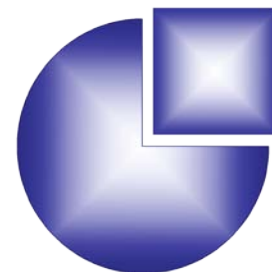


Freeneay Williams Limited



FREENEY WILLIAMS LTD

<http://www.freeneaywilliams.com>

THE DISABILITY AND EQUALITY AGENDA E-BULLETIN – OCTOBER 2008

For information about how Freeneay Williams Ltd can help your organisation achieve the disability and equality agenda please contact

enquiries@freeneaywilliams.com

Please forward this bulletin to a colleague so they can subscribe.

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1. NEW WEBSITE FOR FREENEAY WILLIAMS LTD

August saw the launch of our new website. We are very pleased with it and have made every effort to ensure our new site's accessibility and usability. For those of you interested in the detail of what we've done, have a look at the final item in this months DEA. If you have any feedback of course or can offer ideas about how we might further improve the site's accessibility and usability just contact us.

Take a look at: www.freeneaywilliams.com

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2. INDIRECT DISABILITY DISCRIMINATION RULING HAS MAJOR IMPLICATIONS FOR HR

The ruling in the recent Coleman v Attridge case has major repercussions for HR directors and managers who should amend some key policies now.

The European Court of Justice recently ruled that anti-discrimination laws that protect disabled people in the workplace also cover their carers as well. The decision will prevent an employer discriminating against an employee on the basis of another person's disability.

Read the full story at:

<http://www.personneltoday.com/articles/2008/07/25/46892/indirect-disability-discrimination-ruling-has-major-implications-for-hr.html>

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3. MALCOLM v LONDON BOROUGH OF LEWISHAM – WHAT THIS MEANS FOR DDA CASES

August's DEA outlined the recent House of Lords case of Malcolm v London Borough of Lewisham. Since then lawyers have been analysing exactly what impact this case may have on the law – summarised below.

Mr Malcolm vacated and then sublet his flat which he was renting from Lewisham council. This was a breach of his tenancy agreement and destroyed his security of tenure, as a result of which Lewisham took possession proceedings. To defeat that claim Mr Malcolm argued, unsuccessfully at first instance but then successfully before the Court of Appeal, that the DDA applied to his case because he sublet his flat what he was having a period of mental ill health. The House of Lords has now overturned the Court of Appeal decision.

Three key questions arise when a claimant is arguing that his/her treatment by the service provider (or employer) was unlawful under the DDA.

1. What was the reason for the treatment?
2. Did that reason relate to the claimant's disability?
3. With whom should the claimant's treatment be compared to show that it was less favourable?

The facts of the Malcolm case vividly illustrate that. In answer to the first question, the real reason for his treatment, namely his eviction from the Lewisham flat, was his subletting of the flat.

In answer to the second question (did this relate to his disability, Schizophrenia), you must ask what the connection between the reason and the disability was. Although the Court held that it will be hard in borderline cases to decide on whether there is or is not an adequate connection, in this case although there was evidence that Mr Malcolm only behaved irresponsibly (i.e. in subletting) because of his mental health problem, the Council's reason for seeking repossession had nothing to do with his disability. In other words, the reason which relates to the disabled person's disability must be interpreted narrowly, rather than widely as it has been to date.

Finally, assuming for the sake of argument that the reason for Mr Malcolm's eviction was related to his disability, the Lords asked with whom should his treatment (i.e. eviction) be compared to decide whether there was less favourable treatment? Two potential groups suggested themselves: (a). persons without a mental disability who had sublet a Lewisham flat and gone to live elsewhere or (b). Lewisham tenants who had not sublet or gone to live elsewhere. Until recently, the courts/tribunals have followed the Court of Appeal judgment in *Clark v Novacold*, which meant that the appropriate comparator group would have been group (b). However, the House of Lords has held that this was wrong. The appropriate comparator group is (a). Hence, as comparators in group (a) would have been evicted also, Mr Malcolm was not treated less favourably on the grounds of his disability.

So, for example, if an employer dismisses somebody for being off work sick for a year, then the reason is the absence from work, and probably not one that relates to the underlying disability itself. This means the employer will not be liable under the 1995 Act. However the implications of the *Meikle* case need to be considered here, because if the person was off sick because the employer did not make reasonable adjustments to enable them to work then they may still be liable. The comparator here would be someone who was also off sick for a year but who was not disabled. Readers may well note that persons who are off sick from work for a year but who are not disabled are likely to be few an far between so this makes the comparator issue very difficult.

Finally, the Lords decided that a person can only be liable for discrimination if they know that the individual is disabled. Lewisham did not know that the claimant had a mental health problem.

The judgment is complicated, and needs further careful study. It isn't clear whether an appeal will be brought to the European Court of Justice.

We concluded from the debate that the implications of the case may be limited in terms of the employment provisions of the DDA, because this was a housing case whereas the duties conferred upon employers are much more extensive under Part 2. However, the comparator issue will remain a difficult one.

To read the full judgement, click

<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080625/lewish-1.htm>

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4. PEOPLE WITH A LEARNING DISABILITY FAILED BY THE NHS

People with a learning disability are not getting an equal service from the NHS, according to a report published this month. Action must be taken to ensure more is done to ensure that people with a learning disability get equal access to mainstream health services, says the Independent Inquiry into Access to Healthcare for People with Learning Disabilities.

The team writing the report "Healthcare For All" says it found convincing evidence that people with learning disabilities have higher levels of unmet need and receive less effective treatment, despite the fact that the Disability Discrimination Act and Mental Capacity Act set out a clear legal framework for the delivery of equal treatment.

The inquiry found people with learning disabilities find it much harder than other people to access assessment and treatment for general health problems that have nothing directly to do with their disability.

To view a copy of the report click: <http://www.iahpld.org.uk/>

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5. NEW LAWS FOR DISABLED AIR PASSENGERS

The UK aviation industry will soon have no excuse for discriminating against disabled air passengers, a government minister has told Disability Now.

The legislation covers assisted travel, compensation for damaged mobility equipment and disability equality training for airport and airline staff.

It gives disabled people the right to expect assistance from arrival at an airport to an aircraft, and then from the aircraft to departure from the airport, including getting on and getting off the plane.

For more information click:

<http://www.disabilitynow.org.uk/latest-news2/minister-hails-new-air-travel-laws>

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6. ACCESS TO WORK

Physiotherapists are today urging Government to reconsider plans to remove public sector funding from the Access to Work scheme. Access to Work currently makes it possible for many disabled people to gain or remain in employment, and removing it for public sector employees potentially puts thousands of workers at a disadvantage. See the full story at:

<http://www.personneltoday.com/articles/2008/09/22/47528/physiotherapists-fight-for-disabled-workers-funds.html>

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7. CHANGES IN AMERICAN DISABILITY LAW

Millions of Americans with diseases or impairments such as diabetes, epilepsy, heart disease, cancer and carpal tunnel syndrome will be protected from job discrimination under a new disability rights measure set to become law this week. For more information click:

<http://www.latimes.com/news/nationworld/nation/la-na-disability22-2008sep22,0,4442848.story?track=rss>

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8. CANCER – WHEN WORK IS THE BEST MEDICINE

What can employers can do to support staff who are diagnosed with cancer? An article with two women talking about their experiences of returning to work after a cancer diagnosis can be read at:

http://www.theherald.co.uk/features/features/display.var.2450809.0.Whenwork_is_the_best_medicine.php

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9. DISABILITY ON TV

How should TV treat disability? Take a look at how the Paralympics and other programmes have affected the way disability is portrayed on the small screen. Click:

<http://www.guardian.co.uk/media/2008/sep/22/6>

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10. ACCESSIBILITY FEATURES OF FREENEY WILLIAMS' NEW WEBSITE

The rebuild of the www.freeneywilliams.com website has allowed us to introduce a new powerful site-search feature providing simple and complex searches. We are now using a new validation tool, Total Validator, to assist us with WCAG AAA compliance. We also continue to develop and employ accessibility strategies including:

- Standards compliant design
 - WCAG AAA
 - XHTML 1.0 Transitional
 - CSS 2.1
 - External validation links on each page
- Navigation
 - Logical and consistent navigation
 - Skip and return navigation menus
 - Government standard navigation keyboard shortcuts
 - Sitemap
- CSS Layout
 - Separation of content from design
 - High contrast and unformatted display options
- Site remains fully functional with JavaScript or cookies disabled
- Content and link enhancement by using acronym, title and alt tags
- Downloadable documents provided in three separate file types
 - Plain text
 - MS Word 2003
 - Acrobat PDF

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