WORKPLACE
report

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Violence at work

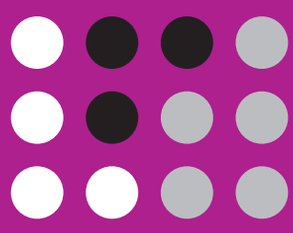
Regular contact with members of the public can leave workers at risk of attack. *Workplace Report* looks at measures that can tackle the problem

Service-related pay

Linking pay to long service may be discriminatory on grounds of age and sex. We review the progress of efforts to reduce the length of pay scales

Law at work

The latest case law on discrimination



The Labour Research Department monthly for union reps and negotiators

Prices inch ahead of pay rises again

THE latest figures from the LRD Payline database of collective agreements shows a median pay increase of 4.0% in settlements reached or stages commenced over the three months to January – meaning that settlements are lagging very slightly behind inflation again. The only significant variation in median increases is between the private and public sectors, with the latter averaging just 3.0%.

Inflation

Whichever measure is used, inflation has increased. In the year to January the retail prices index (RPI) rose by 4.1%, up from December's figure of 4.0%; the RPI excluding mortgage interest payments (RPIX) increased from 3.1% to 3.4%; and growth in the consumer prices index (CPI), previously 2.1%, was 2.2%. The CPI, the government's preferred measure of inflation, has now been above its official target rate of 2.0% for four months.

Earnings

The average earnings index (including bonuses) for the whole economy rose by 3.6% in the year to December, well down on the 4.2% in the year to November. But the figure excluding bonuses was 3.8%, slightly *higher* than November's 3.7%.

The public and private sector average increases were 3.3% and 3.8% respectively (3.7% and 3.8% excluding bonuses), while manufacturing earnings increased by 4.3% (4.0%) and those in the service sector by 3.6% (3.9%).

Labour Research Department three-monthly pay figures

Percentage increases on lowest basic rates (by agreements covered).

For the three months up to and including:

	2007 Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	This payround, 2008 Jan	Aug-Jan
All agreements	3.7	3.7	3.5	3.6	3.6	4.2	4.0	3.9	3.4	3.5	3.9	4.0	3.6
Private sector	3.9	3.8	4.0	4.0	4.0	4.3	4.3	4.1	3.6	3.9	4.0	4.0	4.0
Public sector	3.0	3.0	3.4	3.4	3.4	2.8	3.0	2.8	3.0	2.5	3.0	3.0	3.0
Manual	3.9	3.9	3.6	3.7	3.6	4.2	4.2	4.1	3.5	3.6	3.9	4.1	3.9
Non-manual	3.4	3.5	3.4	3.5	3.5	4.0	3.6	3.5	3.2	3.3	3.5	4.0	3.4
All industries	3.5	3.6	3.6	3.6	3.7	4.3	4.3	4.1	3.5	4.0	4.0	4.0	4.0
All services	4.0	3.9	3.5	3.5	3.5	4.0	3.5	3.5	3.2	3.4	3.5	4.0	3.5

For the 12 months up to and including:

	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Nov
By agreements	3.0	3.0	3.3	3.4	3.5	3.5	3.6	3.7	3.7	3.6	3.7	3.7
By workers covered	3.0	3.0	3.3	3.7	3.7	3.9	3.9	3.9	3.7	3.6	3.6	3.5

The figures show median (midpoint) pay settlements among all the agreements monitored through the LRD pay and conditions database. The weighted median (by number of workers covered) appears in the 12-monthly table.

Full-time weekly average earnings

All workers	£565.70
All male	£623.70
All female	£476.20
Managers	£851.40
Professionals	£763.40
Associate professional	£583.60
Admin & secretarial	£389.50
Skilled/craft	£475.40
Services	£334.50
Sales	£315.40
Operatives	£440.30
Other manual	£343.20

Source: ASHE 2007 uprated by AEI

Other pay analysts

Industrial Relations Services (median, three months to end January 2008)	**3.5%**
Incomes Data Services (median, three months to end January 2008)	**4.0%**

Average earnings indices (including bonuses)

	Earnings index[1] for whole economy	% annual rise: Whole economy	Manufac-turing	Services	Private sector	Public sector
Oct 2006 (r)	128.0	4.4	5.3	4.5	4.7	3.2
November (r)	127.9	3.8	4.7	4.0	4.1	3.0
December (r)	128.8	3.9	3.9	4.3	4.1	3.3
Jan 2007	129.3	4.9	3.5	5.3	5.2	3.3
February	131.3	4.9	3.6	5.4	5.4	2.8
March	129.7	3.5	3.5	3.3	3.8	3.1
April	129.8	3.4	3.2	3.6	3.2	3.2
May	130.5	3.6	4.4	3.5	3.8	3.0
June	131.1	3.2	3.9	3.2	3.2	3.1
July	131.5	3.8	4.3	3.8	4.2	2.5
August	132.1	4.2	2.8	4.6	4.4	3.2
September	132.7	4.2	2.2	4.5	4.4	3.2
October (r)	132.7	3.7	2.5	4.0	3.8	3.2
November (r)	133.2	4.2	3.5	4.2	4.3	3.4
December (p)	133.5	3.6	4.3	3.6	3.8	3.3
Headline rate[2] for Dec		3.8	3.5	3.9	4.0	3.3

[1] 2000=100. [2] Average of earnings increases for latest three months compared to a year earlier. (r) revised. (p) provisional. Source: *National Statistics.*

Average of average earnings forecasts for 2008 is 4.0% (HM Treasury).

Prices

	Retail prices index (RPI), Jan '87=100	% annual increases: RPI	RPI excl. mortgages
Dec 2006	202.7	4.4	3.8
January 2007	201.6	4.2	3.5
February	203.1	4.6	3.7
March	204.4	4.8	3.9
April	205.4	4.5	3.6
May	206.2	4.3	3.3
June	207.3	4.4	3.3
July	206.1	3.8	2.7
August	207.3	4.1	2.7
September	208.0	3.9	2.8
October	208.9	4.2	3.1
November	209.7	4.3	3.2
December	210.9	4.0	3.1
January 2008	209.8	4.1	3.4

Inflation forecasts

Fourth quarter 2008

	RPI	RPI excluding mortgages
Average	2.6%	2.9%
Oxford Economic Forecasting	2.4%	2.7%
NIESR	3.0%	2.9%

Source: HM Treasury, *Forecasts for the UK Economy*, February 2008

WORKPLACE report

***Workplace Report* is published by the Labour Research Department. For subscription details and other information, see the back page.**

GOVERNMENT AWARDS ARMED FORCES 2.6% PLUS 1% UPLIFT IN "X FACTOR"

Soldiers' pay increase 'reflects disadvantage'

THIS year's second public-sector pay award based on a pay review body's report was decided by the government this month, with defence secretary Des Browne announcing that members of the armed forces will receive a 2.6% pay rise from April.

The increase was in line with the recommendations of the Armed Forces Pay Review Body (AFPRB), and raises the lowest salary for a soldier to £16,227. The longer separation allowance will also be increased, meaning that personnel deployed overseas will receive at least £1,100 for a six-month tour.

Additionally, there will be an increase in the "X factor" – a premium on service personnel's pay reflecting the disadvantages of life in the armed forces – from 13% to 14% this year.

The AFPRB said the past five years had seen "an increase in the disadvantages of service life (most pronounced in priority areas such as increased danger, turbulence, separation and hours of work) but an improvement in civilian life", and the X factor should rise accordingly.

Like the 2.45% pay rise announced for schoolteachers last month (see January's *Workplace Report*, page 3), which has prompted the NUT teachers' union to hold a strike ballot, the basic 2.6% increase is well below inflation as measured by the retail prices index – but it exceeds the 2% limit on pay rises which the prime minister is seeking to impose across the public sector.

However, a spokesperson for the prime minister has claimed that the 2% target may not apply to this year's pay awards.

"Decisions need to be taken year by year, sector by sector," he told the *Guardian* newspaper. "Difficult decisions had to be taken last year in relation to a number of public sector workers. We haven't made decisions yet for this year."

CUSTOMER SERVICES STAFF APPROVE TWO-YEAR AWARD WORTH ALMOST 7%

More Royal Mail deals

THE CWU communication workers' union has negotiated pay deals for workers in Royal Mail's Customer Services, Finance Operations and People & Organisational Development Services (P&ODS) divisions.

The two-stage Customer Services award will begin with a 5.2% increase in basic pay, London allowances and weekday overtime, all included in February salaries and backdated to 1 October last year. This will be followed on 1 April by a further 1.7% increase, conditional on the deployment of the division's "customer change programme". However, as with the recent award for Royal Mail administrative workers (see *Workplace Report*, December 2007, page 4), there is no increase for the first six months following the previous settlement's expiry date of 31 March 2007.

CWU members approved the new settlement, which runs until 31 March 2009, by a seven-to-one margin this month. Assistant secretary Andy Furey described the award as "good news", adding: "I am pleased that we have been able to secure members a fair reward for their ongoing commitment to the business."

The Customer Services and administrative awards were used by the CWU executive as benchmarks last month when it rejected a pay offer for Finance and P&ODS employees.

The two-year offer, worth 2.5% backdated to April 2007 and a further 2.7% from this April, was dismissed as "unacceptable" by the union – but it did not take long for managers to return to the negotiating table with improved offers, both of which were endorsed by the executive.

The Finance Operations agreement features increases in pensionable pay of between 5.2% and 12.7%, all backdated to 1 October 2007 and flowing through to weekday overtime. Additionally, the pay scale has been extended by two pay points, which staff can move onto if they reach the intermediate and qualified stages of the Association of Accounting Technicians qualification. This will increase the maximum pay rate for Finance Operations staff by a further 11.4% to £21,000.

Other elements of the deal include the removal of a pay ceiling for data input roles, and a £250 increase in employees' potential bonus from 1 April this year.

The deal in P&ODS is worth between between 5.2% and 14.29%, again with flowthrough to weekday overtime and backdated to 1 October. It will also improve many employees' annual leave entitlement.

The agreements, both of which run until March 2009, are currently being voted on by CWU members in the respective divisions.

JOURNALISTS' VICTORY

Reuters backs down over new job roles

A PLAN to change journalists' career structures unilaterally at press agency Reuters has been withdrawn after the NUJ media union announced a ballot of its members over industrial action.

The company, whose impending merger with Canadian-owned information company Thomson has been the source of anxiety for its staff, has recently been reviewing job classifications across its operations. But last month the NUJ criticised the "shabby way" in which Reuters had treated its journalists by imposing new roles on them.

"Our members are furious that the company's management seems to think it can ride roughshod over its agreements with the union," said union rep Myra MacDonald. "This is not just about job roles, but about the NUJ's right to hold meaningful negotiations with management as we go into a merger that will have huge implications for the future of our journalists and the quality of our journalism."

This month, however, the union suspended its proposed strike ballot after Reuters agreed not to implement the changes until further discussions had taken place and issues had been resolved.

NUJ national organiser Barry Fitzpatrick said Reuters management had "seen sense" by taking the changes to the negotiating table at last, but warned that Reuters and Thomson were failing to take account of NUJ members' concerns in the run-up to the merger. He urged both companies to "engage in meaningful talks" with the union.

European and American competition authorities are currently considering the proposed merger, with a decision expected next month.

BROADCASTER AGREES TO RETAIN BENEFITS AND ALLOWANCES FOR THE TIME BEING

BBC settles dispute over compulsory redundancies

PROLONGED negotiations between the BBC and unions appear to have ended a long-running dispute over job cuts at the broadcaster.

Last month the entertainment union BECTU, the NUJ journalists' union and the general union Unite suspended the strike ballots that they had called over plans for compulsory redundancies and changes to allowances, pensions and redundancy terms (see *Workplace Report*, January 2008, page 5).

The unions had particularly criticised managers for ignoring the results of a trawl for redundancy volunteers – particularly in the TV programme-making arm BBC Vision – and "cherry picking" employees for the axe. But after two weeks of talks, the two sides agreed that at least 100 of the redundancies in BBC Vision will involve volunteers, with 120 redeployment opportunities created for staff who are made redundant. Additionally, no compulsory redundancies will take place until the end of this month.

However, the unions have also had to accept a new agreement for future redundancies, with elements including the removal of the BBC's duty to seek volunteers before deciding who will lose their jobs.

Agreement was also reached on the other matters covered in the dispute:

- the unpredictability allowance will remain for new starters, but at a reduced rate, and will be subject to a review by a management/union working party;
- the preferential arrangements for employees made redundant at the age of 45 or over, under which they receive a full pension, will continue until at least 2011; and
- a 1.5% increase in staff pension contributions has been deferred until next year.

On the issue of pay, however, there is bad news for the unions – the BBC has withdrawn from its commitment, expressed in last year's two-year pay settlement, to re-open negotiations on the 2008 increase of 2% if growth in the retail prices index exceeds 2% in April.

For NUJ general secretary Jeremy Dear, the agreement represents "a basis on which we can address further changes proposed by the BBC". He added: "We're pleased that the imminent threat of compulsory redundancies has been addressed and that all staff required to work unpredictable hours will continue to get a fair deal."

The unions are now to ballot their members on the agreement, but not until next month. With BECTU general secretary Gerry Morrissey describing the negotiations as "particularly difficult given the financial constraints on the BBC and the number of areas targeted for cuts", union negotiators have warned their members that "anything better will only be achieved through sustained and bitter industrial action".

- Unions have expressed relief at BBC Scotland's announcement that it is unlikely to pursue compulsory redundancies as part of the current round of job cuts.

The division is planning to scrap 100 jobs, but more than 100 employees responded to its request for redundancy volunteers. Although at least 20 of these staff do not work in areas directly targeted for cuts, BBC Scotland has agreed to consider releasing them in order to create redeployment opportunities for other at-risk staff; it will report back to unions on this next month.

BECTU Scottish officer Paul McManus said the number of volunteers for redundancy, together with BBC Scotland's response, "makes the current situation more palatable".

AGREEMENT INCLUDES LONG-TERM COMMITMENT TO END TWO-TIER WORKFORCE

University's outsourced workers get £7.50 an hour

CLEANERS and other support staff at south London's Kingston University saw their minimum hourly wage increase to £7.50 this month under a new pay settlement negotiated by UNISON public services union.

The two-year deal with the Kingston University Service Company – a wholly owned subsidiary of the university which also provides transport, student residential management and security services – provides for a further 4% increase next February, taking the minimum rate to £7.80 an hour.

And UNISON has secured a commitment from the company to harmonise its employees' pay rates with those of the university's directly employed staff.

Jon Richards, the union's national head of higher education, said the settlement "begins to recognise the contribution that all staff make to supporting students", while assistant branch secretary Roger Eldred welcomed "the commitment to harmonise pay and conditions in the longer term as a springboard to end the two-tier workforce."

BALFOUR BEATTY FAILS TO PREVENT UNION RECOGNITION FOR PAINTERS

Bridge ballot helps RMT across troubled waters

THE RMT rail union has won recognition at Palmers Ltd, a contractor working on the Forth Bridge in the east of Scotland, despite what the union saw as opposition from construction giant Balfour Beatty – the senior partner in the contractors' alliance on the project.

Painters employed by Palmers on the bridge, which is owned by Network Rail Infrastructure, approached the RMT two years ago with the aim of joining the union and gaining recognition. This led to a campaign in which the union – which already represented members employed by other contractors on the bridge – regularly leafleted outside the workplace, held mass meetings away from the workplace and sent out newsletters to members.

Within months, the RMT had built up membership to around half of the workforce, and it then arranged a meeting with Palmers in the hope of agreeing voluntary recognition. The company initially seemed interested, but Balfour Beatty opposed the proposal – forcing the union to seek statutory recognition from the Central Arbitration Committee (CAC).

A ballot of the workforce ordered by the CAC showed a clear majority in favour of recognition, and the union is now negotiating a procedural agreement with Palmers.

Donald Graham of the RMT's organising unit said: "This recognition deal sends out the message that we can also win recognition with other companies if workers want RMT to represent them."

RETAIL UNION ENDS YEAR WITH 2,000 NEW REPS AND A 16-YEAR MEMBERSHIP HIGH

USDAW ceremony honours outstanding reps

SHOPWORKERS' union USDAW recruited 2,000 new reps in 2007, and ended the year with 356,046 members – its highest membership level for 16 years.

The announcement was made at the union's third national Organising Awards ceremony last month – a deliberately glitzy event celebrating the hard work of USDAW reps across eight categories.

This year's individual recruitment award went to Susan David, a shop steward at supermarket chain Morrison's Neath branch who has raised membership to 93% by recruiting new starters at inductions, often outside her normal working hours.

Last year David became a "stand down rep" (temporarily seconded to the union to establish organising activities in a variety of workplaces) and recruited 112 new members in a two-week period.

NO NEED FOR BALLOT

UNISON wins recognition for cleaners

PUBLIC services union UNISON has been awarded statutory recognition, without the need to go through a ballot, for Westminster Council cleaners employed by a private contractor.

Last June, the union applied to the CAC for recognition on behalf of staff at Carlisle Cleaning and Support Services who work on a contract for Westminster's public conveniences. Six months later, the CAC reported that 63% of the bargaining unit's workers were already UNISON members, and that there was petition evidence in support of recognition.

However, Carlisle argued that there should be a ballot of the staff; it said it had already set up a works council, and claimed that some workers may have signed the petition without knowing what it was about.

But the CAC ruled last month that there was no evidence of the need for a ballot, and ordered Carlisle to recognise the union.

RAIL COMPANY AGREES NOT TO USE MANAGERS AS TRAIN CREW AFTER UNION CALLS TWO-DAY STRIKE

RMT is on guard at Great Western

THE threat of strike action by members of the RMT rail union at train company First Great Western (FGW) has secured a guarantee from the company that it will not use managers to guard or drive trains.

FGW has also pledged to create more than 40 new guards' jobs across its operations, under a deal reached after a ballot of the RMT's 500 guards at the company last month showed a majority of more than two to one in support of a strike. With train drivers backing strike action by a four-to-one majority in their own ballot, a 48-hour stoppage was scheduled for 20 and 21 January, but this was suspended with days to go so that negotiations could take place.

The union had claimed that the use of managers to do its members' jobs was indicative of "a total breakdown in industrial relations" and "a confrontational style of management", and had voiced its intention to ballot all its members at FGW on industrial action. But "detailed talks" lasting three weeks resulted in agreement between the two sides.

"The company has given clear undertakings that managers will not work as guards or drivers, be it for commercial reasons, to manage rostering deficiencies or to cover staff shortages, and that marks an important victory," said RMT general secretary Bob Crow. "Our members are to be congratulated for the determination and solidarity they displayed during these disputes."

Fellow rail union ASLEF has also been in dispute with FGW over "mismanagement, a failure to apply agreed disciplinary procedures and grading issues". ASLEF members voted overwhelmingly for industrial action last month, but the union held back from setting strike dates because of "significant progress" in negotiations.

And the TSSA transport union is currently consulting its members on plans by FGW to harmonise the terms and conditions of all its station staff. The current proposal has been slightly amended from a version that was rejected by former Link and Wessex employees on the grounds that it would reduce their pay for Sunday working. However, the union points out that a reduction in the working week for Link staff will increase their hourly rates.

FAMILY-FRIENDLY HOLIDAY

Building firms can be good eggs at Easter

A JOINT initiative between building companies and construction union UCATT is urging employers to take family-friendly policies on board over the Easter break.

Companies covered by the working rule agreement (WRA) drawn up by the Construction Industry Joint Council (CIJC) normally give workers a four-day Easter break from Good Friday to Easter Monday. But because the Easter weekend is unusually early this year, it does not coincide with the spring school holiday – which could cause problems for workers with school-age children.

"Construction workers with families often have difficulty in arranging childcare during school holidays," said UCATT general secretary Alan Ritchie, who is also secretary of the operative side of the CIJC. "This will cause additional problems and could affect their performance."

Now the CJIC is urging employers to "show good sense" and make use of the leeway already provided in the WRA. "It shall be open to employers and operatives to agree that all or some of the winter holiday and/or the Easter (spring) holiday will be taken on alternative dates," the agreement says.

As far as CIJC employers' side secretary Gerry Lean is concerned, a flexible stance by employers "could be of benefit to both the company and their workforce".

Construction workers are being urged to "speak to their employer at the earliest possible opportunity" if they want their Easter holiday dates to be varied.

SLOW PROGRESS PROMPTS COMMITTEE TO RECOMMEND MANDATORY EQUAL PAY AUDITS

MPs demand 'determined effort' on gender pay gap

AN influential committee of MPs has called on the government to consider introducing mandatory equal pay audits and extending the gender equality duty – which requires all public authorities to demonstrate that they are promoting sex equality – to the private sector, unless there is faster progress on narrowing the pay gap between the sexes.

The recommendations came this month in the House of Commons Business and Enterprise Select Committee's report *Jobs for the girls: two years on*. In 2005, the government's Women and Work Commission (WWC) recommended 40 measures to tackle job segregation and the gender pay gap, and the committee has spent recent months investigating the progress that has been made.

Its report notes that the pay gap "is hard to eliminate, because men and women tend to work in different occupations, and traditional female occupations tend to be lower paid and lower valued than men's". But it is concerned "at the lack of a timetable and committed funding" in the government's response to the WWC's recommendations, especially as the gender pay gap remains almost as wide as it was a decade ago.

Official statistics indicate that full-time female workers earned 17.2% less than their male counterparts in 2007 – only slightly down from the 20.7% in 1997. And the gap between male full-timers and female part-timers is a massive 35.6%.

According to the MPs, there are not enough training opportunities for women in non-traditional occupations – and, until recently, little advice was available to older women who wanted to change work direction or return to work after a break.

While praising the government's proposed "substantial extension" in apprenticeships, the report warns that these "must not just follow traditional occupational breakdowns". It highlights "the need to promote greater equality" through apprenticeships, and advises the Equality and Human Rights Commission (EHRC) and the Low Pay Commission to look into the gender pay gap among apprentices.

Another issue of concern is the "dearth of quality part-time jobs", with the government urged to increase spending on measures to tackle the problem.

MP Judy Mallaber, who led the inquiry, spoke of the need for "a determined effort on all fronts ... to crack the worryingly stubborn pay gap and inequality in employment".

For Katherine Rake, director of equality campaign group the Fawcett Society, the report "adds to the pressure on government to adopt more radical measures on equal pay."

Jobs for the girls: two years on is available at *www.publications.parliament.uk/pa/cm200708/cmselect/cmberr/291/291.pdf*

AWARD BODY'S MULTIPLE DEMANDS LEAD TRAINING TO BE FOCUSED ON MANAGERS

IiP training award leaves minorities disadvantaged

A TRAINING award from Investors in People (IiP), the body that manages standards for employee development, is meant to be an indication of good practice – but a new study has revealed that employers with the award seem more likely to discriminate against minority groups.

Researchers from Nottingham University Business School found that women, staff on temporary or fixed-term contracts, disabled and older workers and those from ethnic minorities were all at more of a disadvantage in terms of training if their employer was IiP-accredited – even though employers are supposed to have met certain equal opportunities criteria in order to qualify.

Based on the government's *Workplace Employment Relations Survey 2004*, the study of almost 15,000 people also found no evidence that IiP accreditation improves training levels for many of these groups or boosts training levels for "routine unskilled" workers.

Much of the government's skills strategy is based on increasing the proportion of the UK workforce qualified to NVQ Level 2, but the latter finding suggests that IiP "may be contributing little if anything to the achievement of this target".

According to Professor Kim Hoque, who led the research, the pattern of disadvantage may be a result of IiP's multiple demands on employers.

"Although IiP requires organisations to uphold equal opportunities principles, it also requires them to gear their training provision to business need," he explained. "In organisations where business need is narrowly defined, developmental opportunities come to be targeted on core value-creating professionals and managers, rather than the workforce as a whole."

Hoque added that the findings appear to vindicate the government's decision last year not to award IiP £1 million to promote equality and diversity best practice.

TUC CALLS FOR £80 MINIMUM WEEKLY RATE TO BE INCREASED TO £110 BY AUGUST

Apprenticeship strategy doesn't tackle pay issues

THE government has set out its strategy for making apprenticeships a "mainstream option for 16- to 18-year-olds" alongside other education and training routes – and for ensuring that an apprenticeship place is available to every qualified young person by 2013.

Last month the Department for Innovation, Universities and Skills (DIUS) published *World-class apprenticeships: unlocking talent, building skills for all* – a report which outlines measures such as consistent national "branding" of apprenticeships, the establishment of a National Apprenticeship Service and better integration of apprenticeships with other education programmes.

To increase provision, the DIUS has decided that employers will be able to submit their own apprenticeship frameworks for public funding – and may also qualify for new incentive payments. Extra funding will be available for courses offered to over-25s, and there will be "support for more employer ownership of apprenticeships".

Apprenticeships also feature heavily in another government report released last month. *Ready to work, skilled for work: unlocking Britain's talent*, published by the DIUS and the Department for Work and Pensions, is aimed at helping employers to "recruit job-ready individuals and raise the skills base of their staff" through initiatives such as officially accrediting employers' training qualifications and setting up "Local Employment Partnerships" with Jobcentre Plus offices.

Both reports were broadly welcomed by TUC general secretary Brendan Barber, but with one major caveat. "It's disappointing that the government has delayed addressing a key problem with apprenticeships, that of poor pay", he said.

The TUC published its own investigation into *Decent pay for apprentices* last month, revealing that some apprentices are paid as little as £1.54 per hour. Low pay was found to be most common among female apprentices, who on average are paid 26% less than men; those in hairdressing, early years education and social care are the worst paid.

By law, most apprentices do not have to be paid the National Minimum Wage (NMW). And although the Learning and Skills Council (LSC) introduced a minimum payment of £80 a week in 2005, this has not changed since then.

The TUC wants the LSC minimum to be increased to £110, broadly in line with the minimum wage youth rate of £3.40, in order to boost apprenticeship completion rates. While the current completion rate of 63% is a massive improvement on the 2001 figure of just 24%, the government is aiming for at least 70%.

The prime minister has announced that the Low Pay Commission is to look at the issue of NMW exemptions for apprentices, but this is unlikely to lead to any changes before October 2009. The TUC wants the LSC to set a £110 minimum from August 2008, and to establish an effective enforcement regime for apprentice pay.

World-class apprenticeships and *Ready to work, skilled for work* can both be downloaded from *www.dius.gov.uk/publications.html*

Decent pay for apprentices is available at *www.tuc.org.uk/extras/apprenticepay.pdf*

REPS URGED TO TAKE PART

Sustainability is theme of learning day

THE Campaign for Learning (CfL) has announced that "sustainable workplaces" will be the theme of National Learning at Work Day 2008 on Thursday 22 May.

Organised by CfL as part of Adult Learners' Week (17–23 May), the day – which aims to promote and support workplace learning events across England, and is supported by many unions – will have an emphasis this year on the environment, work/life balance and learning through life.

A dedicated area has been set up on the CfL website for union learning reps wanting to get involved in Learning at Work Day. Resources including action plans, tailored materials and case studies designed to help reps run a successful event can be obtained by visiting *www.campaign-for-learning.org.uk/cfl/workplacelearning/lawday/index.asp* and clicking on "Take part".

The website also contains details of a series of half-day events being held around the country for anyone involved in planning a learning activity.

UNIONS ARE TO THE FORE IN INNOVATIVE PROJECT BACKED BY ALMOST £2 MILLION OF PRIVATE AND PUBLIC FUNDING

Midlands get new learning centres

TWENTY new union-run workplace learning centres are set to be established across the West Midlands as part of the national "Train to gain" skills programme.

Discussions with employers in Birmingham and Stoke-on-Trent are said to be "at an advanced stage", with the regional development agency Advantage West Midlands (AWM) investing £458,000 as part of a public- and private-sector package worth £1.85 million in total.

A learning room at Birmingham New Street Station and a mobile learning centre for rural areas and workplaces facing multiple redundancies are among the proposed new facilities, which are expected to benefit 1,400 workers.

Much of the funding will be spent on the refurbishment and equipping of existing premises – a process that is expected to be completed in time for the scheme to be launched in April. Employers will be expected to contribute to the project by providing rooms or paying for broadband installation, for example.

According to Gerard Coyne, the regional secretary of general union Unite and union representative on the AWM board, the scheme is based on employers' and employees' preference for "facilities to be as close as possible to their workplace, to provide them with the flexibility they need to fit in with their busy schedules".

He added that the innovative and "user-friendly" project – the result of a "unique partnership" between unions, employers and funding agencies – would encourage local businesses to "be more competitive by improving skills and therefore stimulating the regional economy".

The scheme will offer 1,000 places for workers seeking "skills for life" qualifications and NVQs to Level Two, as well as 400 places for Level Three and Four management and leadership studies.

● The TUC and the Workers' Education Association (WEA) have opened a new education centre in the heart of the City of London.

Located near Liverpool Street Station, the centre will offer courses for union reps and members across the capital and beyond.

For more information on WEA courses, visit *www.wea.org.uk*

LUFTHANSA DEAL

Pilots are on course to beat inflation

GERMAN airline Lufthansa's 4,400 pilots have agreed a two-stage deal worth 5.5% over 18 months.

Signed on 29 January and running until 31 March 2009, the settlement begins with a 2.5% pay rise backdated to October 2007, to be followed by a 3.0% increase backdated to last month.

This increase is well above the German inflation rate, which in January was 2.7%. It is also higher than most pay rises agreed in 2007, which the union-linked research institute WSI estimates to have averaged 2.2%.

Lufthansa director Stefan Lauer said the deal "was within acceptable margins" given the company's good results and "our employees' team performance".

Meanwhile, both the executive and the negotiating committee of Germany's GDL rail union have formally approved the proposed deal for drivers at train company Deutsche Bahn (see last month's *Workplace Report*). The agreement – involving an 8.0% increase in March, another 3.0% in September and an €800 one-off payment – must now be endorsed by the union's members.

INDUSTRY-LEVEL SETTLEMENT IS REACHED IN WAKE OF NATIONWIDE STRIKE

Steely determination pays off for Italy's metalworkers

AFTER nine months of negotiations, a pay deal covering Italy's 1.6 million metalworkers until the end of 2009 has finally been reached. The draft settlement was signed on 20 January 2008, six months after the previous agreement expired.

Workers on the reference grade in the middle of the pay scale will see their monthly salary increase by a total of €127 a month over the duration of the three-stage deal – by €60 from January 2008, a further €37 in January 2009 and €30 in September 2009. Those at the bottom of the pay scale will receive a total increase of €79.38 a month, while workers at the top of the scale get €166.69.

All workers, regardless of their grade, will receive an additional one-off cash payment of €300 next month to take account of the six months without an agreement.

Under Italy's two-tier system of bargaining, most metalworkers also benefit from negotiations at company level. To compensate workers – typically those in smaller companies – who lack this additional level of bargaining, the industry deal increases their pay by an extra €20 a month, starting from last month.

The €127 consolidated monthly increase for the reference grade is larger than the €117 a month demanded by the industry's unions, of which FIOM-CGIL is the largest. However, this pay rise is spread over 30 months – from July 2007 until December 2009 – rather than the 24 months that they had envisaged.

Furthermore, the unions have been forced to concede an additional obligatory day's Saturday working per year, where this is demanded by the employer. The number of Saturdays that employees can be forced to work (with pay at overtime rates) has been increased from four to five in workplaces with more than 200 employees, and from five to six in smaller organisations.

The settlement also provides an extra day's holiday for employees aged 55-plus who have at least 10 years' service. And it makes changes to metalworkers' employment contracts in areas such as probation and service-related benefits, introducing a "single status" for manual and non-manual employees from 1 January 2009.

There will be a 44-month limit on the total length of time that an individual can work on successive temporary contracts, and non-Italian workers will be able to add holidays to other contractually agreed periods of time off so that they can take leave in their countries of origin.

Signed nine days after an eight-hour nationwide strike by metalworkers, the agreement has been welcomed by the unions – albeit with some reservations. For FIOM-CGIL general secretary Gianni Rinaldini, it "presents important and significant aspects, even though there are some elements of concern". He focused on the fact that the unions had at least been able to resist efforts by the employers to get rid of the agreement completely.

Massimo Calearo, president of the Federmeccanica employers' association, said the agreement "looked forward in the interest of the country and the employees", but added: "There is much more to do if companies facing competition are to be competitive."

Union members in the industry will vote on the agreement later this month, with the main unions involved all recommending acceptance.

● The euro was worth 75p on 15 February.

EMPLOYERS AGREE TO BOOST MINIMUM WAGE AND GIVE WORKERS THE RIGHT TO TRAINING IN WORK TIME

Dutch cleaners attain €10 target

UNIONS representing cleaners in the Netherlands have reached an agreement with the largest employers' association in the industry, setting a new minimum wage of €10 an hour from 1 April.

This guaranteed hourly rate will initially apply only to cleaners with eight years' service; those with at least one year's service will be guaranteed €9.70 an hour. But from 1 January 2009, all cleaners with at least a year's service will be paid a minumum of €10.00 an hour, with the rate for those with eight years' service increasing to €10.30.

Cleaners with less than a year's service will move onto a minimum rate of €8.50 from 1 April, and will gain the right to paid training for the first time. And with unions estimating that 90% of the Netherlands' 150,000 cleaners are migrants, they have negotiated the inclusion of provisions giving employees the right to attend courses in work time on Dutch language skills and gaining Dutch citizenship.

Signatories to the agreement on 29 January included FNV Bondgenoten, the largest union in the industry with 13,650 members – around 10% of the workforce. Having spent the past five years campaigning for a minimum wage of €10 an hour, the union describes the settlement as "excellent". "When we first called for €10, we were laughed at by both our friends and our enemies", recalled negotiator Ron Meyer, who also hailed the "groundbreaking" inclusion of citizenship courses.

Dutch unions have also reached a 24-month deal with employers in the hotel and catering industry. The settlement, which both sides have asked to be made "generally binding" on all the industry's employees, provides for an above-inflation increase of 3.25% from 1 July 2008 and a further 1.5% 12 months later. In addition, all employees will receive a one-off payment worth 1.25% on 31 December 2009.

As of last month, inflation in the Netherlands was running at 2.0%.

Discrimination case law

This month's round-up includes rulings on the size of compensatory awards and the types of behaviour that amount – or do not amount – to victimisation.

Equal pay

Case 1: *The facts*

A large group of care, cleaning and catering workers, almost all of whom were women, brought equal pay claims against a local council. The council identified around 1,500 whose claims, it said, were out of time – although most had continuous service with the council, they had changed jobs since the period when they were underpaid.

An equal pay claim must be brought within six months of the end of the contract to which it relates. The issue was whether changes to the claimants' jobs had been variations of the same contract or the replacement of one contract with another; if it were the former, the claims would be in time because it was the "same employment"; if the latter, they would be out of time.

The ruling

Simply providing a document which describes itself as a new contract is not enough to establish that one contract has ended and another begun, the Employment Appeal Tribunal (EAT) said – changes to the contract have to be agreed. If a contract is changed but not in a fundamental way, this will merely be a variation of the existing contract – unless the tribunal is satisfied that there was an express agreement to end one contract and replace it with another. But if there is a *signed* contract which describes itself as a new contract, this is conclusive evidence that the parties agreed to a termination of the initial contract.

Cumbria County Council v Dow & others UKEAT/0148/06 & others ([2009] IRLR 109)

Race discrimination

Case 2: *The facts*

Mr Ukachukwu was involved in an incident with a colleague at work, after which he alleged that the colleague had made racially offensive comments. None of the witnesses to the incident supported this version of events, and Ukachukwu's employer suspended him for making false allegations – a charge that was dropped after further investigation. Following his suspension, Ukachukwu went on sick leave with work-related stress and did not return; he was dismissed six months later for incapability on grounds of ill health.

A tribunal upheld Ukachukwu's claims of race discrimination and unfair dismissal.

The ruling

The EAT overturned the finding of race discrimination, as the tribunal had not compared Ukachukwu's treatment with an appropriate comparator (hypothetical or otherwise). The EAT was satisfied that the employer would have treated anyone else who had made such a complaint in the same way, and held that Ukachukwu had not been discriminated against.

However, the EAT added, the tribunal's ruling that Ukachukwu had been unfairly dismissed because his employer had failed to get an up-to-date medical report was permissible and would stand.

Centrewest London Buses Ltd v Ukachukwu UKEAT/0318/07

Case details for the EAT are available at *www.employmentappeals.gov.uk*. Decisions of other courts, as well as some EAT judgments, are at *www.bailli.org* *IRLR* is the subscription-based journal *Industrial Relations Law Reports* – call 020 8686 9141 for details.

Discrimination law – The key developments

- **For an employee to be regarded as no longer being in the "same job" for equal pay purposes, there must be a clear agreement that she has ended one job and replaced it with another (case 1).**
- **An employee was not discriminated against after making a claim of racial harassment, as the employer would have treated anyone else who had made such a complaint in the same way (case 2).**
- **To prove victimisation, a claimant must prove that there was less favourable treatment as a result of his/her protected act (case 3).**
- **The dismissal of a university academic who represented a student in his race discrimination claim against the university did not amount to victimisation, because the reason for the dismissal was the conflict of interest that the representation involved (case 4).**
- **A claim of race discrimination against the Labour Party should have been brought under section 25 of the *Race Relations Act*, which deals with discrimination by associations – and claims under section 25 must be brought in a county court (case 5).**
- **An employer was not required under equal pay law to pay a shift bonus to staff who did not work the qualifying hours (case 6).**
- **When deciding whether a condition is likely to recur, an tribunal can only take account of what the employer knew at the time of the alleged discrimination (case 7).**
- **A second occurrence of a dislocated kneecap was evidence of an impairment that was likely to recur (case 8).**
- **A tribunal cannot decide whether there was a failure to make adjustments until it has identified the discriminatory provision, criterion, practice or physical feature of the premises – and identified the nature and extent of its disadvantage to the worker (case 9).**
- **A police authority was entitled to dismiss a probationary constable whose disability prevented her from carrying out part of her core duties (case 10).**
- **There was no disability discrimination in a situation where an employer had made what adjustments were reasonable (case 11).**
- **An employer does not have a specific duty to obtain a medical report in order to fulfil its duty to make reasonable adjustments (case 12).**
- **Where a tribunal makes separate findings of race discrimination and disability discrimination, compensation should be assessed separately (case 13).**
- **There are no hard and fast rules about whether separate awards should be made for injury to feelings and for psychiatric damage resulting from discrimination (case 14).**
- **An employer's refusal to allow part-time working amounted to sex discrimination, and the employee's resulting resignation was a constructive dismissal (case 15).**
- **If a claimant in a part-time pensions claim did not join his/her employer's pension scheme once s/he became eligible, the tribunal must investigate the reasons why (case 16).**
- **A belief must be a religious or philosophical viewpoint that the claimant actually believes, not merely an opinion based on real or perceived logic or information (case 17).**
- **An artist was not entitled to bring a claim under the religion or belief regulations for a gallery's refusal of a proposal, as there was no employment to offer (case 18).**

Victimisation

Case 3: *The facts*
When Mrs Munu faced the threat of redundancy as part of a restructuring programme, she complained that she was the only Afro-Caribbean member of staff at risk. She later brought a number of claims, including for victimisation; after she had raised her complaint, she said, her employer had ignored her comments regarding redeployment, had told her to stop spending time looking for another job, had left files on her desk and chair, and had not appointed her to other posts.

The ruling
The EAT upheld the tribunal's decision that there had been no victimisation. For each of her allegations, it found either that there was no less favourable treatment, or that the employer had a clear and permissible reason for the treatment which was not discriminatory: the employer had not ignored her comments, but its policy was not to slot staff into higher-grade posts; she had only been asked to restrict her job-hunting to quiet times; the files left on her desk and chair had been for shredding, which was part of her duties; and the person who had decided not to offer her the alternative posts had not known of her complaint.

The EAT also confirmed that the burden of proof in victimisation claims, unlike those involving other forms of discrimination, does not transfer to the respondent; it is up to the claimant to prove that there was less favourable treatment as a result of a protected act.
Munu v Great Ormond Street Hospital NHS Trust & others UKEA/0287/07

Case 4: *The facts*
Professor Fosh gave evidence in a race discrimination claim brought by one of the PhD students under her supervision. Her employer later discovered that Fosh was representing the student as well as giving evidence; it said it did not object to her giving evidence, but asked her to stop representing him as this was a conflict of interest. She refused and was suspended, after which the employer conducted a search of her emails; this led to further charges, resulting in her dismissal.

Fosh claimed that her dismissal was unfair and amounted to victimisation under the RRA.

The ruling
The EAT upheld the tribunal's decision that Fosh's dismissal was not unfair and did not amount to victimisation. She was dismissed, it held, not because she was representing a student in race discrimination proceedings but because of the conflict of interest that this caused.
Fosh v Cardiff University UKEAT/0412/07

Jurisdiction

Case 5: *The facts*
Raghib Ahsan was a Labour councillor. Following allegations of vote-fixing and housing irregularities in his council ward, none of which was ever verified, he was not re-selected. He claimed that his non-selection amounted to race discrimination, but the Labour Party said the reason for his non-selection was related to his "old Labour" political views. It pointed out that Asian candidates were re-selected in other wards.

Ahsan won his tribunal claim under section 12 of the *Race Relations Act* (RRA), on the grounds that the Labour Party was a "qualifying body"; the issue of whether this section applied to his case went to the House of Lords.

The ruling
The House of Lords held that Ahsan should have brought his claim under section 25 of the RRA, which deals with discrimination by associations against members or prospective members; such claims must be brought in a county court, not an employment tribunal. However, as the tribunal had ruled that it was entitled to hear the claim, the parties were bound by its decision.
Watt v Ahsan [2007] UKHL 51

Genuine material factor

Case 6: *The facts*
Police officers Susan Blackburn and Victoria Manley brought equal pay claims after their police force introduced a bonus scheme for officers who worked at least four hours at night. Neither Blackburn nor Manley worked these hours because of childcare responsibilities; they claimed that the system disadvantaged more women than men, and was therefore indirectly discriminatory.

A tribunal upheld their claims. Although the payment of the shift bonus was for a legitimate aim, it said, the force could have removed its discriminatory effect by also paying it to those who were unable to work those hours.

The ruling
The EAT held that there had not been any discrimination, as there is no requirement for an employer to compensate for the economic disadvantage of those with childcare responsibilities.

The payment of the bonus was to reward those who worked night shifts; having found that this was a legitimate aim and was not related to any discrimination based on sex, the EAT said, the tribunal should have gone on to conclude that it was justified.
Chief Constable of West Midlands Police v Blackburn & Manley UKEAT/0007/07

Definition of disability

Case 7: *The facts*
Elizabeth McDougall, who has a "schizo-affective disorder", was offered a job as a database assistant – but the offer was withdrawn following receipt of a medical report. She brought a claim of disability discrimination.

If a condition has lasted for less than 12 months but is likely to recur more than 12 months after its first incidence, it is regarded as a "long-term" condition for the purpose of defining a disability under the *Disability Discrimination Act*.

Although McDougall's disorder is long-standing and may be lifelong, at the time that the job offer was withdrawn its effects were limited to an eight-month episode a few years previously. However, her symptoms had recurred by the time of her tribunal hearing. The Court of Appeal was asked to rule on whether this could be taken into account.

The ruling
Resolving conflicting decisions of the EAT, the court held that an employer can only be responsible for answering allegations based on evidence that was available at the time – meaning that a tribunal cannot take account of subsequent events.

At the time of the job offer and its withdrawal, there was no evidence that the adverse effects of McDougall's condition were likely to recur; at that time, therefore, she was not a disabled person and so could not bring her claim.
Richmond Adult Community College v McDougall [2008] EWCA Civ 4

Case 8: *The facts*
Mrs Scott dislocated her kneecap in 2002. She dislocated it again in 2005, at which time she was under review because of her level of absence from work; she had been set a target of one day's absence in the following six months. After taking a month off to recover from the knee injury, she was dismissed.

Scott brought a claim of disability discrimination, and the issue on appeal was whether she had a disability.

The ruling
The EAT upheld the tribunal's decision that Scott *did* have a disability. Although she had recovered from the initial dislocation in 2002, the tribunal had identified her impairment as instability of her kneecap. As she had already dislocated it twice, a tribunal was entitled to hold that the effects of the impairment were likely to recur and therefore should be treated as long-term.
British Gas Trading Ltd v Scott UKEAT/0322/07

Duty to make adjustments

Case 9: *The facts*
Clerk/typist Mrs Rowan had an accident which left her unable to sit for long periods of time and requiring a lot of bed rest. She asked her employer to allow her to work from home as a reasonable adjustment, but her request was refused.

Rowan resigned after becoming aware of the contents of a recorded telephone conversation (described by the tribunal as "absolutely shocking") in which her manager and the occupational health doctor suggested that she did not wish to return to work. Rowan claimed constructive dismissal and disability discrimination, both of which were upheld by the tribunal; her employer appealed against the disability discrimination decision.

The ruling
In a claim relating to a failure to make reasonable adjustments, the EAT said, a tribunal must first identify the provision, criterion or practice applied by the employer – or the physical feature of the premises – that put the worker at a disadvantage; it must also establish the nature and extent of that disadvantage. Only when this has been done can the tr tribunal make an assessment of what adjustments were reasonable and whether the employer failed to make them.

As the tribunal had not done this, its finding of disability discrimination could not stand. The case was referred to a fresh tribunal.
The Environment Agency v Rowan UKEAT/0060/07 ([2008] IRLR 20)

Case 10: *The facts*
Ms Hart was a probationary police constable whose probation period was intended to last for two years; however, it was extended a number of times. As a result of two road accidents, she was unable to carry out tasks that carried a real risk of confrontation – but these were part of a constable's core duties, meaning that she was unable to complete her probation.

Hart was offered a staff post which she rejected; she was then dismissed. She argued that the police authority should have made the "reasonable adjustment" of confirming her employment, even though she was unable to meet the required standards.

The ruling
The EAT held that the police authority had been entitled to dismiss Hart, as she was unable to carry out part of her duties; expecting it to dilute the standards required was not a reasonable adjustment.

A major factor in the EAT's decision was the fact that the authority was responsible for assessing a standard of competence against national criteria which allowed constables to be transferred to other police forces.
Hart v Chief Constable of Derbyshire Constabulary UKEAT/0403/07

Case 11: *The facts*
A year into his employment with Royal Mail, Mr Khan developed asthma. His GP said his condition was caused by dust from one of the vents in the sorting office, and recommended that he be found work elsewhere. Royal Mail offered Khan alternative work, which he refused, before dismissing him after 18 months' sickness absence.

Khan brought claims of disability discrimination and unfair dismissal, both of which were dismissed by a tribunal. He appealed, arguing that his employer had failed to make reasonable adjustments.

The ruling
The EAT held that there had been no failure in the duty to make reasonable adjustments. The tribunal had concluded that Royal Mail had taken steps – such as moving Khan's work station away from the vent – that were reasonable in the circumstances, and had found that there was no obligation to create a job which did not already exist.
Khan v Royal Mail Group plc UKEAT/0480/06

Discrimination law – The basic legal rules

It is unlawful to discriminate on the grounds of sex, race, disability, trade union membership, transsexuality, religion or belief, or sexual orientation.

Four forms of discrimination are banned. *Direct* discrimination occurs if a person is treated less favourably. *Indirect* discrimination is where the treatment is no different but where the application of a "requirement or condition" or a "provision, criterion or practice" has a detrimental impact. *Victimisation* of someone because they have raised or provided evidence in a discrimination claim is also unlawful, as is any form of *harassment* on one of the unlawful grounds.

If an employee brings a discrimination claim, the law says that:
- **the employer should complete a questionnaire giving responses to the allegations of discrimination, if requested by the claimant;**
- **discrimination can be inferred from the employer's practices and procedures where there is no direct evidence;**
- **compensation for discrimination is unlimited and includes compensation for injury to feelings, as well as aggravated damages where the employer's conduct was particularly poor; and**
- **a claim can be brought against a *former* employer who discriminated against or otherwise victimised an individual.**

For the purposes of equality legislation, a disability is defined as an impairment that lasts at least a year and has a substantial adverse effect on a person's ability to carry out normal day-to-day activities.

It is illegal for an employer to treat disabled people less favourably; this includes refusing for a disability-related reason to hire or promote them. If an employer's premises and/or any "provision, criterion or practice" applied by the employer place a disabled person at a substantial disadvantage compared with someone who is not disabled, the employer has a legal duty to make reasonable adjustments to prevent that disadvantage.

Case 12: *The facts*
Mrs Price-Job suffered from the degenerative condition lupus, and had pain in her back, neck and shoulder. Following a number of episodes of sickness, she was dismissed; her employer said this was because of the time-limited nature of the project she was working on and the high risks associated with its delivery.

A tribunal found that – by failing to provide a suitable chair and other equipment within a reasonable time, and by failing to visit her at home to discuss her employment – the employer had failed in its duty to make reasonable adjustments. These decisions were not appealed.

But the tribunal also said the employer should have allocated some or all of her duties to another person and should have arranged its own medical assessment. The employer appealed these two decisions, as well as the ruling that Price-Job's dismissal had not been justified.

The ruling
The EAT held that there was no obligation on the employer to provide a medical assessment. The employer's duty is to make adjustments to prevent a substantial disadvantage, it said; a medical report may identify adjustments that could be made, but an assessment is not itself an adjustment. This part of the tribunal's decision was overturned.

Furthermore, the EAT held that the tribunal had not properly considered the the allocation of Price-Job's duties. The case was sent back for the tribunal to reconsider this matter, as well as the question of whether the dismissal was justified.
London Borough of Camden v Price-Job UKEAT/0507/06

Every month *Workplace Report* rounds up the latest case law in key areas of employment legislation. Apart from this month's topics, the other main subject areas appearing regularly are dismissal, redundancy, TUPE transfers, contracts and tribunal procedures.

Injury to feelings awards

Case 13: *The facts*
Mr Jumard brought claims of race and disability discrimination and unfair dismissal. As well as upholding his unfair dismissal claim, a tribunal found that his employer had treated him less favourably on grounds of both race and disability, and had failed to make reasonable adjustments. It awarded a total of £116,547, which included an injury to feelings award for "racial and disability discrimination" of £13,000.

Jumard appealed the size of the award, arguing that the tribunal should have considered the disability and race discrimination separately.

The ruling
The EAT upheld Jumard's appeal. Where different forms of discrimination arise out of the same facts, it said, a single award for injury to feelings is justified; but where there are specific acts which fall into one category but not the other, they should be separately assessed. However, a tribunal must still look at the total figure to ensure it is proportionate overall.

Jumard's case was sent back to the tribunal for the compensation award to be reconsidered.
Jumard v Clywd Leisure Ltd & others UKEAT/0334/07

Case 14: *The facts*
After Hugh Martins attempted to run him off the road, Mohammed Choudhary brought a claim under the *Protection from Harassment Act*, which also included a claim for race discrimination. A court found that the incident had been premeditated and intentional, and that Martins had previously made a number of racially offensive remarks to and about Choudhary.

Choudhary was awarded £12,500 for personal injury and £10,000 for injury to feelings for harassment. The issues on appeal were whether the court was right to make separate awards for personal injury and injury to feelings, and whether those awards were too large.

The ruling
The Court of Appeal said there should be no hard and fast rule about whether separate awards should be made. In some cases where the psychiatric harm is "very modest" and merges with injury to feelings, it said, one award may be appropriate; but where harm is more substantial, as in Mr Choudhary's case, it is helpful to have separate awards as this make the judge's thought processes clearer.

The court held that both the £12,500 personal injury award and the £10,000 injury to feelings award were within the range of permissible awards.
Martins v Choudhary [2007] EWCA Civ 1379

Refusal of part-time working

Case 15: *The facts*
Mrs Shaw wrote to her employer while she was on maternity leave, asking to return to work on a part-time rather than a full-time basis. Her employer asked her to complete a "request for flexible working" form, which she did. It then refused her request and Shaw resigned, claiming sex discrimination and constructive dismissal.

A tribunal held that the employer's refusal to allow part-time working had amounted to both direct and indirect discrimination; however, it said Shaw had not been constructively dismissed, as she had resigned in response to the refusal of her flexible working request. As an employer is entitled to refuse such a request, the tribunal reasoned, this was not a breach of contract.

The ruling
The EAT upheld Shaw's constructive dismissal claim. It pointed out that it was the employer that had described Shaw's request to work part-time as a "flexible working request". Since the tribunal had found that the refusal amounted to sex discrimination, and it was clear that Shaw had resigned in direct response, this did amount to a constructive dismissal.
Shaw v CCL Ltd UKEAT/0512/06

Part-timers' pension rights

Case 16: *The facts*
The exclusion of part-time workers from pension schemes was found to be discriminatory by the European Court of Justice in the case of *Preston v Wolverhampton NHS and others [2000] IRLR 506*; this resulted in a large number of claims, for which the Employment Tribunal Service (ETS) issued guidance bulletins.

Mr Pepper brought a claim for retrospective membership of the Teachers Pension Scheme, from which he had been excluded because of his part-time status. A tribunal upheld his claim for the years 1987 to 1995 but not from 1995 to 2000, a period when he had been entitled to join but had not done so.

The ruling
In accordance with the ETS's *Information Bulletin No 9*, a claim will not usually succeed if the claimant did not join the pension scheme when the eligibility rules changed. But there is an exception if the claimant can satisfy the tribunal that s/he would have joined the scheme earlier had s/he been eligible; this is to allow for special cases where the claimant had already taken out a private pension plan or was so near retirement that it was pointless to join the scheme.

The EAT held that the tribunal should have heard Mr Pepper's evidence on this point. His case was sent back to the tribunal to decide why he had not joined the scheme and whether he had suffered a detriment as a result.
Pepper v Lancashire CC & others UKEAT/0404/07

Religion or belief

Case 17: *The facts*
Justice of the peace Mr McClintock, who was a judge on the Family Panel, asked to be relieved of any cases that could result in children being placed with same-sex couples; such adoptions were a "social experiment" that had not been sufficiently researched, he said.

When his request was refused, McClintock resigned from the family panel and brought a claim of indirect religious discrimination, arguing that the Department of Constitutional Affairs had forced him to resign by refusing to accommodate his beliefs.

The ruling
The EAT noted that, when he brought his claim, McClintock did not say that agreeing to place children with same-sex couples was incompatible with his religious beliefs as a practising Christian. It added that a belief must be a religious or philosophical viewpoint that the claimant actually believes, not an opinion based on real or perceived logic or information – as McClintock had not shown this to be the case, the tribunal had been justified in rejecting his claim.
McClintock v Department of Constitutional Affairs UKEAT/0223/07 ([2008] IRLR 29)

Case 18: *The facts*
Artist Anthony Padgett submitted a proposal to the Tate Modern art gallery for a performance around a half-size reconstruction, made of sugar clubes, of the Tate Memorial in Norwood Cemetery.

When his proposal was declined, Padgett brought a claim of discrimination on grounds of religion (a claim which was, the EAT noted, possibly intended as a piece of performance art itself), arguing that the performance concerned the themes of contemporary art and religious fundamentalism.

The ruling
The EAT held that Padgett did not meet any of the criteria for bringing a claim under the *Employment Equality (Religion or Belief) Regulations 2003*, as he was not responding to any "offer" of work by the Tate or applying to the gallery to carry out work personally; there was nothing to indicate that the Tate had employment to offer. Willingness to listen to a proposal, or encouragement to put forward a proposal, does not establish that someone has work to offer.
Padgett v Sir Nicholas Serota & another UKEAT/0097/07

MORE THAN 50 WORKERS HAVE DIED ON BUILDING SITES SINCE APRIL, UCATT CLAIMS

Construction union seeks urgent action on fatalities

WITH the death toll in the building industry currently running at more than five fatalities a month, construction union UCATT has urged employers to make safety a priority.

Last month a worker on a luxury flats development at Swansea Marina fell from scaffolding and later died in hospital – one of more than 50 construction deaths since April 2007, according to the union.

"This latest death underlines the dangerous nature of construction," said Nick Blundell, UCATT regional secretary for the Wales and South West. "While it is almost impossible to make the industry entirely safe, construction employers in general could be doing far more to make sites safer."

Construction is the most hazardous industry in Britain, with 77 workers losing their lives at work in the 12 months to March 2007 – a 30% increase on the previous year.

UCATT blames the higher fatality rate on the recent increase in construction work – which has placed additional time pressures on workers – coupled with the increasingly casualised nature of the industry and a reduction in the number of safety inspections and prosecutions, resulting from cutbacks at the Health and Safety Executive.

As *Workplace Report* went to press, UCATT and the Chesterfield-based Trade Union Safety Team were planning an accident simulation as part of activities leading up to the Midlands TUC conference later this month.

UNION DEMANDS INSTALLATION OF SCREENS AND CAMERAS FOR DRIVERS' PROTECTION

Use tax breaks to improve minicab safety, says GMB

THE GMB general union is planning to lobby the Department for Transport (DfT) over the poor levels of protection given to minicab drivers.

Research by the union's professional drivers branch has revealed 45 cases of serious assaults on drivers by their passengers between April and December 2007 – with nine drivers losing their lives in attacks which involved guns, knives and even their own vehicles.

Branch secretary Terence Flanagan called for "immediate action" to reduce the "severe risks" faced on a daily basis by minicab drivers.

The GMB is seeking the introduction of tax incentives and other measures to finance the installation of a closed-circuit television camera and a shield between the driver and the passengers – as already exists in black cabs and buses – in every licensed minicab. It points out that the introduction of such fixtures in Sheffield has reduced the number of attacks on drivers by 72%.

The union also wants minicab companies to train drivers in anticipating trouble and dealing with it when it occurs.

The DfT lobby will take place on Workers' Memorial Day, 28 April.

ANNUAL HEALTH AND SAFETY BUDGET OF £1.4M UNDERPINS LEEDS AGREEMENT

University puts safety first

UNIONS at the University of Leeds are celebrating a new agreement to promote and safeguard the health and safety of staff and students.

With managers declaring that health and safety is their highest priority, the university has agreed to spend £1.4 million every year on measures such as safety training, an awareness-raising campaign and an online risk assessment package.

Lecturers' union UCU, which signed the partnership agreement this month alongside general union Unite and public services union UNISON, praised the university for accepting its past shortcomings and commiting resources to achieve change. About 10% of the university's staff say they have reported an accident at work, and Leeds has received two improvement notices from the Health and Safety Executive in the past three years.

Roger Kline, UCU's head of equality and employment rights, said the agreement "sets a standard on health and safety policy that is amongst the best, if not the best, in higher education".

The agreement is available at *http://reporter.leeds.ac.uk/press_releases/current/assets/safety.doc*

NEWS IN BRIEF

Safer driving

A TRAINING initiative designed to improve driving safety at delivery firm Parcelforce has received the backing of the CWU communication workers' union.

"Drive safely" is a confidential online quiz, to be completed in work time, involving multiple-choice questions on the Highway Code. If drivers get an answer wrong, the program points this out to them so that they can understand their mistake and correct their response.

In response to its members' concerns, the CWU has issued a joint statement with Parcelforce confirming that the program will not be used for disciplinary purposes or be used to remove workers from driving duties.

Support for deaf workers

THE CWU is also calling on its safety reps to check that workplace safety measures are installed for workers with hearing difficulties.

The union points out that 15% of the population is deaf or hard of hearing, and many cannot hear fire alarms or public address announcements. It wants to make sure that employers are complying with the *Disability Discrimination Act*'s duty to make reasonable adjustments for these workers.

Reps are advised to consult guidance from deafness charity RNID on adjustments such as the Deaf Alerter – a radio-based fire alarm and messaging system.

For details, call/textphone RNID on 020 7296 8229/8137 or email *anna.hollis@rnid.org.uk*

TUC resources online

THE TUC has made some of its *Hazards at work* manual available free of charge online.

The full paper version is still available to buy, but much of it – 31 chapters covering hazards such as asbestos, asthma, bullying, chemicals and dust, and drugs and alcohol – is now available on the health and safety section of the TUC website. For each subject page in the section, the chapters can be accessed via a green box in the top right corner of the page.

NEWS IN BRIEF

Manual handling warning

THE Health and Safety Executive (HSE) has warned employers to follow the *Manual Handling Operations Regulations*, after prosecuting a company over an incident in which a worker was injured by a 50kg sack of rice falling onto the back of his neck.

An investigation into the accident at East End Foods found that large consignments of the sacks were routinely offloaded manually from containers, without the use of any mechanical aids. To lift the sacks, workers were raised and lowered on a pallet placed on the forks of a forklift truck.

The company, which had not carried out a risk assessment for the activity, was fined £25,000 plus £28,000 costs last month.

RSI research

A NEW HSE-funded report into repetitive strain injury has called for "multimodal interventions" to help sufferers return to work.

***Management of upper limb disorders and the biopsychosocial model* found that "neither medical treatment nor ergonomic workplace interventions alone offer an optimal solution". And it cited evidence that "successful management strategies require all the players to be onside and acting in a coordinated fashion; this requires engaging employers and workers to participate".**

The report is available on the HSE website at *www.hse.gov.uk/research/rrhtm/rr596.htm*

IMPROVEMENT NOTICE IS SERVED ON FIRE AUTHORITY FOLLOWING INVESTIGATION

HSE acts over firefighter deaths in Warwickshire

THE Health and Safety Executive (HSE) has strongly criticised Warwickshire Fire and Rescue Authority over the information it gives its firefighters about the special risks they may face at certain premises.

Last month the HSE served the authority with an improvement notice as part of its investigation into a warehouse fire at Atherstone-on-Stour in November 2006. Four firefighters lost their lives when the building partially collapsed.

Matt Wrack, general secretary of the FBU firefighters' union, welcomed the improvement notice but said: "It is a tragedy that four more young firefighters have died before such a notice was served."

He added that the union's "grave concerns" about firefighter safety had been ignored by the authority, which has a legal duty to meet the requirements of the *Health and Safety at Work etc Act* and the *Management of Health and Safety at Work Regulations 1999*.

Alan Craddock, HSE head of operations in the Midlands, said the investigation had revealed evidence that the authority's current arrangements "do not comply with the statutory duties to provide its firefighters with all the information they should have to assist them in making the appropriate decisions when attending a fire".

The improvement notice, he explained, requires the authority to "make the appropriate arrangements to gather and take action in response to information about special risks which may be present at premises where firefighters may have to deal with emergencies". As part of these arrangements, it must compile an action plan for the inspection of premises and the identification of risks.

"The brave men and women in the emergency services deserve to have the right equipment, the right training, and information whilst fulfilling their pledge to protect the public," said Craddock.

Warwickshire police are carrying out their own investigation into the blaze, and have commented that it is "far too early" to say whether the authority may be prosecuted.

HSC HOPES THAT ADVISORY COUNCIL WILL ADOPT A COMMON-SENSE APPROACH

New body will balance deregulation and risk

THE government has replaced the Better Regulation Commission – set up to oversee deregulation in a range of areas including health and safety – with a new body that willl have "a fuller and more rounded consideration of public risk".

The establishment of the Risk and Regulation Advisory Council (RRAC) was welcomed by TUC general secretary Brendan Barber. "Effective regulation is the hallmark of any civilised society that protects the weak and vulnerable against the strong and powerful, but it's also important to get the right balance between risk, regulation and liberty," he said.

The Health and Safety Commission (HSC) was similarly positive. "In recent years, 'Elf and Safety' has become a universal excuse for banning many low-risk activities, often in situations where there is actually no regulatory requirement at all," said HSC chair Judith Hackitt. "We have long promoted a common-sense approach to risk, and look forward to working with the RRAC to identify new ways to take this principle further."

INSTITUTE OF OCCUPATIONAL MEDICINE CALLS FOR A RENEWED FOCUS ON PROTECTING WORKERS FROM HAZARDS

HSE 'is neglecting its core mission'

A LEADING research body on occupational health issues has echoed union concerns about the future of the Health and Safety Commission and Executive (HSC/E).

In its submission last month to the House of Commons Work and Pensions Select Committee's inquiry into the operations and work of the HSC/E, the Institute of Occupational Medicine (IOM) claimed that there has been "a serious weakening of the HSE's medical expertise, coupled with a reduction in their resources for enforcement of health and safety law". As a result, it said, the HSE "is less able to provide clear, authoritative guidance, and is less able to carry out effective enforcement".

The IOM expressed concern that the HSE "is under-resourced to meet its core responsibilities", noting that this is a particular worry "in relation to occupational diseases, such as chronic lung diseases caused by dust and chemicals and occupational cancer".

It also questioned "whether the HSE should have a headline target for reducing sickness absence, most of which is not work-related, when there is still much to do within the HSE's core mission of protecting workers from exposure to hazards in the workplace".

The TUC's submission to the inquiry, also last month, argues that the UK has been transformed "from a world leader to a follower" on health and safety. This trend can best be reversed, it says, by improving the HSE's resources and putting "worker involvement and safety representatives at the heart of its work".

Unions hit back to protect front-line employees from violence

Current levels of assault and abuse inflicted on workers by members of the public are shocking, but union action on the issue is already making progress at both legislative and workplace level.

Violence at work is an everyday threat and a frequent reality for workers who come into regular contact with members of the public. Firefighters, teachers, civil servants, postal workers, NHS staff, shopworkers, railway station staff and bus drivers are all subjected to verbal and physical assault by people who are angry at the quality of an often under-funded and overstretched service, or who are simply taking out their frustrations with the problems in their own lives.

For many years unions have run campaigns, negotiated with employers and the government and taken industrial action to reduce the level of violence against workers.

One example is the high-profile "Freedom from fear" campaign launched by shopworkers' union USDAW in 2002. Aimed both at improving workplace safety and promoting respect for shopworkers, the campaign – which involves a variety of activities from workplace to national level – has led to a sharp decrease in the level of attacks in the retail sector. However, the most recent British Crime Survey showed an increase in incidents (see *Workplace Report*, October 2007, page 13), prompting USDAW general secretary John Hannett to call for more "retailers, shopworkers, councils and police to work together to rid our shops and shopping areas of this criminal behaviour".

In a similar initiative, the Community union is currently encouraging its members in betting shops across Scotland to report all incidents of abuse. Last year it persuaded the firm Betfred to retain emergency alarms in its betting shops (see *Workplace Report*, May 2007, page 13), and Labour MP Jim McGovern has recently raised the issue of attacks on betting-shop staff in Parliament and with other major employers in the sector after being approached by the union.

A campaign by the RMT rail union on London Underground has led to the introduction of DNA spit-testing kits, which can be used for prosecutions. The RMT's success led to a similar initiative by the T&G section of the general union Unite in bus companies.

Public services union UNISON and the RCN nursing union were both involved in drawing up the Department of Health's "zero tolerance" policy on violence against NHS staff, and have run campaigns to improve on the policy within individual NHS trusts.

A year ago this month, the CWU communication workers' union persuaded Royal Mail to introduce a "Walk Safe!" policy aimed at reducing violence and assaults on postal delivery staff. The company has agreed to adopt measures including risk assessments of workers' routes, specialist training in sorting offices where serious threats have been identified, the forging of stronger links with the local police in assault "hot spots", and the reporting of threats as well as attacks.

The past year has also seen the GMB general union campaigning to highlight the issue of attacks on workers including traffic wardens and minicab drivers (see page 13).

But while many unions have made progress on tackling violence, there is a long way to go before workers are genuinely safe. This month, for example, the FBU firefighters' union published the results of research by LRD which found that the number of reported assaults on firefighters rose from 1,300 to 1,500 last year – although under-reporting means that the total number of incidents could be much higher. The increase came in spite of the improved legal protection against violence that was recently given to emergency workers following strenuous union campaigns.

Legal protection

All employers in the UK have a legal duty to protect their workers from assaults and abuse; health and safety law applies to risks from violence just as it does to other workplace risks.

The *Health and Safety at Work etc Act 1974* requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees. The working environment should be healthy and safe, and workers' welfare is considered in any work activity. Under the Act, an employer has an obligation to ensure that any potential risk of violence is eliminated or controlled.

To comply with the *Management of Health and Safety at Work Regulations 1999*, an employer must consider the risks (including the risk of reasonably foreseeable violence) facing its staff. It must then decide how significant these risks are and how they can be prevented or controlled, and develop a clear management plan to achieve this.

The *Safety Representatives and Safety Committees Regulations 1977* state that employees must be informed and consulted in good time on matters relating to their health

Anti-violence checklist

UNISON's checklist for safety reps is divided into five sections. The first of these, *Recognising the problem*, asks whether the employer accepts that there is a violence problem and recognises it as a health and safety issue. The employer should be acting on the guidance published by the HSE and the Health and Safety Commission, and consulting safety reps on the application of this guidance.

The next section, *Monitoring the problem*, covers the first steps of a risk assessment. There should be a reporting form specifically for violent incidents, with all employees (including agency workers and part-timers) made aware of it. Staff should be encouraged to report all violent incidents, including verbal abuse and threats.

Once the level and nature of incidents is known, the third stage is *Deciding what to do*. Safety reps should be consulted with a view to finding solutions, as should outside experts such as security consultants, police crime prevention officers and victim support services.

***Preventive measures* are covered in the next section. They should be based on local risk assessments, with consideration given to measures such as increasing the physical security of work premises, employing properly trained and vetted security staff, ensuring that staffing levels are adequate at all times, fitting panic buttons (with a reliable response procedure), providing personal attack alarms, offering sympathetic support to staff who encounter awkward or aggressive clients, and training all staff in procedures for dealing with violence. Where appropriate, policies and procedures should be drawn up covering specific areas such as home visits, lone workers and handling cash.**

Finally, the *Implementing the policy* section checks whether a named senior manager has responsibility for the violence policy. All safety reps should be given a copy of the policy, which should be regularly reviewed and updated in consultation with them.

The checklist is set out in the UNISON publication *Violence at work: a guide to risk prevention*, available at *www.UNISON.org.uk/acrobat/13024.pdf*

Surveying workers

The RMT's questionnaire asked members about their sex, their ethnicity and their job, and whether they had experienced any of the following in relation to their work over the previous year:

- **a major injury requiring medical assistance;**
- **a minor injury requiring first aid;**
- **being threatened with a weapon; and/or**
- **threats or verbal abuse.**

Those answering "yes" were asked about the (worst) incident – had they been working alone, was racial and/or sexual harassment involved, did they take time off as a result of the incident, and did they report it?

Details of the assailant(s) were sought – their sex and whether they were alone or in a group, along with factors that may have provoked the incident (such as a fare dispute, travel delays, alcohol/drugs and/or theft).

Finally, members were asked about managers' attitudes – whether they took staff concerns seriously, had a policy on workplace violence, offered support to victims and encouraged them to report all incidents – and, where appropriate, how the police had dealt with the incident.

The questionnaire is available at *www.rmt.org.uk/shared_asp_files/GFSR.asp?NodeID=100240*

and safety. Safety reps may investigate any violence-related issues, including stress from the fear of violence, that affect the health and safety of employees.

Under the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995*, an employer must notify the relevant enforcing authority of any accident at work – including any act of physical violence – that results in an employee's death, major injury or incapacity for normal work lasting three days or more.

Emergency workers now have added legal protection, however. The first to benefit were in Scotland, where the *Emergency Workers (Scotland) Act 2005* made it a specific offence to assault, obstruct or hinder anyone providing an emergency service or assisting an emergency worker in an emergency situation.

Similar legislation, making it an offence to obstruct or hinder emergency workers such as firefighters and ambulance workers responding to emergency circumstances, came into force in February 2007 in England, Wales and Northern Ireland.

The Scottish Act was widened late last year to include doctors, nurses and midwives, but unions want it to go much further.

"We have long argued that it should cover public-service workers in non-emergency situations," says UNISON Scottish organiser Dave Watson, pointing out that a range of other workers – from social care workers to teachers, utility workers and other NHS staff such as physiotherapists – face a higher risk of violence from the public and clients.

Workplace policies

At workplace level, unions have negotiated important agreements and policies with employers to tackle the issue of violence. A workplace policy should set out:

- a statement of intent;
- a definition of the types of violence covered by the policy – the best policies cover all acts from verbal abuse to physical assault and apply to all types of workers, perhaps using the Health and Safety Executive (HSE) definition of violence as "any incident in which an employee is abused, threatened or assaulted in circumstances relating to their work";
- a summary of the law on violence at work;
- the roles and responsibilities of both managers and employees;
- a list of the prevention, control and management measures that will be adopted to address the issue of violence – this should include risk assessments on attacks, with the involvement of union safety reps;
- the action to be taken when an attack has taken place, including methods of investigation and support that will be offered to the staff involved;
- staff training requirements; and
- measures for monitoring and reviewing the policy, with union involvement.

Additionally, the policy should be cross-referenced with those in related areas such as lone working.

UNISON has produced a checklist to help safety reps assess the violence situation in their workplace and draw up a policy to tackle the issue (see box on page 15). This can be adapted to most workplaces.

Preventing violence

In situations where workers are attacked over inadequacies in the service they are able to provide, an obvious solution is for the employer to tackle the failures of the system through measures such as increasing staff and other resources.

Another approach is to work with clients and problem groups who are responsible for the attacks. LRD's recent research for the FBU found that such work is being carried out by a number of fire authorities under the Local Intervention Fire Education (LIFE) programme, and is proving popular: the one-week LIFE course in Cleveland is booked up for 12 months. Most firefighters interviewed by LRD felt that these schemes were the best long-term way of preventing attacks on crews, with union reps commenting that they provide "positive role models" of firefighters.

Unions have also supported public awareness and education campaigns to highlight the consequences – for both victim and perpetrator – of violence against workers. Hospitals and railway stations now display posters threatening legal action against members of the public who attack staff. And the emergency services in Northern Ireland have used television, radio and vehicle advertising to spread the message "We're the target, you're the victim".

The risk of prosecution may also act as a deterrent to attacks, which is why unions such as USDAW urge employers to prosecute anyone who attacks a worker. "Violent offenders have to get the message that shops have a zero-tolerance policy for violence," says general secretary John Hannett. "Our members can rest assured we will campaign for tougher measures, including the increased use of ASBOs and tougher sentencing, to protect them from thugs."

Protecting workers

The employment of specially trained security staff is another deterrent, and these personnel can also help to control and deal with violence if it occurs. Employers have a duty to implement violence control measures, but increasingly they are turning to technology to achieve this – and among the most common and controversial measures is closed-circuit television (CCTV).

While CCTV is often presented by employers as the panacea for workplace violence, but unions are more sceptical – particularly given its expense and the poor quality of the images, which means that footage is often inadmissible as evidence in a prosecution. LRD's FBU research, for example, found that most reps and firefighters said CCTV blurs the line between public servants and law enforcers – they felt that it eroded trust between themselves and their communities, and turned them into even more of a target.

Where CCTV has been imposed, unions have sought commitments from employers that footage will not be used for disciplining

members rather than tackling violence. Humberside Fire and Rescue Service, for example, has a policy which states: "CCTV will be used in accordance with the requirements of the relevant legislation for the principal purposes of protecting operational employees against attacks or abusive behaviour. CCTV will not be used for covert surveillance and, with the exception of gross negligence or misconduct, may not be used in any conduct and performance proceedings."

Other technological solutions have more support; there are many examples of unions persuading employers to supply panic buttons, personal alarms, mobile phones and other devices for lone or vulnerable workers. PCS members in benefit offices took strike action in 2001-2 to keep security screens, which had prevented members from serious injuries, while bus drivers have supported the installation of similar screens to protect them from assault. And central locking and reinforced glass are now included on many fire appliances to help prevent attacks.

Managing incidents

One area with considerable room for improvement is the management of violence at work. Relatively few employers have effective systems in place to record and catalogue violence at work, making it difficult to determine the true scale of the problem. Unions want simple-to-use recording systems to be adopted, together with management encouragement to report all abuse. In the meantime, unions such as the RMT have successfully used surveys to discover how many workers have experienced violence at work – and how they were treated afterwards (see box, left).

Health and safety guidance from the HSE puts an emphasis on training as a practical means of reducing the risks from any hazard. Violence at work is no exception, and many workers would benefit from being trained in what to do should an assault occur.

Management attitudes are vitally important to the success of efforts to crack down on workplace violence – and in this respect, train operator Nothern Rail set an appalling example at the end of last year by docking the pay of staff who needed time off after being assaulted at work (see box, right).

In contrast, the CWU/Royal Mail "Walk safe!" policy (see page 15) shows a recognition by management of the risks faced by postal workers – for example, in its statement that workers have the right to cease a delivery without fear of disciplinary action if it has become unsafe. (This is in fact a right that applies to all workers – the law states that workers in "serious and imminent danger" can withdraw from situations where their health and safety is being threatened – but Royal Mail's explicit acceptance of it should improve workers' confidence in the policy.)

Workers on the front line delivering public services know how difficult their jobs can be, without the added fear of attack and abuse. Experience shows that continued union campaigning and negotiation is the best way to get the government and employers to take the issue seriously and do something about it.

Rail firm's climbdown

Last October, Northern Rail unilaterally imposed a change to its sick-pay policy, by penalising workers who went on sick leave following an attack unless they had suffered "severe physical injury".

The change did not come to light until a a conductor who had been physically assaulted and threatened with a bottle was told that he would receive only his basic pay rather than average wages, because the latest in a string of attacks on him had not been serious enough.

However, pressure from the union and MPs – 37 of whom signed an Early Day Motion on the matter – forced the company to tell RMT reps last month that it would withdraw the disputed document.

"Our members had made it quite clear that the policy change was unacceptable, and the company has now agreed to withdraw it pending proper talks on the issue," said RMT general secretary Bob Crow. "I hope that we can now move forward with Northern and start to deal effectively with the root of the problem, which is that the men and women who operate Northern's services need better protection from assaults and abuse – and proper support if they become victims."

For more about sick pay for people injured at work, see *Workplace Report*, December 2007, pages 15-17.

Shortened pay scales reduce potential for discrimination

Pay systems based on long service may fall foul of age equality and equal pay laws – so how can workers' earnings reflect increases in experience and competence? *Workplace Report* investigates.

Last month, *Workplace Report* examined the widespread practice of giving long-serving employees more holiday in recognition of their loyalty to their employer. About one-fifth of the current holiday agreements recorded on LRD's Payline database involve enhancements to annual leave for staff with more than five years' service, despite the introduction of anti-ageism legislation in October 2006 – but the phenomenon of linking pay to long service has become much less common in recent years.

Under the *Employment Equality (Age) Regulations 2006*, it is unlawful for an employer to offer any benefit based solely on length of service of more than five years, unless offering the benefit is a "proportionate means of achieving a legitimate aim"; in other words, there must be an objective justification (such as encouraging recruitment and retention) for the benefit.

But while this loophole may be used to justify service-related benefits (including sick pay and retirement payments as well as annual leave – see boxes overleaf), pay structures based on long service have also been challenged on equal pay grounds.

In the same month that the age regulations came into force, the European Court of Justice (ECJ) issued its ruling in an important equal pay case concerning Bernadette Cadman, a member of the technical and professional union Prospect at the Health and Safety Executive. Cadman discovered that four male colleagues in her pay band were being paid £4,000 to £9,000 more than she was; their longer length of service had enabled them to progress further along the salary scale in that band.

Cadman argued that the long pay scale was an example of sex discrimination; because female workers are more likely to take time out to raise a family or take on caring responsibilities, she said, they typically have a shorter length of service than men.

Sick pay

Among 129 current agreements on LRD's Payline database which specify a link between length of service and eligibility for sick pay, only 9% have no apparent link beyond the first year of service. Two-thirds of agreements move staff onto their maximum sick pay entitlement after five years' service, with 15% requiring one to five years before the maximum is reached.

All of these arrangements are free from any hint of discrimination, as the age equality regulations apply only to benefits related to more than five years' service. But 9% of agreements increase entitlement to sick pay over a longer period – up to 25 years in some cases.

In the public sector, the five-year limit is common. Under the NHS's Agenda for Change agreement, staff in their first year of service can take one month's sick leave on full pay followed by two months on half pay. Their entitlement then increases to two months' full pay and two months' half pay in their second year; four months' full pay and four months' half pay in their third year; and five months' full pay and five months' half pay in their fourth and fifth years. Finally, after five years' service, they move on to their maximum of six months on full pay followed by six months on half pay.

The "Green Book" national agreement for local authorities in England and Wales gives new starters the right to one month's sick leave on full pay; after four months' service, this is supplemented by two months on half pay. From their second year of service, their entitlement is identical to that offered in the NHS.

In the private sector, however, technical staff at Rolls-Royce (Bristol) have the right to six months' sick leave on full pay plus six months on half pay, but qualify for 12 months on full pay after 10 years' service. At Akzo Nobel, the entitlement is initially seven weeks on full pay, rising to 11 weeks after two years, 16 weeks after four years, 24 weeks after six years, 32 weeks after eight years and 40 weeks for staff with 10 years' service. And it takes 12 years for employees of GE Aviation Systems Customer Services (formerly Smiths Aerospace, Cheltenham) to move from their initial nine-week entitlement to the maximum of 45 weeks.

A new scheme at bus company First Birkenhead links service to sick leave in a different way: while on sick leave, employees receive Statutory Sick Pay (SSP) in their first five years of service, 75% of their gross pay in years six to eight, 85% of gross pay in years nine to 12 and 90% of gross pay thereafter.

However, concerns about age discrimination may lead employers to remove the link between sick pay and long service. This year Unite is updating its collective agreement for craft workers at food manufacturer Kellogg's, and is holding discussions with the company over its absence management arrangements – including the level of sick pay entitlement based on service. Where employers agree to reduce the length of service required before a maximum level of entitlement is reached, the challenge for unions is to ensure that the employer enables staff to reach the same maximum more quickly rather than simply reducing the maximum entitlement.

The ECJ's ruling failed to deliver the "knockout blow" that Prospect had hoped for, although it did offer some encouragement to unions seeking to reduce the length of pay scales within individual grades or bands. The court held that employers do *not* generally have to justify the length of their pay scales; long service goes "hand in hand" with experience, it said, which improves the quality of employees' work. However, it added that this general rule can be challenged, if "serious doubts" can be raised that the operation of such long scales genuinely enables workers to perform their duties better.

Pay and long service

By highlighting the issue of service-related pay and raising the possibility that employers will have to justify their long pay scales in an employment tribunal, the Cadman case has had an effect. Incremental pay scales with regular progression (subject to performance in some cases) are still widely used, but employers seem to be heeding union calls for the length of these scales to be reduced.

Guidance on equal pay issues from civil service union PCS points out that, as well as tending to disadvantage women, long pay scales create differences in pay between people who may be doing exactly the same work to the same level of competence. The union aims to set a standard of five years' progression time from the minimum to the maximum on the scale, with regular and automatic progression through the scale points (see box, above right), although it accepts that the length of the scale may vary slightly depending on the nature of the work being carried out.

A number of recent and forthcoming pay settlements in the private and public sectors have reduced the length of pay scales (but not always as far as the five-year optimum recommended by PCS). At First Bristol – one of many bus firms operating a system of incremental pay for drivers – the basic weekly wage ranges from the £216.08 training rate to £328.19, paid to those with at least six years' service. But as of the end of next month, drivers will move on to the top band after five years' service – and the service requirement will be reduced again to four years from 30 March 2009.

The new three-year agreement at First Huddersfield, meanwhile, has reduced the time needed to progress between the company's three pay rates: with effect from 2 December last year, it takes three years for drivers to move from the lowest rate (£7.00 per hour) to the middle rate (£8.11), and then a further two years to reach the top rate (£9.59). This represents a reduction of six months in each step.

The First Portsmouth bus firm does not use pay scales, but it does have one pay rate for its minibus drivers and a separate, higher rate for "big bus" drivers; at present, minibus drivers move onto the big bus rate after 12 years' service. But the third stage of the company's current four-year pay agreement on 1 April will see this service requirement reduced to just four years, while also increasing the minibus hourly rate by 10p more than the big bus rate – and the final stage in April 2009 will see the two rates converge.

In the public sector, where incremental pay scales are far more common, the most junior (Level 3) secretarial staff in the postal/administrative division of Royal Mail saw the length of their pay scale reduced from seven to five points in October 2006.

The Engineering and Physical Sciences Research Council moved to a five-band pay structure last April, with increased pay minima and shorter scales for the lowest-paid employees. Staff were assimilated to the new scales by moving to the nearest higher point against their present salary, or to the pay minimum for their new band if their previous salary was below this level.

Under a two-year pay settlement at the UK Hydrographic Office, the time taken for staff in the bottom two grades to progress through their pay bands was cut from six years to three and five years respectively in August 2005. Progression times for the middle and top grades stayed at nine and eight years respectively, but in the second stage a year later they were both reduced to seven years.

August 2006 also saw the shortening of pay scales at the Scottish Parliament, and a pay restructuring exercise at the National Museums of Scotland; this involved the retention of the existing 10-band pay structure but with a "more condensed bandwidth" of pay within each band. Times for progression through the pay scale were reduced to four years for employees in junior grades, six years in the middle grades and eight years for the most senior staff.

In the same month, the Government Offices for the English Regions reduced the length of their pay scales by one year for all staff. This moved those in the lowest two (administrative) grades onto five-point scales, although all other grades still have eight steps between their pay minima and maxima.

An ongoing process of shortening pay bands at the Department for Culture, Media and Sport continued in August 2006 with the division of each of the organisation's five pay bands into three narrow "zones".

Pressure exerted by Prospect and PCS to move onto shorter pay scales has had a considerable impact across the civil service.

Similar arguments have been advanced in recent years within local government, in an attempt to reduce the length of councils' pay scales against the backdrop of new pay structures required under the national "single status agreement". But the results have been mixed – an LRD survey of the first councils to adopt new pay structures found that about a third had pay bands of more than six pay points per grade (see *Workplace Report*, July 2005, pages 17-19).

One-off payments

While the length of pay scales is decreasing, many employers are continuing to offer monetary rewards to their long-standing employees – not in the form of a consolidated pay rise but as a one-off payment. PCS advises that such payments should "reward seniority and experience, not staying power", but long-service awards – in the form of cash or vouchers – remain relatively common.

The recently revised staff agreement at pharmaceutical company Sanofi-Aventis (Dagenham), for example, awards employees £250 once they have achieved 10 years' continuous service; they also get £500 after 15 years, £750 after 20 years, £1,000 after 25 years, £1,250 after 30 years, £1,500 after 35 years and £650 plus £1,000 in travel vouchers if they achieve 40 years' service. This arrangement was negotiated by reps from the general union Unite, who said it was "requested by employees as a desired benefit that motivates staff and encourages retention".

Battery manufacturer Chloride Motive Power provides a £200 cash bonus to staff once their length of service has reached 10 years, and again every five years thereafter. (They also receive one extra day's holiday on completing 20 years' service). And Petroleum firm Ineos Manufacturing Scotland provides a £500 gift and a company dinner for employees with 25 years' service.

Vouchers rather than cash are provided by some employers. Insurance firm Atradius's award for 25 years' service is £1,250 in vouchers. And American-owned vehicle manufacturer Terex runs a voucher scheme providing the equivalent of $100 after five years' service, $250 after 10 years and $500 after 15 years; the vouchers are converted to pounds sterling and issued in "Love2Shop" vouchers which can be spent at a variety of chain stores. The scheme was introduced in the summer of 2006, suggesting that Terex does not consider it to be open to accusations of discrimination.

Under an agreement between Fox's Biscuits and the BFAWU bakery workers' union, long-service awards take the form of points which can be redeemed under the Northern Food catalogue system, with no liability for income tax falling on the employee. Staff with 20 years' service receive 3,000 points and an additional day's leave (for that year only). Those reaching their 30- and 40-year milestones receive 4,500 and 6,000 points respectively.

And vouchers redeemable at department store John Lewis are awarded at ExxonMobil Chemicals, to the value of £250 after 10 years' service, £600 after 20 years, £750 after 30 years and £900 after 40 years.

Rather than offering cash or vouchers to be spent elsewhere, other employers give their long-serving employees a choice of gifts which the company supplies itself. White-goods manufacturer Indesit offers its staff a gift to the value of one week's wages, to be chosen from its own catalogue, on completion of 25 years' service. Birds Eye Frozen Foods also offers gifts to a certain value after 15 and 40 years' service, and a month's tax-free salary after 25 years. And catalogue awards at Perkins Engines are worth £50, £75, £250 and £450 after 10, 15, 25 and 40 years respectively; staff also get a day's extra leave in their 20th, 30th and 40th years of service.

Staff at chemicals manufacturer MacDermid receive a gift after every five years of service, with their spouse or partner also receiving a gift after 15 years or more. Team leaders at insurers Diligenta, meanwhile, can authorise expenses of up to £300 to celebrate employees' reaching each five-year milestone; this can be spent on a non-work event such as a meal or a team golf day.

Long-service pay awards can also be found in the public sector. Staff who complete 25 years' continuous service at the London Borough of Ealing, for example, are eligible for a £580 payment. This arrangement is notable for defining "continuous" as including periods of service separated by up to eight years' absence for maternity reasons.

Negotiated alternatives

Clearly service-linked benefits remain entrenched in the UK labour market, but they are not immune from change. Engineering firm Bifrangi UK (Sheffield) recently introduced a new retirement package in place of its system of long-service awards, and last year the Fire Service phased out a scheme that increased firefighters' pay by around £990 a year once they had 15 years' service.

In its place, the FBU firefighters' union negotiated a system of payments to recognise and reward experienced staff who can demonstrate continual professional development (CPD) over and above that required for "competent" firefighters. Eligibility for the payments (worth between £199 and £915, depending on the fire authority) is based on national standards in professional competence, commitment to the job, relations with the public and colleagues, and willingness to learn and adjust to new circumstances.

These examples demonstrate that unions do now have the ability to review even well-established benefits based on length of service, if they wish to do so.

Automatic progression

While automatic progression through a pay scale may be considered discriminatory on age grounds (since younger workers are likely to be at a lower point on the scale than their older colleagues), PCS considers it to be preferable to a discretionary approach. "The more discretion that is involved, the higher the risk of discrimination," the union argues.

In general, PCS says, progression should be automatic all the way to the maximum point on the scale for a particular grade (reached within five years), which should be "the rate for the job" – the salary for a fully competent worker in that role. While accepting that it may sometimes be appropriate for a grade's pay scale to have automatic promotion up to a certain point and then discretionary progression beyond it, the union stresses that the discretionary criteria should be gender-neutral, understood by all workers and monitored to ensure that equal proportions of both sexes progress.

Other benefits

At Runnymede Borough Council, which has opted out of the national agreement for local authorities in England and Wales, a retirement grant is payable to employees with 25 years' unbroken service. To qualify for this lump sum (which varies in size according to the number of years worked), staff must be entitled to receive immediate local government pension benefits through normal retirement or retirement on grounds of ill health, redundancy or efficiency. Additionally, employees with at least 10 years' consecutive service may have their pay enhanced by up to 10% in their final year of service, at the discretion of management.

In contrast, unions at Bifrangi UK have negotiated to replace long-service awards (along with a pre-retirement agreement that applied at one of the company's sites but not the other) with an arrangement to award 75 days' pay to all employees reaching retirement age, irrespective of their length of service.

At the London Borough of Ealing, employees with two years' continuous service in a post requiring them to occupy accommodation (for the better performance of their duties as a service tenant) are guaranteed up to two offers of alternative accommodation if they leave their post under certain circumstances.

And staff with 10 years' service at Air Products (Acrefair) get free entitlement to BUPA health insurance in addition to service-related holiday.

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