

YOUR WEEKLY BULLETIN OF WIT AND WONDER



STAY IN YOUR LANE

But by all means trade off the kerb (with council approval)



SICK OR SLICK?

The tricky case of a disciplinary dodger who possibly wasn't



CALCULATED RISK

Will your ego survive a BBC bitesize maths test?

KERB YOUR EXCITEMENT

I've often wondered whether the Employment Team should just get up, go outside and set up the office across the southbound lane of The Avenue.

Well, OK, that's not exactly true. I haven't actually wondered that at all until this week. But if the idea of me and Howard and the gang dragging our desks across College Place and over to a chunk of the main trunk road into Southampton sounds daft to you, think again.

'We might have *rented* that bit of road. Like the cafe in Louth, near Grimsby, which has taken advantage of a local council wheeze called 'Parklets' where small businesses can rent a chunk of the road outside their frontage, deck it and carry on business on it.

Larders Coffee House has caused a storm of objection, according to *Grimsby Live*, after plonking a rectangle of decking and seating just off the pavement, leaving traffic compelled to weave awkwardly around it.



It's part of the council's Active Travel Scheme to discourage cars and encourage bikes and walkers in the busy town centre.

It's innovative... although having some cake and a cup of tea while white van drivers veer angrily past wouldn't have much appeal for me. A wing mirror clipping the back of your head is going to clunk your teeth on the china.

Still, it's something to be considered here in the south and perhaps our parklet could extend from the nice grassy bit that divides the north and south lanes of the Avenue, just a short walk from our office.

We'd be a useful traffic calming measure - and we might pick up some interesting new clients as they queue to get past us. A big sign with PEACE OF MIND on it would surely calm down the yells of abuse.

Although I'm not sure I can get it past the WG Tower Health & Safety gods, given the fumes, the noise and the chances of an Audi driver careering through a meeting.

Leave it with me...

And speaking of walking out brings me to the case of *Mr Parbhjot Singh V Metroline West Limited 2022* in which the tribunal considered whether an

employer had fundamentally breached the contract of employment when it withheld company sick pay from an employee it suspected was not genuinely ill.

Mr Singh was invited to a disciplinary hearing by his employer. Shortly after this invitation, Mr Singh was signed off sick. While on sick leave, Mr Singh met with Occupational Health, who did not indicate that his illness was not genuine. Nevertheless, the employer suspected that Mr Singh had gone on sick leave to try to avoid the disciplinary hearing. Consequently, the employer only paid Mr Singh statutory sick pay, rather than contractual sick pay.

In Mr Singh's contract of employment it was stated that the employer reserves the right not to pay company sick pay "where a thorough investigation has revealed that the absence was not genuine." The employer's disciplinary policy also stated an employee may be suspended without pay where they are "deemed to have reported sick as a hindrance to ... the disciplinary process." However, there had not been a "thorough investigation" into the legitimacy of Mr Singh's sickness and it was not suggested by the employer that Mr Singh had been suspended.

Mr Singh resigned and brought a claim of constructive unfair dismissal.

The Employment Tribunal found that the failure to pay contractual sick pay was a breach of the contract of employment, but was not a *fundamental* breach. The ET reasoned that by withholding company sick pay, the employer was trying to get Mr Singh to engage in the disciplinary process, and was therefore "encouraging the continuance" of the employment relationship. This, according to the ET, indicated an intention to still be bound by the employment relationship. Mr Singh's claim was consequently dismissed. Mr Singh appealed to the Employment Appeal Tribunal arguing that the ET had erred in law.

The EAT found in favour of Mr Singh. The ET had considered that for there to be a fundamental breach of contract, the employer must have acted in a way that indicated it no longer wished to be bound to the employment relationship. This, the EAT held, was an error of law. Instead, the question the tribunal needs to consider is whether there is evidence of "an intention no longer to comply with the terms of the contract that is so serious that it goes to the root of the contract." The employer had unilaterally and deliberately decided not to pay Mr Singh the company sick pay to which he was entitled under his contract. This, the EAT held, was a fundamental breach of contract.

The matter was remitted to the ET to hear the remaining component of the constructive dismissal claim, namely whether Mr Singh resigned in response to the employer's fundamental breach.

This case reminds employers not to act rashly, even when they have reason to believe that an employee may be fabricating an illness. Instead, employers should review the employee's contract and their own policies and decide a course of action. In this case, had the employer followed its own procedures and carried out an investigation, it may have been able to obtain evidence that the employee's illness was not genuine. The employer then would have been justified in withholding company sick pay under the contract of employment and disciplinary policy.

EVENTS SEASON

2022

SEP 28
Peace of Mind
Members Seminar

OCT 6
Settlement Agreement
Masterclass

OCT 13
HR Hangout - Holiday
Pay Calculations: The
Harpur vs Brazel Case

NOV 23
Litigation Lessons
Masterclass



BITE THIS



What is the distance from the centre of the 1st tree to the centre of the 10th tree?

Either you're instantly grappling with this or you're shouting: 'WHAT? MATHS! NOW?' at the screen. And either response is fine, but if you have or are regularly around school age children, you could check in to [BBC Bitesize](#) and take a short maths test in solidarity with them all trooping back into school this or next week.

It's a little mental work out and hey - I scored 6/6 and now feel incredibly smug. I may be

Ten identical trees are planted in a row. The trees are spaced out equally. The distance between the

centre of the 4th and 7th tree is 18 metres.

somewhat older than the quiz demographic, but that's not denting my pride. Go me!

How did YOU score? Do tell us over on [Facebook](#) and feel free to set us a new term maths challenge of your own.

Peace of Mind

Do you want to save your business time and money, and reduce stress?

"A true class act; every company should have them on their speed dial!"

Contact us today on

023 8071 7717 or email peaceofmind@warnergoodman.co.uk to find out how **Peace of Mind** can help you.

Are you looking for us on Facebook?

If you haven't liked us already, follow the link below...



... And after liking us on Facebook, why not follow us on Twitter?



Sarah Whitmore
Partner
023 8071 7462



Howard Robson
Partner
023 8071 7718



Emma Kemp
Associate Solicitor
023 8071 7486



Natalie Rawson
Associate Solicitor
023 8071 7403



Louise Bodeker
Solicitor
023 8071 7448

DISCLAIMER

While every effort is made to ensure that the contents of these newsletters are up-to-date and accurate, no warranty is given to that effect and Warner Goodman does not assume responsibility for their accuracy and correctness. The newsletters are provided free of charge and for information purposes only. Readers are warned that the newsletters are no substitute for legal advice given after consideration of all material facts and circumstances by an experienced employment lawyer. Therefore, reliance should not be placed upon the legal points explained in these diaries or the commentary upon them.

UNSUBSCRIBE

If you do not wish to receive future editions of this newsletter, please simply reply to the e-mail and include the word "Unsubscribe". Click [here](#) to view our Privacy Policy on how we hold and process your data.

COPYING THESE DIARIES ON TO OTHERS

While the author retains all rights in the copyright to these newsletters, we are happy for you to copy them on to others who might be interested in receiving them on a regular basis. You are also welcome to copy extracts from the newsletters and send these on to others who may be interested in the content, provided we are referenced as the author when doing so.