

YOUR WEEKLY BULLETIN OF WIT AND WONDER



### DOWNWARDLY MOBILE

How the ultimate cool is now not having a smartphone or social media... *at all!*



### ONE VERY EXPENSIVE EXPENSES BID

A departing sales director hustles himself out of a claim.



### BOUNCE THE CO2S AWAY

A climate change solution we can all climb on board with.

## DON'T CALL ME

Do you remember getting two paper cups and a long bit of string and rigging up a phone system across the garden fence with the kid next door?

Or arranging an elaborate system of waves and signals through your bedroom window to your mate across the street?

Or just the furtive thrill of passing bits of paper with scribbled notes under your desk to a classmate in school?

I've been getting nostalgic for all this stuff. The stuff we used to do before the mobile phone was a thing.

This week I've read, on *Yahoo!'s Bang Showbiz* page, that Sarah Jessica-Parker, George Clooney, Jennifer Lawrence, Sir Elton John and Winona Ryder are part of an exclusive set of superstars who just don't do social media.

At all.

They're among a select group of celebs who don't go near Twitter or Facebook or even on the internet at all.

Some don't have a mobile phone at all.



Of course, that kind of abstinence is a lot easier to achieve when you have 'people' to do all that tiresome communications stuff for you, but even so, it did make me yearn for the simpler times when two cups and a taut length of string were our cutting edge social tech. The conversations were a bit buzzy and not unlike those early recordings of Alexander Graham Bell, but still...

I wonder how much more successful I will have to be to get 'my people' to talk to 'your people' and just lose the mobile. I could sit in a log cabin office at the end of a wooded garden, working diligently on my caseload without fear of interrupting apart from the three times a day when one of my people was permitted to approach with hot drinks and plates of cake or chocolate and a handwritten list of messages.

They would wait, smiling, while I responded verbally to the messages, taking down my words in shorthand, and then scamper back up the garden to another office, where they would sully themselves with emails and texts and WhatsApp messages, while I would remain serenely unconnected.

It's a nice thought, isn't it..?

But if I catch you passing notes under the table at the next Warner Goodman Employment seminar, I *will* have words.

**What non-tech methods of communication do you favour or propose? Do tell us over on our Facebook page (yeah, the FACEBOOK page - I know!)**

# UNSETTLING BEHAVIOUR

And speaking of having words brings me to the curious case of *Mr P Porchetti v Brush Electrical Machines Limited 2021* and an unfairly dismissed employee who lost out, because he was the “author of his own misfortune”.

Mr Porchetti began working for the company in October 2015 as a sales director. Early on in his employment it became clear he was “not particularly effective at dealing with matters promptly”. The Employment Tribunal (ET) heard of several instances where Mr Porchetti had to be chased by his line manager, Mr Van Schaik, to perform integral parts of his role such as updating the sales management system and responding to clients. Mr Van Schaik made it known to Mr Porchetti that he was not pleased with his performance and raised performance issues several times with him over the course of his employment.

In early 2019, Mr Van Schaik met with the company’s HR Director and CEO to discuss Mr Porchetti’s performance and future at the company. They agreed that performance management would be difficult considering his senior position at the company and it was agreed that the HR Director, Mr Lordereau, would have a discussion with him about a possible settlement.

In May 2019, Mr Porchetti met with Mr Lordereau and was content with the company’s offer of six months’ pay as a settlement. He mentioned to Mr Lordereau and Mr Van Schaik that he had three years’ worth of unclaimed expenses but did not reveal the extent of them as he correctly believed it would jeopardise the settlement negotiations. The company’s expenses policy required all authorised travel expenses to be forwarded to the Finance Department within 14 days of the employee’s return. Mr Van Schaik said he would review the expenses but did not commit to paying them.

Shortly after, Mr Porchetti submitted his expense claims totalling £59,252.43, with some expenses dating back to 2015/2016. The company refused to pay more than £10,000 of these claims and the settlement negotiations broke down. At this point, the company felt that the relationship had broken down irreparably and terminated Mr Porchetti’s employment, citing capability concerns.

Mr Porchetti then filed a claim for unfair dismissal in the ET and the company conceded that the dismissal was procedurally unfair. However, given the circumstances, the ET was satisfied that if a fair procedure had been followed, Mr Porchetti would still have been dismissed. The ET accepted that Mr Porchetti’s performance was poor and that he had failed to make any improvement despite being given various opportunities. It was Mr Porchetti’s failure to follow the proper expenses procedure which led to the breakdown in settlement negotiations. At this point, the ET reasoned, it was reasonable for the company to conclude that the relationship had irretrievably broken down and “had [the company] followed a fair procedure, a fair dismissal would have been the result”.

Similarly the ET was satisfied that had Mr Porchetti initially rejected the offer of a paid exit the company would have taken him through a capability procedure, and given Mr Porchetti’s consistent refusal to improve, this would have resulted in a fair dismissal for capability. As the chances of dismissal were 100%, the ET reduced Mr Porchetti’s compensatory award by 100%.

Although the result was favourable to the employer, this case should be regarded as unique on its facts. Employers should be reminded of the importance of following a fair procedure, even when the reason for dismissal is substantially fair. Once settlement negotiations have begun, some employers may feel that termination of employment inevitable, but if settlement negotiations break down, dismissing the employee without a fair process could still result in an unfair dismissal.

## EVENTS SEASON

# 2021

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

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



# COP A LOAD OF THIS!



There are many brilliant inventions and initiatives getting showcased in Glasgow this week - but the playground that sucks in CO2 is the BEST! Featured on the [BBC website](#) every



My favourite COP26 report of the week is on the bouncy castle that could save the planet!

bounce in the inflatable bobbie playground sucks carbon dioxide in from the air outside and feeds it into tubes filled with microscopic algae. The CO2 is consumed by the algae and converted into safe biomass.

I have NEVER outgrown a bouncy castle and so this seems like a dream come true. When I have finished my off-grid day at work (see above) I will invite 'my people' into the bubble in the garden for some end-of-day bouncing which will help restore the balance to our world. It'll massively help Warner Goodman's carbon footprint too. I reckon I can claim it back on expenses...

It's an ambition now.

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Associate Solicitor  
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Louise Bodeker  
Solicitor  
023 8071 7448

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