

SEXISM IN THE WORKPLACE

The sacking of Sky Sports presenter Andy Gray serves as a salutary reminder to employees and employers alike that attitudes change and sexist banter is simply not acceptable.



The law protects employees from sexual harassment. Harassment is unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant or of violating the complainant's dignity. This includes behaviour by one employee towards another. The definition of harassment in the Equality Act 2010 means that employees can complain of behaviour they find offensive even if it is not directed specifically at them, and the complainant need not possess the relevant protected characteristic themselves.

When an employer is considering dismissing someone on the ground of misconduct, whether dismissal would be fair or unfair will depend on whether it is reasonable for the employer to treat the misconduct as sufficient reason for dismissing the employee.

Where an employee brings a claim of unfair dismissal, in reaching its decision the Employment Tribunal (ET) must consider whether the employer reasonably believed that serious misconduct had been committed by the employee and was the reason for the dismissal, whether the procedures followed by the employer were fair, and whether dismissal fell within the 'range of reasonable responses' open to the employer. Each case will be decided on its own merits and facts. Consideration will be given to whether the conduct in question, be it an action or a failure on the part of the employee to do something, is specifically mentioned in the employer's disciplinary code of practice as amounting to gross misconduct, with the possible sanction of dismissal, and whether the employer has taken adequate steps to bring the code to the employee's attention.

Employers should ensure that all employees are aware that no form of harassment will be tolerated in the workplace, and have in place robust procedures for enforcing the policy.

The possible sanctions should be made clear in your disciplinary code. Failure to take action is potential evidence of non-compliance with discrimination law in any future ET claim. Where a particular act or omission is deemed gross misconduct likely to lead to dismissal, this should be clearly stated and employees made aware of the application of the code.

We can advise you on how to create and enforce an effective anti-discrimination policy.

BUYING OR SELLING YOUR HOME? VISIT DUFFIELD STUNT PROPERTY SALES ONE-STOP-SHOP!

Duffield Stunt Property Sales is set up as a **'One Stop Shop'** to provide a seamless service as an alternative to an estate agency. Firstly, we will find a buyer for your property and then carry out all the legal work on the sale and, if appropriate, any related purchase all in the same office.

We work together in the house sale process, keeping each other and - most importantly, you, informed of the progress of your transaction to bring your sale to exchange and completion as quickly as possible.

Duffield Stunt Solicitors' Property Sales combines over 200 years conveyancing experience of the Duffield Stunt legal team with the services of our experienced estate agency negotiators and the latest online technology to help sell and convey your property.

We believe our 'under one roof' service is the most attractive and competitive in the Essex area, offering greater efficiency and control of the whole transaction therefore helping to make your move as easy and stress free as possible.

We also have strong links with Independent Financial Advisers who we can refer clients to for *all* their financial needs, not just mortgages.



**Visit: www.duffieldstunt.co.uk/estate_agents.
or contact our Property Sales Department on 01245 253100 or email katie.elkington@duffieldstunt.co.uk**

LAW SOCIETY DEMANDS FORMAL QUALIFICATIONS FOR WILL WRITERS

The Law Society is campaigning to persuade the Government that a change to the law is necessary to protect members of the public from problems caused by using unqualified will writers.

The Law Society wants will writers to have to gain formal qualifications before being able to provide a service to consumers. The Society's President, Linda Lee, said, "The fact that most problems are detected after the individual has died is a strong argument for establishing a robust regulatory framework.

"Many of those calling themselves will writers may have purchased a franchise to do so, and are free to



prepare wills without any training or insurance protection."

Unlike solicitors, unregulated will writers do not have to be legally qualified or insured. As there is no regulatory body, there is no mechanism for bringing a complaint, and without insurance there may be no means of redress should

things go wrong. Solicitors, on the other hand, are professionally qualified to do the work, are bound by a stringent code of professional conduct and, in the very rare event of a loss to a client, clients are protected by the solicitor's professional indemnity insurance, which is compulsory.

Hardly a week goes by without another story emerging on the problems caused by wills drafted by unqualified will writers or by the use of home-made or 'form' wills.

If you are seeking to write or amend your will, we provide a professional service at a reasonable cost and give you the peace of mind that comes from having your will drafted by qualified specialists.

AIRSPACE – IS IT A RIGHT?

Who has the right to the airspace above a flat? This question was at the centre of a recent legal dispute involving a block of flats.

The block of flats was wider at the bottom than on the upper floors, narrowing at the 6th. The 6th floor tenant obtained permission for and built an extension over the top of the abutting area of the 5th floor, having been granted a lease of the airspace to do so.

A good idea is proved by being copied, and the owner of the 7th floor flat thought it would be a good idea to build over the extension to the 6th floor. He also obtained a lease of the airspace from the landlord. However, the plan was opposed by the owner of the

6th floor flat, who argued that his 'airspace' lease included the space adjacent to the 7th floor flat. Alternatively, he argued that his lease included the roof of the extension, which prevented its use by anyone else. The roof of the extension was directly overlooked by the bathroom window of the 7th floor flat.

The issue was not assisted by the plan attached to the airspace lease granted to the owner of the flat on the 6th floor, which did not indicate the vertical extent of the demised premises.

The court dismissed the claim that the lease extended above the 6th floor for several reasons, two of which were that it was contrary to normal expectations

that a lease would grant a right beyond the area occupied and also that it would be an unexpected result if the 6th floor tenant had the right to use the space immediately outside the 7th floor bathroom window.

As regards the roof, however, different concerns arose. Whilst the roof had become part of the freehold of the whole building, it had skylights, which made the building of an extension above it impossible unless these were removed. In the circumstances, it was reasonable to conclude that the roof was part of the premises demised under the lease to the 6th floor tenant, but not the airspace above it, thus preventing any extension to the 7th floor.

SPEAKING THE LANGUAGE

A recent case shows that the creation of a valid will in English does not depend on the person creating it being able to speak the language.

The situation arose when a woman's daughters contested her will, which left everything to her four sons, arguing that it was invalid because its preparation had required the assistance of a translator. The woman spoke Gujarati, but no English, so a family friend

had acted as translator to convey her intentions to the English-speaking will writer.

The woman's daughters argued that their mother did not understand the effect of her will and that she had intended to divide her £200,000 estate equally between her seven children.

Judge David Hodge did not accept their argument, concluding that he was 'satisfied on the evidence that she did know and

approve of the contents of her will'.

It is perfectly possible for a person who speaks no English to create a valid will under English law, provided they understand and approve of its provisions.

Making a will need not be expensive and will ensure that your property is distributed according to your wishes after your death.

Please contact us for further information or advice.

in brief

statutory maternity, adoption and paternity pay increases

The standard weekly rate of Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay increased from £124.88 to £128.73 from 3 April 2011.

The weekly rate for days of sickness absence commencing on or after 6 April 2011 is increased from £79.15 to £81.60.

EASEMENT ESTABLISHED BY USE LIMITED TO ACTUAL USE



When land is used over a long period of time by persons other than the owner of the land, they may acquire an easement (a legal right to use the land). Easements can also be acquired by express agreement, in which case the rights of use over the land will depend on the agreement. In cases where an easement comes into existence as a result of use, the rights of use are less clear, however.

In a recent case, a dispute arose over the right of way over a private road, which had been used by a farmer for more than 20 years. The County Court held that the use was effectively unlimited as far as his agricultural purposes were concerned. Since this included driving stock along the road, the owners of adjacent properties opposed it and appealed the decision.

The critical point was that although the use of the road by the farmer for pedestrian and vehicular access had been shown to have been permitted for more than 20 years – thus establishing the general right of easement – the use for driving stock had not. Since this was more burdensome on the owners of the adjacent properties than pedestrian or vehicular access, the High Court ruled that the right of easement did not include the right to drive stock along the road.

Allowing other people free use of your land for a long period can mean that you lose the right to prevent such use.

If you have concerns about others using your land, we can advise you of the appropriate steps to take.

CARE ORDERS, COURT OF APPEAL BACKS COUNCIL

The decision of a local authority to place a baby born in prison in care after her mother's behaviour was believed to have put the child's life in danger, was recently backed by the Court of Appeal.

After the local authority had obtained a separation order, which it did as a matter of urgency outside normal working hours, the mother sought a declaration that the authority's action breached her human rights under Articles 6 and 8 of the European Convention on Human Rights (the right to receive due process of law and the right to respect for family life).

The Court rejected the mother's claims. The social worker, council and family judge involved all acted in good faith and made decisions that were

reasonable in the circumstances and based on the information to hand.

The welfare of the child was of paramount importance and the separation was intended to be temporary.



Decisions made under pressure and in exceptional circumstances were not to be criticised if made in good faith and on the evidence available at the time, even if a more lengthy analysis of the facts might have led to a different decision.

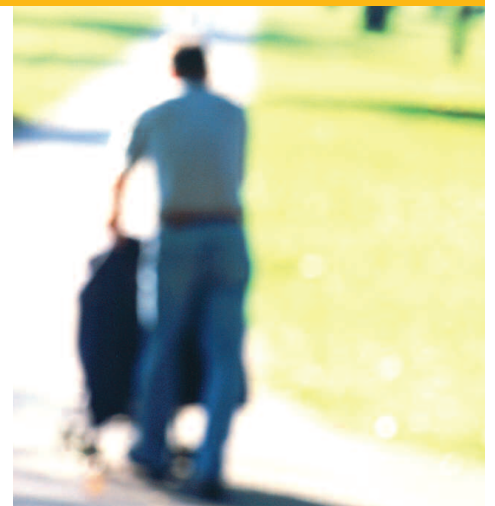
This case shows that the Court of Appeal recognises the pressures under which social workers operate and will support them when appropriate.

ADDITIONAL PATERNITY LEAVE FOR NEW FATHERS

Employers are reminded that new rights apply to parents of children due to be born, or those notified that they have been matched with a child for adoption, on or after 3 April 2011.

The Additional Paternity Leave Regulations 2010 give new fathers the right to take additional paternity leave during the period which begins 20 weeks after the child's date of birth and ends 12 months after this date if the mother chooses to return to work with maternity leave outstanding and the father has the main responsibility for caring for the child. Some of the father's leave may be paid if it is taken during the mother's 39-week maternity pay period. The period of leave must be continuous; the minimum allowed is two weeks and the maximum 26 weeks.

The changes also apply to spouses, partners and civil partners of a child's mother or of an adoptive parent who has elected to take adoption leave.



CHILDREN'S RIGHTS COME FIRST IN IMMIGRATION CASES

A child who has a British parent and is born and raised in the UK is a citizen and has a citizen's rights, which must be considered by the court in any decision made regarding the child's welfare.

In deciding the case of a Tanzanian woman who had made three failed asylum claims, the Supreme Court ruled that her children, who were born in the UK to a British father, had rights

which had to be taken into consideration when making a decision that would affect their ability to remain in the UK.

Merely assuming that the children 'could adapt' if their mother's claim was refused and she was repatriated to Tanzania with them was not adequate. The children had the right to remain in the UK, and their mother's application to remain had to be considered with that in mind.

LANDLORDS WIN DEPOSIT CASE

Provisions introduced on 6 April 2007 under the Housing Act 2004 made it a requirement that landlords protect their tenants' deposits using an authorised Tenancy Deposit Scheme, if they have let the property on an assured shorthold tenancy. The rules require the landlord to notify the tenant within 14 days that this has been done. The Act set up a system of penalties for landlords that fail to meet this obligation.

Recently, however, the Court of Appeal has issued a ruling which will please landlords and dismay tenants. It involved a tenant who took legal action against his landlord because the landlord failed to lodge the tenant's deposit with one of the authorised schemes.

By the time the action had been brought, the landlord had put the position right. The question before the court, therefore, was whether the tenant could bring an action

given that the failure which led to the action had been rectified.

The court concluded, by a two to one majority, that the tenant could not. Where a landlord is late in taking steps to protect the deposit and in notifying the tenant within the 14-day time limit that this has been done, but does so before proceedings are brought by the tenant, the tenant has no cause of action against the landlord.

In practice, this means that a landlord who fails to comply with the law in this respect can do so with impunity up until the point at which proceedings are brought by the tenant. However, if your landlord has not fulfilled his obligations with regard to your deposit, an application for possession of the property will not be successful.

For advice on any aspect of landlord and tenant law, please contact us.



SUPREME COURT SUPPORTS RADMACHER PRE-NUP

The Supreme Court handed down its decision recently in the Radmacher case – the everyday story of a massively rich German heiress who fell in love and married and then fell out of love and divorced her husband.

Ms Radmacher had the wisdom to create a pre-nuptial agreement with her betrothed and this found support in the

Court of Appeal, which reduced his settlement from £5 million to £1.5 million. He appealed to the Supreme Court, which ruled in favour of the terms of the pre-nup.

The Court took the view that in circumstances such as this, consenting adults should reasonably be expected to abide by the agreements they have made.

This case puts the final stamp of approval on pre-nuptial and post-nuptial agreements. The courts have been unwilling to back the former fully in the past. However, Lord Phillips, President of the Court, was at pains to point out that the courts would still have the discretion to overrule the terms of a pre-nup, especially in cases in which the operation of the agreement would be unfair to the children of the marriage.



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