a reason related to his disability if a non disabled person with a similar record of bad time keeping would also be disciplined. However, depending on the circumstances, he could claim that his employer had discriminated against him by failing to make a reasonable adjustment by not providing him with transport.

Thanks to Daniel Barnett legal bulletins for this item.

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## **2. Council risks disability discrimination claim**

A council suing its former managing director for £1m for allegedly lying on her job application is at risk of being accused of disability discrimination, an expert has warned. For the full story click:

<http://www.personneltoday.com/articles/2009/01/29/49192/disability-discrimination-risk-for-council-suing-former-md.html>

Ed's note:

If the Council win this case and is supported by Appeal, it will have major implications affecting disabled people's choice in whether or not to disclose their disability. We will be following the case closely and keep readers informed.

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## **3. Disability discrimination: Lack of knowledge defence**

The Employment Appeals Tribunal (EAT) has delivered a new judgment setting out what prior knowledge of a disability an employer should have if they are to be held liable for discrimination. The DDA demands that employers and potential employers make adjustment to the job application and interview processes to take account of disability so the process is fair. Employers can be exempt to making adjustments if they do not know that a person is disabled. Read more at:

<http://www.out-law.com/page-9749>

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## **4. UK signs the Optional Protocol to the UN Convention**

On 26 February, the UK Ambassador to the United Nations signed the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities on behalf of the United Kingdom. In doing so, the UK joined over 80 other UN Member States who have so far signed.

The Optional Protocol provides a procedural avenue allowing individuals to bring petitions before the UN Committee that will monitor the Convention, and for that Committee to make inquiries into alleged grave or systematic violations of Convention rights.

Signing the Optional Protocol is an important step which is further evidence of the Government's firm commitment to the Convention. The decision to sign the Optional Protocol was reached in the light of work towards ratification of the Convention itself. The Government is now close to starting the Parliamentary procedures required for ratification, and hopes to make a separate announcement on that soon.

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## **5. Depression following absence from work**

A new report from the Mental Health Foundation has found that many people 'suffer depression on returning to work after a period of prolonged absence for both physical and mental illnesses.' Read more at:

<http://news.bbc.co.uk/1/hi/health/7883028.stm>

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## **6. Mental health is strongest taboo**

Mental health is the strongest taboo in society today, research shows. People are more reluctant to reveal they have a mental illness than to come out as gay, according to a new study that reaffirms warnings from campaigners that mental illness still faces a persistent social taboo. For more information click:

<http://www.guardian.co.uk/society/2009/feb/20/mental-health-taboo>

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## **7. UK retailers increasing focus on accessibility of websites**

John Lewis' website offers its customers the best levels of accessibility out of the top UK high street retailers, with Boots showing the most drastic improvement in the sector, according to a new study released today. For the full story click:

[http://www.it-analysis.com/business/news\\_release.php?rel=9960](http://www.it-analysis.com/business/news_release.php?rel=9960)

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## **8. New website to help jobless disabled people**

Leonard Cheshire has launched a jobs website to help people with disabilities get into work. Read about the website at:

<http://www.halifaxcourier.co.uk/local-business/Help-on-jobs-for-disabled.5016951.jp>

Access the website at:

[www.lcdisability.org/suitability](http://www.lcdisability.org/suitability)

Ed's note:

What is surprising and frustrating about this new jobs website is its poor performance in terms of accessibility and usability!!

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## **9. New Bill for disabled workers**

Labour MP John Robertson outlines the case for his Employment Retention Bill, which aims to help people stay in work after they become disabled or when an existing impairment changes. For more information click:

<http://www.epolitix.com/latestnews/article-detail/newsarticle/john-robertson-mp-justice-for-disabled-workers>

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## **10. Disability hate crime law in Scotland**

A new law to widen the definition of hate crimes to protect gay communities and disabled people has moved closer. The Scottish Government has already said it will support the bill, meaning it is now almost certain to become law. Crimes motivated by hatred of gay or disabled people would be considered aggravated offences, meriting tougher sentences. Read more at:

<http://news.bbc.co.uk/1/hi/scotland/7925703.stm>

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## **11. Illegally “left out of the loop”**

Shops, banks and other businesses are breaking the law in failing to provide simple hearing aid systems, an RNID study has found. Induction loops – which work like a short-range radio system between speaker and hearing aid – make hearing easier while eliminating background noise. When they work, that is. Read the full story at:

<http://www.guardian.co.uk/technology/2009/mar/26/law-disability>

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## **12. Time to Change campaign tackles mental health stigma**

The Time to Change campaign aims to tackle mental health stigma and discrimination and raise awareness of their impact on people's everyday lives. The website has a “what would you do?” scenario about interviewing a job candidate with depression. Access the website at:

<http://www.time-to-change.org.uk:80/what-were-doing/our-campaign>

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### **13. Larger firms “focus more on diversity”**

There is a "clear relationship" between the size of an employer and the focus that it places on issues such as diversity and corporate social responsibility. Research carried out by KPMG has discovered that there appears to be a "threshold" of approximately £50 million in turnover at which firms begin to implement schemes such as diversity performance. It noted that these larger organisations are twice as likely to consider their corporate responsibility than smaller outfits. Read more at:

<http://www.efd.org.uk:80/media-centre/news/4102/larger-firms-focus-more-on-diversity>

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### **14. Wheelchair manoeuvring training**

One of our clients, who has many visitors, recently asked us to develop and run a course for their front of house staff in how to successfully and safely manoeuvre a wheelchair. This proved very popular and useful and it occurred to us that other organisations who have visitors might find such training useful. If you have visitors and your staff are called on to help then this course is for you and them! If you are interested or would like more information please contact [enquiries@freeneywilliams.com](mailto:enquiries@freeneywilliams.com) or ring the office on 01273 327715

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