



## BBi BECOME AN ACCREDITED NEBOSH TRAINING CENTRE

### BBi GROUP - SUPPORTING YOUR BUSINESS

BBi become an accredited Nebosh training centre

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We are pleased to announce that BBi Risk Solutions have become one of 450 course providers worldwide that can deliver and set examinations from the prestigious National Examination Board of Occupational Safety & Health.

Regulated by Ofqual and SQA, the courses are considered to be the best expert education in the field of Occupational Safety and Health and Fire Safety Management.

We have courses running from January 2013 through to March 2013 with a 50% discount in the following subjects, NEBOSH General Certificate, Fire Safety and Risk Management and International Certificate.

Please email [train@bbrisksolutions.com](mailto:train@bbrisksolutions.com) for further information or to book your place, quoting **BBINL 122012**. Alternatively visit [www.bbrisksolutions.com](http://www.bbrisksolutions.com) for further information about all of our training courses.

## BBi Group News

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## NEWS FROM THE HR TEAM

### HUMAN RIGHTS

**Lack of protection against unfair dismissal on grounds of political affiliation is a breach of Article 11 of the European Convention on Human Rights.**

The ECHR, by a majority, has upheld the complaint in *Redfearn v the United Kingdom* [2012] ECHR 1878, that the lack of protection in UK employment legislation against dismissal because of a person's political affiliation represents a breach of the right to freedom of assembly and association, contained in Article 11 of the European Convention on Human Rights.

In 2004, Mr Redfearn was dismissed from his job as a driver due to the fact that it had come to light that

he was a member of the British National Party (BNP) to whom he was a local councillor. Mr Redfearn's employer was genuinely concerned about the safety of the disabled people Mr Redfearn transported, many of whom were Asian. For this reason he was dismissed. At the time of dismissal, Mr Redfearn didn't have enough service to claim unfair dismissal and so brought a claim for race discrimination, which was rejected by the Court of Appeal.

The ECHR stated that EU member states must:

Take reasonable and appropriate measures to protect employees, from dismissal on grounds of political opinion or affiliation, either through the creation of a further exception to the qualifying

period (for unfair dismissal) or through a free-standing claim for unlawful discrimination on grounds of political opinion or affiliation.

The court then concluded: "As the UK is deficient in this respect, the facts of the current case give rise to a violation of article 11 of the convention."

So, unless the Government can successfully challenge the courts decision by asking for it to be re-examined, it will have to change UK employment law in some way to afford protection to employees (irrespective of their length of service) against dismissal on account of political opinion or affiliation.

### PROPOSED AMENDMENTS TO THE EQUALITY ACT

**In May this year, the Government announced its intention to repeal some provisions in the Equality Act 2010. The aim is to remove "unnecessary regulation" and reducing bureaucracy in equality law.**

The first proposal is to remove s40 (subs 2-4) of the Equality Act 2010. Within this section, an employer can be held liable for harassment of one of its employees by a third party (customer or supplier) if the employer knew their employee had been harassed on at least two occasions and failed to take steps to put a stop to the behaviour.

The Government is also proposing to repeal the power of Employment Tribunals to make recommendations in discrimination cases that go beyond the individual claimant, i.e. recommendations that affect the whole workforce.

Finally, there is a proposal to abolish the statutory questionnaire procedure. This allows employees to refer certain questions to their employer regarding their treatment at work either before or after commencing tribunal proceedings.





## 'ON CALL' AND THE NATIONAL MINIMUM WAGE

**Time spent 'on-call' during which workers are provided with sleeping facilities at their place of work or nearby does not count as working time for the purposes of the National Minimum Wage (but it may count for the Working Time Regulations).**

The claim failed because of regulation 16A of the National Minimum Wage Regulations 1999, which provides that time during which an employee is required to be available for work and is provided with sleeping facilities at or near the place of work does not count as working time.

This case concerned Sheltered Housing Wardens. They were provided with tied accommodation. Four nights a week they were required to be on-call to respond to emergency calls. They were allowed to take time off in lieu or overtime payments if called out.

But, the ET said, the position could be different if their job was simply to be there to deal with anything that arose. If that was so, mere attendance would amount to work. But here, their job was to attend to their core duties during the day but only to be available on-call at night.

The wardens complained that all time on-call was working time. If this was found to be correct, then their pay was below the National Minimum Wage.

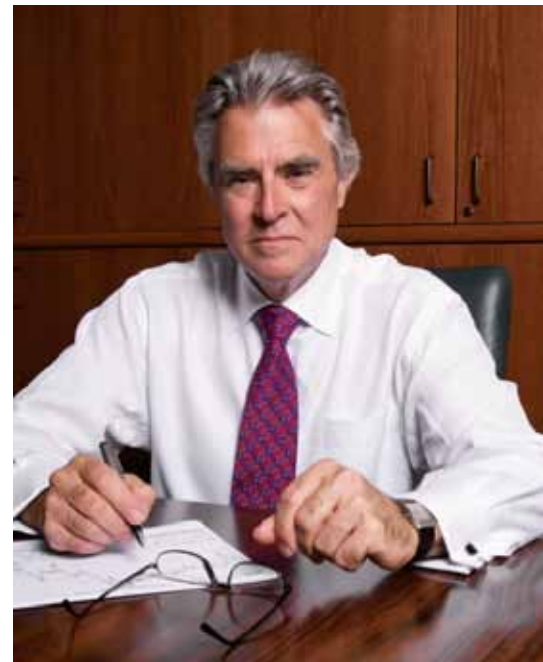
## UNJUSTIFIED DISCIPLINARY PROCEEDINGS

**Instigating disciplinary proceedings in circumstances which do not justify doing so could be found to be a fundamental breach of contract possibly leading to constructive dismissal. But if the disciplinary procedure is immediately brought to an end when an investigation shows that there is no case to answer, then there is less likely to be a fundamental breach.**

When the investigators learnt that Mr A had been away on holiday at the time, they decided no disciplinary action should be taken and all documents about the disciplinary process were removed from his records.

One evening during Mr A's holiday, the pub manager discovered there was only one employee working in the kitchen when there should have been two. The manager immediately demanded that all kitchen managers, including Mr A, attend a meeting. None of them turned up. Mr A was suspended pending an investigation into his non-attendance in the evening and his failure to show up to the arranged meeting.

Mr A resigned claiming that he had been constructively dismissed. The employment tribunal, upheld by the EAT, held that there was no fundamental breach. The fairness of the investigation prevented the situation from escalating to what would otherwise have been a fundamental breach



Over the last couple of years the number of cases reaching Tribunal has hugely increased, it is thought to be by more than 50%. Many of you may have experienced this for yourselves, the increases being driven by disputes about equal pay, unfair dismissal, age, sex, race and disability discrimination.

With this being high on the agenda, we are able to offer our clients with not only hands on consultancy but also, an insured/legal expenses cover of up to £75,000 per claim.

For further information please contact Michelle Brinklow at BBi Risk Solutions:

**Tel:** 020 8559 2111  
**Email:** mbrinklow@bbirisksolutions.com



# NEWS FROM THE HEALTH & SAFETY TEAM

## PREPARING FOR WINTER DRIVING

**If we believe what some weather forecasters are predicting we could see our worst winter for a decade. As we're all aware forecasting is about as predictable as winning the lottery but when it does occur in the UK, chaos on the roads ensues. So preparing for severe winter weather if it arrives or not is always good pre planning.**

Driving in severe winter weather poses many challenges. Cars can get stuck in snowy conditions even on familiar roads, forcing the driver and passengers to spend the night on the roadside.

Here is some advice on how to prepare your car for winter driving, first consider if you have to make the journey, check the forecast for your route if you have to make a journey, what to do should you be caught out in bad weather.

### BEFORE YOU LEAVE

**Tyres:** Ensure your tyres are inflated correctly and that you have a minimum of 3mm of tread on your tyres to cope with wet and slippery conditions.

**Battery:** In winter, the battery will run down quicker than in warmer weather. Make sure you do a regular long journey to top it up or trickle-charge the battery.

**Engine:** Modern engines are more robust than older ones. All the same, depress the clutch when starting as this will reduce drag on the engine when starting, and preserve the battery.

**Screen wash:** Keep this topped up and use a proper additive at the right concentration to prevent it freezing.

**Fuel:** Keep your tank topped up - that way if you are caught out, you'll have enough fuel to make it home or run the engine to keep warm. However, it's essential to keep snow from blocking the exhaust as noxious fumes can leak into the vehicle.

**Windows:** Clear all snow and ice from the windscreen before driving. Do not use water to de-ice windscreens. Hot water can crack the glass, and the water will only freeze again on the screen or on the ground where you are standing.

**Locks:** A squirt of WD-40 will prevent your door locks freezing up.

**Warm clothing:** Your car may be as warm as toast on the inside but if you have to step outside, you could be in trouble if you have not got any warm clothing with you.

Always pack the following: warm coat, hat, gloves, sturdy boots, a blanket to keep you warm if you get stuck. Take some food, chocolate, biscuits, water and a hot drink if you can. Always carry a

fully charged mobile, and some old bits of carpet, or cat litter, to put under the tyres when stuck and a shovel to clear snow.

## EMERGENCY SNOW KIT

- Jump leads
- Cat litter or sand
- Shovel
- Ice scraper
- Warm clothes
- Torch
- Food and water
- First aid kit
- Mobile phone
- Sturdy boots

## FEE FOR INTERVENTION (FFI)

**After a postponement in April 2012, the Health and Safety Executive (HSE) has now confirmed that its cost recovery scheme, Fee for Intervention (FFI), started on 1 October 2012.**

New, detailed guidance<sup>[1]</sup> has been published on HSE's website setting out how the scheme will work in practice. Developed in consultation with representatives from industry, it explains how FFI works and includes examples illustrating how it would be applied.

FFI recovers costs from those who break health and safety laws for the time and effort HSE spends

helping to put matters right such as, investigating and taking enforcement action.

In summary the system will work on the basis that a material breach has occurred and the HSE Inspector needs to take some action either a simple letter, Improvement/Prohibition notices or prosecution.

### What is 'Material Breach'?

A material breach is, when in the opinion of the HSE inspector, there has been a contravention of health and safety law that is serious enough to require them to notify the person in material breach of that opinion in writing.

HSE and the government believe it is right that businesses and organisations that break health and safety laws should pay for HSE's time in putting matters right, investigating and taking enforcement action. Without FFI, this is paid for from the public purse.

The proposed Fee for Intervention hourly rate for 2012/13 is £124.

FFI will also encourage businesses and organisations to comply in the first place or put matters right quickly when they don't. It will also discourage those who undercut their competitors by not complying with the law and putting people at risk



## NEWS FROM BBI HOUSING SOLUTIONS TEAM

**The BBi social housing team have been busy exhibiting at the small Housing Association Conference at Inmarsat, London at the beginning of November.**

The focus of our offering was centred around niche products specific to the sector. Andrew Chatel and Matt Winter were on hand to discuss all insurance matters ranging from property, liability and tenants contents schemes.

Sarah Herd had a busy time and lots of interest from Associations in our Employee Benefits and Auto enrolment offering.

Rob Wales complimented the team with HR, Health and Safety and elearning. The conference was a great success for BBi and potential clients alike.



**Berns Brett**

Insurance Brokers : Risk Managers : Independent Financial Advisers

# An event not to be missed...

EMPLOYEE BENEFITS

## The Jargon Free Way

BBi are delighted to be hosting an intimate lunch for a limited number of people on the 31st May at the offices of Brewin Dolphin, 48 St Vincent Street, Glasgow, G2 5TS.

This is specifically for the Social Housing sector and would be of interest to Finance & HR Directors in particular. Our guest speakers will discuss the funding issues of final salary pension schemes and auto enrolment in the pension's arena. Employee benefits will be the main focus of the day. Hear how BBi can help you with your employee benefits solutions.

### Agenda:

- 10.30am - registration with refreshments for an 11am start
- 11am - Glen Read (Fund Manager, Brewin Dolphin)
- 11.30am - Steve Bee (Managing Pensions Partner of Paradigm Pensions)
- 1pm onwards - Lunch

Please contact Sarah Herd on tel: **07930 490319**  
or email: [sarah.herd@bernsbrettlife.com](mailto:sarah.herd@bernsbrettlife.com) to reserve your place.

Places are strictly on a first come, first served basis so don't delay.



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