

# Employment Newsletter

YOUR WEEKLY BULLETIN OF WIT AND WONDER



## FASHION ME IN PLASTIC!

Why can't I be a doll?



## DOES THIS APPEAL?

The redundancy of two teachers taught one Council an important lesson.



## BITE ME!

Sweet new record set by marathon runner.

## BARBED COMMENT

I have found a new ambition in my life.

I want to be a Barbie.

Noooo - I don't mean I want a handspan waist, unfeasibly long legs, boobs that defy the laws of physics, permanently arched feet and an unwavering painted smile.

I just want what Samantha Cristoforetti has just got, according to the news this week.

A Barbie doll of *me!*

OK, to be fair, Cristoforetti *is* currently the only active female astronaut with the European Space Agency, so you could argue she's put in the effort to deserve this plastic accolade from Mattel. She is due to take a six month stint as Commander of the International Space Station from April 2022.

The special edition Space Barbie looks like her and wears the correct space-walking apparel - and has already experienced weightlessness in what has to be the ultimate toy photoshoot.



To give credit where it's due, Barbie's CV is impressive, moving from model to air hostess to nurse and then doctor, dentist, astrophysicist and even virologist! STEM subject dolls are waving the flag for more science-y career aspirations for girls. Bravo! Of course the vast majority of six-year-old girls are still going to want to be Fairy Barbie with a career involving unicorns, but it's still a worthwhile goal.

And yes - there *is* a Lawyer Barbie. In fact, there are a load of black-gowned Barbie Judges - with own gavel. It's just that that they don't look like me. Yet.

I'm not being big-headed. I'm just looking to be represented... I don't mind if it looks like Sarah Whitmore Barbie circa my late 20s, but ideally with the career goals achieved by my early 50s. I also don't mind being Barbied up a bit. I mean, an accurate scale model might not stack up on the shelves too well against Fairy Barbie or Elsa from Frozen. I'm happy to have a little 3D airbrushing. Got to get that mass-market appeal after all...

The accessories could be a mobile phone, a nice leather folschap folder, a mug of foaming coffee and a small box of Thornton's Continental. Now... who knows someone influential at Mattel..?

**Who or what would you like to see in Barbie form? Are there any careers you feel should be represented? Tell us over on our Facebook page!**

## QUITE APPEALING

And speaking of being appealing brings me to the case of *Gwynedd Council v Barratt and anor* and whether an opportunity to appeal is a necessary component of a fair dismissal procedure.

Ms Barratt and Mr Hughes were both teachers employed by Gwynedd Council until their dismissal in 2017 when the school they worked at closed permanently. A new school was then established at the same location and teachers from the old school were told they would need to apply for positions at the new school. Ms Barratt and Mr Hughes were unsuccessful in their applications and were consequently made redundant. Ms Barratt and Mr Hughes filed a claim in the Employment Tribunal (ET) claiming that their dismissals were unfair because (among other reasons) they were not given the right to appeal.

The ET accepted that Ms Barratt and Mr Hughes were dismissed by way of redundancy, but found that the dismissals had been unfair. In reaching the decision, the ET took note of the fact that Gwynedd Council failed to properly consult with the affected staff regarding the redundancies and that the unsuccessful applicants were not given a chance to appeal their dismissal.

The Employment Appeal Tribunal (EAT) upheld the ET's decision and dismissed the Council's appeal. The Council then appealed to the Court of Appeal (CA).

The CA dismissed the appeal. Lord Justice Bean wrote that "*if the original selection for redundancy was in accordance with a fair procedure the absence of an appeal is not fatal to the employer's defence*" and that "*it would be wrong to find a dismissal unfair only because of the failure to provide the employee with an appeal hearing*". However, the CA reasoned, the ET had not treated the absence of an appeal as automatically rendering the dismissal unfair. Rather, the ET had applied the correct test of fairness and considered whether the decision to dismiss fell within the range of reasonable responses. In reaching its decision the ET considered not only the lack of appeal but also the Council's failure to properly consult with the affected teachers and so the ET was therefore entitled to find that the dismissal was unfair.

This case is significant for employers because it confirms that a dismissal will not necessarily be unfair solely because the dismissed employee was not offered a right to appeal. The right to appeal is only one factor the courts will look at when considering the fairness of the dismissal as a whole. As this is a Court of Appeal decision it will be binding on lower courts in future cases.

Another recent case that followed similar reasoning is the case of *Moore v Phoenix Product Development Limited*, heard in the EAT. In that case, a director was dismissed following a complete breakdown in the relationship between him and the other members of the board. The EAT reasoned that though an appeal will often be part of a fair dismissal procedure, this will not always be the case and courts will need to consider all the relevant circumstances when deciding whether a dismissal was fair. Employers should therefore still be cautious and remember that in many cases, an opportunity to appeal a dismissal should form part of their fair procedure.

## EVENTS SEASON

# 2021

**OCT 12**  
Employment Law  
Masterclass –  
Settlement Agreements

**OCT 20**  
HR Hangout – Creating  
a Diversity and  
Inclusion agenda

**NOV 9**  
HR Hangout – How to  
include Diversity and  
Inclusion – A Practical  
Session

**NOV 24**  
Employment Law  
Masterclass – Practice  
Makes Perfect



## SWEET SUCCESS



Wg Towers would like to shout out to another female high achiever this week.

Sure, getting to command the ISS is pretty impressive, but we would also like to salute Anna Basil from St Albans... for being the fastest woman to complete a marathon... as a cake.

Anna, 42, finished Sunday's London Marathon in four hours, twenty minutes and twelve seconds... beating by nearly ten minutes the previous record for the title of the fastest marathon by a 'woman dressed as a sweet food'.

She made her cupcake costume with chicken wire, hula hoops and papier-mâché. Having run a few races myself in just regular running gear, I salute anyone who can do a loop of the park as a cake, let alone 26+ miles.

I'm not sure what I'm more inspired to do. Go running or eat a cake.\*

\*Cake. Obviously, it's cake.

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