

# WORKPLACE report

No.127  
September 2014

## Maternity and paternity

Our survey highlights the best collective agreements

## Homeworking

Basics and benefits of a homeworking policy

## Law at work

Discrimination — the latest cases

### Health and safety

Workers with mental health problems need more support

### Bargaining news

Number of Living Wage employers set to grow in UNISON deal

### Equality

Unions target under-represented groups in equality drive

### Learning and training

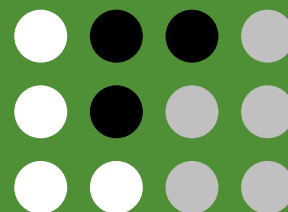
High praise for TUC's skills and education arm Unionlearn

### Recruitment and organisation

TUC presses government over union check-off

### Europe

French bank pens deal over equality



The Labour Research  
Department monthly  
for union reps and  
negotiators

# Pay and cost of living at 2.4%

COLLECTIVELY agreed pay settlements kept pace with the rise in the cost of living in August, but official earnings figures continue to make grim reading.

In August, the 2.4% three-month median (midpoint figure) derived from the Labour Research Department's Payline database of collective agreements matched the annual rate of inflation as measured by the Retail Prices Index (RPI). However, the median figure was down on the 2.5% rise for July and the previous six months.

In the private sector, the median maintained its rise of 2.5% for the seventh consecutive month.

In the public sector, the rise was up to 2.0% in August against 1.0% the previous month, but that still means settlements are not matching the rise in RPI inflation.

The average weekly earnings figures from the Office for National Statistics have been revised back to 2000 when the series started. However, there was no good news in the latest data for July as the growth figure for the whole economy edged up to just 0.7% from 0.6%.

In the private sector, the annual increase for July was 0.8% against a 1.3% rise for June. For the public sector, there was a 0.5% rise against a 2.3% decrease the previous month. If financial services are excluded, the rise for the public sector was up to 1.1% from 0.6%.

Growth in manufacturing headed in the wrong direction as the rise in July was 1.8% against 2.2% the previous month. The service sector lagged well behind manufacturing and posted an increase of just 0.3% in July against 0.4% increase in June.

## Labour Research Department three-monthly pay figures

Percentage increases on lowest basic rates (by agreements covered)

For the three months up to and including:

	2013				2014								This pay round,	
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Aug	
All agreements	2.0	2.0	2.2	2.4	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.4	2.2	
Private sector	2.5	2.3	2.4	2.3	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.3	
Public sector	1.0	1.0	1.0	4.0	3.1	3.1	2.8	1.6	1.3	1.6	1.0	2.0	2.0	
Manual	2.4	2.3	2.5	2.4	2.6	2.5	2.6	2.5	2.5	2.5	2.5	2.5	2.4	
Non-manual	1.9	2.0	2.0	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.3	2.1	
All industries	2.5	2.5	2.5	2.5	2.6	2.5	2.6	2.5	2.5	2.5	2.5	2.5	2.5	
All services	1.7	2.0	2.0	2.3	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.2	2.2	

For the 12 months up to and including:

	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug
By agreements	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
By workers covered	1.5	1.6	1.6	1.6	1.8	1.8	1.8	2.0	2.0	2.1	2.1	2.3

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

## Full-time weekly average earnings

All workers	£607.90
All male	£663.10
All female	£522.20
Managers	£948.20
Professionals	£770.00
Associate professional	£653.90
Admin & secretarial	£436.30
Skilled/craft	£508.70
Services	£357.60
Sales	£363.70
Operatives	£464.10
Other manual	£357.20

Source: ASHE 2013 updated by AWE.

## Other pay analysts

XpertHR (median, three months to end August 2014)	2.0%
Incomes Data Services (median, three months to end July 2014)	2.5%

## Average weekly earnings (AWE)

Total pay including bonuses. Percentage annual increases

Month	Whole economy	Private sector	Public sector	Manufacturing	Services
May 2013 (r)	1.8	1.9	1.3	1.7	1.8
June (r)	1.0	1.1	0.1	2.6	0.9
July (r)	0.8	1.1	0.3	2.1	0.8
August (r)	0.6	1.1	-1.3	1.6	0.3
September (r)	0.9	1.2	0.1	1.8	0.8
October (r)	1.1	1.4	0.2	2.1	1.0
November (r)	0.7	1.0	0.1	2.7	0.6
December (r)	1.7	2.0	0.2	2.9	1.4
January 2014 (r)	1.6	2.0	0.8	3.8	1.2
February (r)	1.9	2.0	1.3	2.9	1.9
March (r)	2.1	2.4	1.4	2.5	2.0
April (r)	-1.4	-1.9	0.5	0.8	-1.6
May (r)	0.4	0.7	0.1	2.0	0.3
June (r)	0.6	1.3	-2.3	2.2	0.4
July (p)	0.7	0.8	0.5	1.8	0.3
Headline rate <sup>1</sup>	0.6	0.9	-0.6	2.0	0.3

<sup>1</sup> The latest three-month average. Source: Office for National Statistics, (r) revised, (p) provisional.

Average of average earnings forecasts for 2014 is 1.4% (HM Treasury).

Prices	Retail prices index (RPI), Jan '87=100	% annual increases		Retail prices index (RPI), Jan '87=100	% annual increases		
		RPI	RPI excl. mortgages		RPI	RPI excl. mortgages	
July 2013	249.7	3.1	3.2	February	254.2	2.7	2.7
August	251.0	3.3	3.3	March	254.8	2.5	2.5
September	251.9	3.2	3.2	April	255.7	2.5	2.6
October	251.9	2.6	2.7	May	255.9	2.4	2.5
November	252.1	2.6	2.7	June	256.3	2.6	2.7
December	253.4	2.7	2.8	July	256.0	2.5	2.6
January 2014	252.6	2.8	2.8	August	257.0	2.4	2.5

## Inflation forecasts

Fourth quarter 2014

	RPI	RPI excluding mortgages
Average	2.5%	2.6%
NIESR	2.6%	2.4%
Oxford Economics	2.6%	2.4%
ITEM Club	2.5%	2.4%

Source: HM Treasury, *Forecasts for the UK economy*, September 2014.

## WORKPLACE report

**PAY AND PRICES** 2

**BARGAINING** 3-5

London bus workers take industrial action over erosion of pay and conditions  
Local government workers ponder strike action over measly pay offer  
BBC staff pen deal

**EQUALITY** 6

TUC on domestic violence and workplace

**LEARNING AND TRAINING** 7

Unionlearn's 'ouststanding results'

**RECRUITMENT AND ORGANISATION** 7

TUC pamphlet outlines pluses of unions

**EUROPE** 8

On the autobahn to better terms and conditions at Autogrill

**LAW AT WORK** 9-12

The latest case law concerning the various types of discrimination

**HEALTH AND SAFETY** 13-14

UCATT warns over working in sun  
Charging scheme backed by review

**Parental leave and pay** 15-17

Rights for parents are set to change next year. *Workplace Report* sets out the changes and looks at the top deals on maternity and paternity leave and pay presently available.

**Homeworking** 18-19

Flexible working has boosted numbers working from home. *Workplace Report* has the answers to what makes a good homeworking policy.

### IN OCTOBER'S *Workplace Report*:

- A full analysis of settlements in the 2013-14 pay round, with more detail available online

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

## LIVING WAGE

# UNISON in landmark deal with National Society

OVER 800 EMPLOYERS have become accredited Living Wage employers and the number is set to grow further.

UNISON and the National Society (which promotes and resources Church of England schools) have reached a landmark agreement which paves the way for all Church of England schools to gain Living Wage accreditation. The current Living Wage rates of £8.80 an hour in London and £7.65 elsewhere will be updated on 3 November.

Dr John Sentamu, the archbishop of York and chair of the Living Wage Commission, said: "Church of England schools were set up more than 200 years ago to serve the poor and marginalised and they have always been committed to treating staff and pupils fairly. This new agreement with UNISON will reward schools with Living Wage accreditation for their commitment to treating staff fairly."

Dave Prentis, general secretary of UNISON, was "delighted" the union will be working closely with the National Society.

"Times are tough and low paid workers are struggling under the burden of rising prices for basics like food and fuel. Schools are under a lot of pressure and that is why UNISON wants to make it easier for them to win Living Wage accreditation by producing a step-by-step guide. Having that accreditation sends out a strong

message that this school is one that takes its responsibilities to its staff and the wider community seriously," he said.

As accredited employers, the National Society will be committed not only to paying Living Wage rates to their own directly-employed staff now and in the future, but to extending it to the staff of contractors that work for them on a regular basis. The move stems from a decision in 2012 by the General Synod (which makes laws for the church) to strongly encourage all Church of England institutions to pay at least the Living Wage.

Nearly 4,700 church schools now have a new step-by-step implementation plan produced by the union, covering both directly employed and contracted out staff to help them win Living Wage accreditation (see box). Around a dozen Church of England, Catholic or other schools are already on the Living Wage Foundation's accredited employers' list.

Nigel Genders, chief education officer at the National Society, said: "I'm delighted that we are able to recommend the step-by-step implementation plan to help schools win Living Wage accreditation. In signing up to this commitment, schools are taking a clear stand against poverty, and setting a very public example for their pupils about how people should be treated."

### UNISON's plan for putting Living Wage in place

The first stage set out in UNISON's implementation plan is for schools to take steps to ensure that no directly employed members of staff are paid less than the Living Wage. If schools are part of a wider academy chain or trust then any agreement to implement the Living Wage must cover all schools in the chain or trust, the union warns, as failure to do so may render the chain or trust liable for equal pay claims.

Schools are advised to assemble a small team of key people who are able to practically implement the Living Wage. It should include representatives from the diocese, UNISON, the chaplain, HR, finance and also the member of staff responsible for dealing with contractors.

Following a review, and increases in the minimum rate of pay for directly employed staff below the Living Wage, schools will need to consider the impact on pay differentials at the bottom of the pay structure: "The most obvious example might be the closing of the pay gap between catering assistants and catering supervisors or catering staff and some admin staff. Schools will need to decide locally what approach to take to deal with the issue of diminished pay differentials at the bottom of the scale."

Once the governing body or academy trust has agreed the implementation plan, the school or trust should then apply to the Living Wage Foundation for accreditation and consult the wider support staff workforce on the plan for implementing the Living Wage.

Stage 2 of the implementation plan then provides for a direct approach to all contractors (such as caterers and cleaners) providing services for the school. In this stage of the implementation plan there should be a specific commitment to ensuring that the Living Wage is embedded in commercial contracts; an exact timetable to be agreed following negotiations with existing contractors; and agreement that in future all new contracts will be issued on the basis that the Living Wage will be the minimum pay point.

## NEWS IN BRIEF

**Disciplined action**

ASLEF drivers at Arriva Trains Wales voted overwhelmingly this month for strike action over the company's continued failure to resolve matters relating to application of disciplinary procedure. The vote in favour of action was 86% on a turnout of 72%. Drivers withdrew their labour for turns starting between 00.01am and 11.59pm on 26 September.

**That's the ticket**

TRAFFIC WARDENS in the London Borough of Ealing, employed by the support services group NSL, have won a 2% pay rise, followed by a further 1.5% in 2015.

The deal for the 50 civil enforcement officers, represented by the Unite general, was accepted at a mass meeting on the eve of strike action planned for 11 September. The company had previously offered 1.5% for 2014-15.

**Living Wage oasis**

OASIS Community Learning Trust is to apply for accreditation as a Living Wage employer in an agreement reached with UNISON (see also page 3). The trust runs a chain of 43 Academy Schools across England and, as an accredited employer, will expect outsourced contractors to apply the same approach.

**Minimum wage pledge**

TUC GENERAL SECRETARY Frances O'Grady welcomed Ed Miliband's pledge at the Labour Party's annual conference to raise the National Minimum Wage to £8.00 an hour over the course of the next five-year parliament.

"The predictable scaremongering from business about the impact of a rising minimum wage on jobs should be ignored," she said.

"They said the same in the 1990s before the minimum wage was introduced. They were wrong then and they are wrong again now. After years of falling real pay we need a range of policies to ensure fairer pay from board level to the shop floor."

## TRANSPORT

# Pay and jobs the focus of bus and train staff

PAY AND JOBS are on the transport agenda as London bus workers demand sector-wide negotiations and councillors in Liverpool back a union demand to save conductors on train services in the North West.

Drivers in London's privately-owned bus companies demonstrated against the erosion of their pay and conditions on 10 September and called for a reinstatement of collective bargaining for all bus drivers across the capital. Unite's 25,000 bus driver membership is spread across more than a dozen companies who hold preferred bidder status with Transport For London (TfL) to run the familiar red buses or other services.

The union hopes that sector-wide negotiations involving companies like London United, Sovereign Buses, Abellio, Tower Transit and Hackney Community Transport would close a disparity of up to 25% in pay and terms and conditions. Some drivers

can be paid as little as £17,000, the union says, depending on which company they work for.

London bus companies are required to compete to win routes put out to tender by TfL, but an explosion in competition has led to an unprecedented squeeze as individual bus companies choose to "bid low".

Unite general secretary Len McCluskey said: "Only a forum that brings employers and the workers to the table, through their union ... will bring continued improvements to terms and conditions."

The role of train conductors is at risk in the north west as government franchising exercises for Northern Rail and TransPennine Express services expect bidders to show how they will remove the safety critical role of the guard from their services, introducing driver-only operation. The RMT rail union is campaigning to defeat moves that would see guards axed,

ticket offices closed, stations de-staffed, rail services cut and fares increased on the Northern and TPE franchises. It has welcomed the backing of Liverpool City Council in a cross-party motion adopted on 17 September, which expressed concern that the government is requiring bidders for the franchises to introduce driver-only operation, and committed the council to working to retain guards and their full safety role.

The council says that conductors provide an invaluable service to passengers with mobility issues, dealing with anti-social behaviour and reacting to safety and operational incidents, as well as revenue protection duties and providing travel information.

Liverpool is a key player in the Rail North partnership and the union sees its approach as a model for local authorities across the north of England.

## MEDIA SETTLEMENTS

# Threat of industrial action brings deal for BBC staff

UNION MEMBERS at the BBC have voted to accept a revised pay offer of £800 for those earning below £50,000 and £650 for those earning above.

The BBC pay award, which was concluded following a threat of industrial action by BECTU, NUJ and Unite members during the Commonwealth Games, is in stages. For those earning below £50,000, £650 was payable on 1 August 2015. For those earning above £50,000 it's £500 on 1 August and a further £150 on 1 January 2015. The deal included a 2.7% increase on the floors and ceilings of grades and all allowances,

thresholds which have been eroded in previous years.

The management also made concessions on a range of pay anomalies and grading issues and proposed a pay increase for 2015 of 2.5%, with the same rate applied on all grade thresholds and all allowances. Director-general Tony Hall agreed to talks to address the pay inequities that exist in the BBC World Service and BBC Monitoring, which is part of the World Service.

Elsewhere in the sector, staff at award-winning Red Bee Media (RBM) are to receive a 2% pay rise for a seven-month period. The deal reflects

the recent acquisition of the company by Ericsson, which aims to incorporate RBM staff into its company-wide pay policy.

BECTU national official Noel McClean said: "Two per cent for such a short period stands up well compared to other settlements." The deal applies to bank holiday, night shift and day conditions allowances.

The union was unable to secure an across-the-board increase for members in the creative division, but says it will revisit issues affecting these staff in 2015. Workers in the division rely on a performance-related pay system for pay rises.

## PUBLIC SECTOR

# Strike action looms over pay in councils and NHS

TEN DAYS on from the historic referendum on Scottish independence, UNISON Scotland will know whether its local government members have voted to take strike action over their 2014 settlement.

If they do, it increases the prospect of strikes north and south of the border over public sector pay, in the run up to the TUC's Britain Needs a Pay Rise protests on 18 October.

UNISON did not join accept the last two-year local government settlement for Scotland (1% for 2013-14 and 2014-15) and lodged a claim this year for £1 an hour for all staff, consolidation of the Living Wage and the deletion of spinal column points below the level of the Living Wage.

Members have already voted by a majority of 65% for an industrial action ballot to be held and UNISON is recommending a yes vote for ac-

tion, while acknowledging that it will be a difficult dispute to win.

UNISON's local government members in England, Wales and Northern Ireland are already on course for a second national pay strike on 14 October, alongside Unite and the GMB, following the 10 July strike.

A separate ballot is being held for its academy school support staff members under the NJC local government agreement. The unions point out that when on 1 October the national minimum wage increases, that will make local government officially a minimum wage employer.

A parallel pay dispute is developing in the NHS, fuelled by government instructions to the NHS Pay Review Body not to make a report on pay for 2015-16: it has been asked to report on delivering health care

services every day of the week without increasing expenditure.

UNISON's NHS members in England have already voted strongly for strike action and action short of a strike over the government's refusal to pay the recommended 1% pay rise for 2014 and members in Wales are now being balloted too.

Unite is balloting members working in the NHS in England, Wales and Northern Ireland for industrial action over 0-1% pay "in-sults" and a UK-wide ballot by the Society of Radiographers (SoR) is also being held.

SoR chief executive officer Richard Evans said: "The fact that other unions, such as the Royal College of Midwives, are balloting members for the first time in history, shows the strength of feeling that surrounds the government's attacks on pay."

## BONUSES

## Increase overtakes wages growth

A TOTAL of £40.5 billion was paid in bonuses in the year to April 2014 – a 4.9% rise on the previous year. That compares with median pay settlements trending at 2.5% or less and average weekly earnings growing even more slowly.

Payments are not spread evenly through the economy. In cash terms, £14.4 billion was paid in the finance and insurance industry, where bonuses contributed nearly one quarter of total pay, up by 2.9% over the year.

Based on this information, collected from employers and published as part of the average weekly earnings statistics, the Office for National Statistics (ONS) calculates that the average employee gets around £1,500. However, in reality, many will have got much more than that, while others will have got little or no bonus. The average bonus per employee in the finance and insurance industry was £13,300.

The statistics highlight differences between the public and private sectors. The "average" private sector employee received just over £1,800 in bonuses, approximately seven times higher than the average public sector worker's bonus of just below £300. And if the nationalised banks are removed from the public sector, the average public sector worker's bonus falls to just £100.

ONS points out that private sector workers are on average in receipt of lower regular pay than people working in the public sector, and bonuses are a more significant part of total pay in the private sector. Even so the contrast between the two broad sectors, and in particular between the finance sector and the rest of the economy, are marked.

## OUTSOURCING

# Cost savings are hitting contracted-out staff

EVIDENCE that contracted-out workers would benefit from protections like the Living Wage and the two-tier workforce code of practice emerges from a new report

The report, *Outsourcing the cuts*, by the independent think tank, the Smith Institute and commissioned by public services union UNISON, features five organisations where making cost savings in response to public spending cuts was the key objective of the outsourcing.

For the workforce the effects range from a straight 40% cut in take-home pay without any corresponding change of duties to more complex infrastructure and process efficiency improvements resulting in savings in labour costs. In between

were instances of work intensification, job insecurity and low or non-existent pay increases.

The report finds that the two-tier workforce appears to be returning following the withdrawal in 2010 of the Code of Practice on Workforce Matters in Public Sector Service Contracts and changes to the law on TUPE (see *Workplace Report*, June 2014).

An exception cited by the report was a school catering contract in Newport, Wales, where the code of practice is still in force, illustrating how contractors can adapt to a more level playing field. But the widespread practice of fragmenting contracts makes it difficult to establish which employees were previ-

ously assigned to a particular service.

The report also highlights the importance of commitments to paying the Living Wage to staff working for contractors. The absence of any such commitment has, for example, led to a 15% differential between the lowest-paid employees of Newport council and contracted-out school meals staff for who the minimum wage is the benchmark rate.

The successive retendering of contracts and reconfigurations of services have produced a "staggering array" of different terms and conditions and a decrease in pay transparency making it more difficult for trade unions to monitor equal pay issues.



## Gender pay scheme flops

A GOVERNMENT initiative to encourage companies to report on the gender pay gap among their staff and actions to address failings, has fallen flat with only four companies disclosing their pay gap.

The “Think, Act, Report” scheme was launched with great fanfare in 2011, with over 200 companies pledging support. However, three years on, the government has revealed in response to a parliamentary question from Labour’s shadow women and equalities minister Gloria De Piero that only four companies have published details of their gender pay gap.

Only two firms — Friends Life and Genesis Housing — provided detailed pay gap information broken down by grade; the other two — Tesco and AstraZeneca — only provided general figures on the pay gap.

According to De Piero, the scheme had “flopped” because it had “been given no priority” by a government which only paid “lip service” to equal pay.

## First job guide

NEW GUIDANCE for young workers and others starting their first job to help them understand their employment rights has been launched by the Acas employment relations service.

The guidance includes advice on preparing for the first day of work, and questions that starters should ask of their employer.

A brief outline of employment rights is provided, including an explanation of employment contracts, rights under the working time regulations and National Minimum Wage entitlements. Issues such as discrimination, harassment and bullying are also covered, with links to more in-depth advice.

Acas research has found that young workers — aged 16-24 — are more likely to face problems at work but less likely to take actions to resolve them.

The guidance can be downloaded at: [www.acas.org.uk/firstjob](http://www.acas.org.uk/firstjob)

# LGBT staff and young workers to be targeted by unions

UNIONS are stepping up campaigns to encourage under-represented groups into active membership, the 2014 TUC Equality Audit shows.

As with all previous audits — there have now been seven in total — the latest was undertaken for the TUC by Labour Research Department. It was based on completed questionnaires by 36 unions — two-thirds of TUC affiliates — and covers over 5.6 million members or 95% of TUC-affiliated union members.

According to the TUC, data in the audit illustrates the steps being made by unions to target young workers and LGBT workers in particular. Half of all TUC-affiliated unions are now running targeted recruitment campaigns aimed at LGBT workers.

The audit shows that women are over-represented among union membership — representing a higher share of membership than they do among UK employees. Disabled

workers and black workers are also over-represented in this way, while Asians and other ethnic minorities are under-represented.

The high number of women union members is not, however, fully reflected in union branch and workplace organisation. Women are well represented — and sometimes over-represented — in union learning rep and equality rep roles, but they are under-represented among shop stewards, branch officers and union conference delegates. A similar pattern was observed among black and minority ethnic members.

The data suggests that both disabled and LGBT workers are over-represented in all union positions. However, this apparent over-representation compared to overall membership levels may relate to the fact that people in union positions are comfortable in openly declaring their status.

Young workers are under-represented in union membership and in local branch and workplace roles. Nevertheless, unions are recognising the challenges presented by an ageing membership, and most are specifically targeting recruitment and organisation of young workers.

TUC general secretary Frances O’Grady said that, while there was “more to do in improving the representation of women, young workers and black and Asian employees at senior levels”, the audit showed that unions are “making welcome progress in ensuring that they better reflect the members they represent”.

But O’Grady called on employers to play their part and “recognise and properly support” equality reps. Many still struggle to get the same recognition and rights as other reps.

A copy of the audit is available at: [www.tuc.org.uk/equality-issues/equality-audit](http://www.tuc.org.uk/equality-issues/equality-audit)

# Need for employers to help victims when at work

THE FAR-REACHING consequences of domestic violence and its impact on the workplace have been highlighted by the TUC.

The report, *Domestic violence and the workplace*, draws from the findings of a TUC survey of over 3,000 people, over 40% of whom had experienced domestic violence.

More than one in 10 reported that the violence had continued in the workplace, mainly through abusive emails or phone calls. But in nearly half of these cases this involved the partner turning up at the workplace. One in six respondents who had experienced domestic violence reported that their abuser was employed in the same workplace.

Of those who had experienced domestic violence, over 40% experienced difficulty in getting to work, while 80% said it adversely affected their performance at work.

Examples of support that employers could give to those experiencing abuse are given in the report. These include time off work, moving the abused worker to a safer place at work, changing work phone numbers and email addresses and providing transport between work and home.

However, two-thirds of those who had experienced abuse said that none of these forms of help were offered by employers.

The report notes that in cases where a manager is unaware of or

unsympathetic to the reasons for persistent lateness, unexplained absences or poor performance, abuse victims can find themselves being disciplined or even dismissed. Yet, the survey shows that most victims do not disclose it to anyone at work.

The report stresses the need for the promotion of workplace environments which encourage disclosure, with union reps playing an important role in supporting victims in discussions with managers.

Moreover, workplace training and policies need to recognise the impact of domestic violence on work performance and ensure those experiencing it are treated sensitively.

# Cuts threaten TUC's impressive work

THE POSITIVE role that the TUC's Unionlearn plays in supporting unions and union learning reps to help workers to improve their literacy and numeracy skills is highlighted in a new report from the cross-party, House of Commons business, innovation and skills select committee.

The committee's report, *Adult literacy and numeracy*, found that Unionlearn had "achieved outstanding results at a fraction of the cost of full-time formal education" and criticised the recently announced government cut of £2.5 million from Unionlearn's budget.

The committee said it was "concerned that funding has been cut to adult learning schemes, including Unionlearn [as] such short-sighted financial savings risk the imposition of long-term costs, as such cuts will

make it harder for adults with limited literacy and numeracy skills to gain employment and to help their own children".

The report said that the move "sends out the wrong signal about the government's commitment to adult learning. At a cost of under £100 per learner, and bringing in an extra £4 to £6 additional employer funding for every £1 of government funding, Unionlearn is a cost-effective way of reaching large numbers of learners with the most acute English and maths needs. This is an area of high impact, which offers value for money, so we urge the government to reverse its decision to cut Unionlearn's funding."

It highlighted the fact that the cut was going ahead even though "the minister himself acknowledged the

impressive work that the organisation does in adult skills training". Minister for skills and enterprise Matthew Hancock had informed the committee that he worked closely with Unionlearn because it was able to reach people who cannot be reached as easily in other ways.

TUC general secretary Frances O'Grady said: "We need a skilled workforce for a sustainable recovery and a strong economy with more living wage jobs and living standards rising again. We are keen to continue bringing these benefits to as many workers as possible, especially those who are not reached by traditional learning routes."

Taking into account the results of a recent OECD survey of 24 countries which ranked England and Northern Ireland 22nd for literacy

and 21st for numeracy, the select committee also called for a more "joined-up" government approach to tackling the problem, with improved funding arrangements and better assessment and support of the literacy and numeracy needs of unemployed people.

It found that adults struggling with English and maths were not getting the help and support they needed and were not aware of the support available. It recommended that the government launch a campaign to tackle the problem.

The report is available at: [www.publications.parliament.uk/pa/cm201415/cmselect/cmbsis/557/557.pdf](http://www.publications.parliament.uk/pa/cm201415/cmselect/cmbsis/557/557.pdf)

The TUC's submission is available at: [www.unionlearn.org.uk/publications/unionlearn-briefing-bis-adult-literacy-and-numeracy-report](http://www.unionlearn.org.uk/publications/unionlearn-briefing-bis-adult-literacy-and-numeracy-report)

## NEWS\_ RECRUITMENT AND ORGANISATION

### CHECK-OFF

# Fight to keep subs facility

THE TUC is to press government departments to continue to deduct union subscriptions from wages following a Home Office decision to end the facility.

On 1 September, the Home Office announced it is to withdraw from the "check-off" arrangement from 1 December 2014. A number of other government departments are considering the same move.

The threat to check-off in government departments came in the summer, with Cabinet Office minister Francis Maude describing it as "undesirable" and urging departments to review it. At the end of August, the largest civil service union, PCS, sought assurances from departments that they would continue with the facility, but all refused.

An emergency resolution agreed by delegates at this month's Trades Union Congress in Liverpool called on the TUC to lobby government

ministers asking them to continue to provide the facility.

Moving the motion, Helen Flanagan of the PCS said: "Check-off is only undesirable if you want to break a union. They do." She added that the government's actions "give the green light to many hostile employers who will want to cut union income streams."

The resolution also called on the TUC to lobby the Labour Party for a

manifesto pledge on the right to have union subs deducted through salary by check-off and for the TUC to launch a campaign to counter government anti-union rhetoric.

PCS is already running a belt-and-braces drive inside the union to get people to switch to direct debit. This is now a priority campaign in the huge Department for Work and Pensions, which has been formally consulting on ending check-off.

### Recognition successes

**TWO unions have recently won collective bargaining rights through the statutory recognition process.**

**The Unite general union won recognition for manual workers and supervisors at Paragon Vehicle Services (Port of Tyne) without the need for a ballot. The Central Arbitration Committee accepted that the union had majority membership in the bargaining group and there was no significant objection to recognition among the staff.**

**The GMB general union unanimously won a ballot for recognition at the Nottinghamshire-based garden care firm Doff Portland. Thirty out of the 40 staff voted in the ballot, with 100% voting in favour.**

### MEMBERSHIP

# Trade union positives

**A TUC pamphlet, *The union advantage*, outlines how unions benefit not only individual workers but also employers and society as a whole.**

**For individuals it points out that 55% of unionised workplaces had pay rises in 2011 compared to just 35% of non-unionised ones and union members have 3.8 days' more paid leave on average than non-union members.**

**Unionised workplaces are also on average healthier and safer than non-unionised ones, thanks largely to union safety reps.**

**Young workers benefit particularly from union membership. It says that 16-24 year-olds who are union members earn on average a third more than those who are not.**

The pamphlet can be downloaded from: [www.tuc.org.uk/sites/default/files/TUC\\_UnionADV.pdf](http://www.tuc.org.uk/sites/default/files/TUC_UnionADV.pdf)

## SPAIN

## Union slates employers on bargaining

CCOO, one of Spain's two main union confederations has strongly criticised the action of some of employers in blocking negotiations and setting up new bargaining structures to worsen terms and conditions.

CCOO's criticism is based on the latest figures on collective bargaining produced by the ministry of labour. These show that the pace of negotiation has fallen sharply as compared with last year. In 2013, by August, 1,046 agreements covering 2.96 million employees had been signed. In the same period this year, only 792 agreements have been concluded and they cover only 1.04 million employees, around a third (35%) of the number last year.

However, the problem is not just that the number of agreements has fallen. It is also that a third of the agreements signed — 262 out of 792 — are agreements for new bargaining units, mostly at company level.

The union confederation fears that employers are reducing existing terms and conditions through these new company deals. Under a change in the law, introduced in 2012, company agreements have precedence over industry agreements, even where they provide worse pay and conditions.

The figures certainly show very low levels of pay increase in company level deals signed this year — 0.16% as compared with 0.63% for those signed at higher levels. Of the 11 agreements showing a pay cut in 2014, all but one are company deals.

CCOO general secretary Ignacio Fernández Toxo said that the limited improvement in the Spanish economy has not reached a majority and is calling for pay increases "because the returns would outweigh the costs".

## FRANCE

## European equality pact is signed by banking group

BNP PARIBAS, the French-based banking group, has reached an agreement with its employee representatives on action to improve the position of women working in the bank's European operations.

The agreement on "professional equality" was signed on 16 September by the group human resources manager, for the company, and for the employees by the BNP Paribas European works council, the body representing the bank's European employees, UNI-Europa, the European trade union industry federation and FECEC, representing senior managers. It covers the bank's 140,000 employees in Europe, working in 20 separate countries

The agreement, which Elise Buckle, the Uni-Europa negotiator, describes as "ambitious", deals with five separate areas: equality of opportunity in career management; wage equality between men and women; a better balance between work and private life; encouraging

women's networks; and promoting diversity among employee representatives. There is also a separate section in the agreement on monitoring and implementation.

Among specific commitments included in the pact are that:

- by 31 December 2014 25% of senior manager should be women (the proportion was 22% at the end of 2012);
- any areas where there is a notable gap between male and female participation in training should be investigated and if necessary corrective action should be taken;
- as far as possible training will be during working hours;
- each country should analyse discrepancies between the wages of men and women, with the aim of taking action to close the gap;
- the company will ensure that part-time employees have comparable career development opportunities to full-time employees;
- the company will encourage

women's networks through the so-called MixCity network; and

● the company and the unions will work together to increase the number of women who are employee representatives.

The agreement lasts for three years and during that time it will be monitored at meetings of the European works council, which will receive regular reports on the key points, including male/female participation in training and local action to reduce pay inequality.

For Buckle at Uni-Europa, effective implementation is the key to making a success of the agreement, which Gabriel Di Letizia of the European works council sees as being "particularly innovative".

It is the second agreement that BNP Paribas has signed at European level (the first in 2012 covered managing employment), and Buckle hopes that in time, it could be extended to the company's 40,000 employees outside Europe.

## GERMANY

## Strikes win fast-food deal

WORKERS at the Autogrill chain of service stations on Germany's motorway network have won their struggle for better conditions. After a series of strikes spread over almost five months, the 1,300 employees have forced their employer to agree that in future their terms and conditions will be covered by the nationwide agreement for their industry.

Autogrill, an Italian-based company with operations in 30 countries, agreed on 9 September that its German subsidiary would become a member of the German employers' association for fast-food restaurants, the BdS. In future, the pay and other conditions of Autogrill employees will be set by industry-level negotiations

between the BdS and the German food and hospitality union NGG.

The NGG's deputy president, Burkhardt Siebert, said the agreement had "put an end to employer arbitrariness" and meant that terms and conditions at Autogrill would now be "secured through a collective agreement". Although the final settlement involved mediation from the economics ministry in the German state of Thuringia, Siebert was in no doubt that it had been the strike, "supported by solidarity from trade unionists, politicians and citizens from the region", which had led to the final agreement.

Although industry-level agreements remain the principle method

for setting terms and conditions in Germany, the proportion of employees covered by them has fallen in recent years. Figures from the official employment research body IAB show that, the percentage of employees covered by industry-level agreements has fallen from 70% in West Germany in 1996 to 52% in 2013; in East Germany the fall has been from 56% to 35% over the same period.

Coverage rates for the hospitality sector, at 28% in West Germany and 12% in East Germany, are even lower (2013 figures), so the getting Autogrill to join the employers' association and accept the terms of the industry agreement is a significant victory.



# Discrimination — latest cases

The latest case law analysed by LRD's legal specialists

## Claimant only has to show evidence of disadvantage

### Case 1: The facts

A test case was brought against the Home Office on discovering that a disproportionate number of black and minority ethnic (BME) candidates over the age of 35 were failing the Core Skills Assessment (CSA) test for promotion to higher grades within the Civil Service, when compared with non-BME and younger candidates. The claim was for indirect race discrimination under section 19 of the *Equality Act 2010*.

At a pre-hearing review, a tribunal judge ruled that the claimants must not only prove evidence of systemic statistical or group disadvantage to a group with a protected characteristic to which they belong - in this case the BME employees aged over-35s who take the test — but also that they failed the test because of race and age and not for some other reason. The claimants appealed.

### The ruling

The Employment Appeal Tribunal (EAT) disagreed and overturned the tribunal's ruling.

In a claim for indirect discrimination, said the EAT, it is enough for members of a group who share a

protected characteristic to be able to point to statistical evidence that they are disadvantaged — in this case, that fewer BME workers aged over 35 are passing the CSA test, and that the claimant, a member of the group, failed the test. The EA10 does not require claimants to show, in addition, why they failed the exam.

It is up to the employer to show that whatever has caused the difference in outcome can be objectively justified and is not tainted by discrimination.

One of the basic aims of indirect discrimination under both domestic and European law is to tackle hidden or disguised discrimination, said the EAT. It is often impossible, for example, because of the lack of transparent procedures, to know the reason why a group of workers sharing a protected characteristic, such as race or sex, is suffering worse outcomes.

Sometimes, even the employer doesn't realise that an aspect of their process or policy is discriminating against particular groups. This is why many employers choose to use diversity monitoring.

A claim for indirect discrimination based on hidden discrimination

## Discrimination — the key developments

- In a claim for indirect discrimination, a claimant must produce evidence to show that a group of workers sharing a protected characteristic has suffered a disadvantage. However, the claimant does not need to go on to show that the reason for that disadvantage was the protected characteristic. For example, in a claim for indirect discrimination against BME candidates aged over 35, based on statistical evidence showing that this group of workers were more likely to fail the test for promotion at the UK Border Agency, it was enough for the claimants to prove that they failed the test. They did not need to go on to prove that they failed because of their age and race (case 1).
- The EAT has ruled that a mandatory retirement age of 65 (as opposed to some later age such as 68 or 70) was a proportionate means of achieving a legitimate aim, and as a result, did not amount to direct age discrimination. However, this result depended on the particular facts of the case. It does not necessarily follow that 65 will always be an appropriate retirement age (case 2).
- The duty to make reasonable adjustments is owed only to the disabled person, and not to others, such as their parent or carer (case 3).
- Where a claimant entered the UK illegally as an illiterate young teenager from Nigeria in a scheme devised by her future employer to deceive the immigration agencies, only to suffer physical and mental abuse from the employer, the illegality of the arrangement did not prevent a discrimination claim based on her discriminatory dismissal. This was because the illegality created the background or context against which the discrimination was able to take place, but it was not "inextricably linked" to the discrimination. By a majority, the Supreme Court also ruled that the public policy of making sure the law does not condone illegality should, in appropriate cases, give way to the public policy to stamp out human trafficking (case 4).
- In a claim for disability discrimination, a tribunal judge was wrong to order the employer to pay the full cost of the expert medical evidence on the basis that it was in a better position to pay for it than the impecunious claimant (case 5).
- It was not unlawful age discrimination to allow a group of employees aged 50 to 55 to reconsider their choices in a redundancy exercise while not extending the same opportunity to an employee aged 49, where a change in position by the employer meant that those aged between 50 and 55 became entitled to take advantage of an early pension without reduction, while the employee aged 49 did not (case 6).
- Although obesity is not necessarily a disability for the purposes of European law, severe obesity can amount to a disability where it hinders an individual's ability to participate fully and effectively in their working life on equal terms with other workers (case 7).

would never be able to be pursued if the test also required claimants to prove why they were unsuccessful.

As the EAT pointed out, it is always open to an employer to demonstrate that a particular individual

failed the test for reasons unrelated to the protected characteristic.

**Essop v Home Office (UK Border Agency) [2014] UKEAT 0480/13/1605**

## Mandatory retirement age of 65 was not direct age discrimination

### Case 1: The facts

Mr Seldon was a partner at a firm of solicitors. He was forced to retire at age 65 by a term in the firm's partnership deed. He brought a tribunal claim arguing that forced retirement at 65 amounted to direct age discrimination.

His case reached the Supreme Court and in a landmark ruling, the Supreme Court judges confirmed that a mandatory retirement age, even though discriminatory on grounds of age, could be lawfully justified as long as it aimed to achieve inter-generational fairness

or "dignity" (by avoiding the need for capability-based dismissals).

Seldon's claim was sent back to the employment tribunal to decide whether in his own workplace, a mandatory retirement age of 65, as opposed to some later age such as 68 or 70, was discriminatory.

The tribunal ruled that a retirement age of 65 was not unlawful. Instead, said the tribunal, it was a proportionate means of achieving the legitimate aims of retention, workforce planning and "collegiality". Seldon appealed.

## Discrimination — the basic legal rules

Discrimination law is found in the *Equality Act 2010* (EA 2010). The EA 2010 lists nine “protected characteristics”: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The broad aim of the EA 2010 is to outlaw less favourable treatment that takes place because of one of these protected characteristics.

Discrimination can take one of four different forms.

- **Direct discrimination:** This can include “associative discrimination”, where a person suffers less favourable treatment because of their association with an individual who has the protected characteristic, and “perception discrimination” where a person suffers less favourable treatment because of a mistaken belief that they have the protected characteristic, for example, less favourable treatment because of a mistaken belief that someone is gay.
- **Indirect discrimination:** This is where a practice engaged in by the employer impacts negatively on workers sharing the protected characteristic. For example, a requirement for all employees to work nights would disproportionately impact on women, as they are more likely to be carers.
- **Victimisation:** This law aims to protect someone who suffers as a result, for example, of having made a complaint about discrimination or for bringing discrimination proceedings.
- **Harassment:** This is where someone suffers unwanted conduct because of a “protected characteristic”, with the purpose or effect of violating that person’s dignity or creating an “intimidating, hostile, degrading, humiliating or offensive” environment for them.

In the case of disability, the EA 10 includes two further legal rights for reps to draw on. These are:

- the employer’s duty to make reasonable adjustments where a provision criterion or practice puts a disabled person at a substantial disadvantage when compared with a non-disabled person; and
- the duty not to treat a disabled person unfavourably because of something arising as a consequence of their disability. There is a defence if the employer can show that the treatment is a proportionate means of achieving a legitimate aim.

An employer will not be liable for direct discrimination, or in the case of disability, for a failure to make reasonable adjustments, if they did not know and could not reasonably have known about the protected characteristic.

In addition, across all equality strands, the Public Sector Equality Duty requires public authorities to have due regard, when exercising their functions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

Tribunal fees must now be paid for all tribunal claims. For discrimination claims, there is a fee of £250 to issue the claim and a hearing fee of £950 if the claim does not settle. A few claimants will qualify for full or partial financial assistance with their fees (remission). The threshold limits for remission are very ungenerous. The test is based on an assessment of household (not individual) income and capital. If you or your partner have disposable capital of £3,000 or more (£16,000 for claimants aged 61 or over), you will not qualify, even if you pass the income threshold test. No claim can be issued without payment of the fee or a properly completed application form requesting fee remission.

Many unions have made arrangements to loan members the tribunal fee, to be repaid if the claim is successful. Contact your union to see what arrangements have been put in place. In any event, you should always apply for fee remission if you qualify and you should make sure you issue your claim in time.

The deadline for bringing the claim (three months from the act of discrimination) has not been changed by the introduction of tribunal fees.

In April 2014, a new step was added to the tribunal procedure for all claims. This is known as Acas early conciliation. Early conciliation became mandatory from 6 May 2014. From this date, no claim can be issued in the tribunal unless you have first contacted Acas by sending them a completed Acas Early Conciliation Notification Form, available from the Acas website. Although contacting Acas and completing the form is a mandatory step, as long as you have submitted the form, you do not have to participate in the conciliation process if you would rather not. Neither does your employer. Acas early conciliation is free of charge. For more information, you can call the Acas Helpline on 0300 123 1100 or visit the Acas website. The Early Conciliation Notification Form must be sent to Acas within the normal three-month time limit for bringing the claim, otherwise your claim will be out of time and the tribunal will not be allowed to hear it.

### The ruling

The Employment Appeal Tribunal (EAT) refused to overturn the tribunal’s conclusion. In particular, the EAT said that the choice of 65 as a retirement age will not become unlawful just because the employer could have chosen a different age such as 66 or 70. An employer does not have to demonstrate that no other proposal was possible. Otherwise, employees would always be able to challenge a chosen retirement age on the basis that a slightly later date would serve just as well.

Instead, the employer needs to show that its proposal is capable of objective justification, taking into

account the conditions of its own business. The tribunal’s job is to balance the discriminatory effect of the chosen retirement age against the effects on the business, including the interests of other employees and partners.

### Commentary

It is important to remember, as Lady Hale points out in her judgment, that when Seldon retired, the default retirement age of 65 was still in place.

Another factor that sets this case apart is that it involved equal partners who negotiated a partnership deed, as opposed to unequal parties to an employment relationship. In

particular, the partners — including Seldon himself — had re-negotiated other aspects of the partnership deed just a year before Seldon retired. At the time, nobody queried the retirement age of 65, which had been in the partnership deed since

anyone could remember, suggesting that the partners, including Seldon himself, were happy with it.

*Seldon v Clarkson Wright & Jakes*  
[2014] UKEAT/0434/13/RN

Case details are available at:  
[www.bailii.org](http://www.bailii.org)  
and  
[www.employmentappeals.gov.uk](http://www.employmentappeals.gov.uk)

## Duty of reasonable adjustments is only owed to disabled person

### Case 3: The facts

Ms Hainsworth worked in Germany for the Ministry of Defence (MoD). Her teenage daughter had Down's Syndrome.

The MoD provides education and training facilities for the children of overseas serving personnel, but it makes no special provision for children with more significant needs. Hainsworth made a formal request for transfer to the UK to meet the special needs of her daughter, but it was rejected.

She then issued a tribunal claim supported by the Equality and Human Rights Commission. She argued that the MoD owed her a duty to make reasonable adjustments to accommodate her daughter's needs.

The tribunal rejected her application, confirming that the duty to make reasonable adjustments is owed only to a disabled person, and not to anyone else, such as the disabled person's parent or carer. The claimant appealed.

In her appeal, the claimant conceded that under the *Equality Act 2010*, the duty to make reasonable adjustments is owed only to the disabled person. However, she argued

that this position does not properly reflect European Community law.

In particular, she relied on Article 5 of Council Directive 2000/78/EC (General Framework for Equal Treatment in Employment and Occupation), and on the United Nations Convention on the Rights of Persons with Disabilities. Her case reached the Court of Appeal.

### The ruling

The Court of Appeal rejected her claim. Article 5 of the Directive is clear, said the court, in extending the duty of reasonable accommodation only to the disabled person and to nobody else. And no other piece of European legislation, including the United Nations Convention on the Rights of Persons with Disabilities, the EU Charter of Fundamental Rights and the European Social Charter changes this basic position. As a result, the claim must fail.

The Court of Appeal refused a request to refer the issue to the Court of Justice of the European Union.

**Hainsworth v (1) Ministry of Defence (2) Equality and Human Rights Commission [2014] EWCA Civ 763**

## Illegality of arrangement does not prevent discrimination claim

### Case 4: The facts

Ms Houna entered the UK illegally from Nigeria with the help of her employer, Mrs Allen. Houna was aged around 14 when she entered the UK on a visitor's visa, following a plan masterminded by her employer which involved her pretending to be a relative.

Allen promised £50 a month for Houna to work as an au pair/housekeeper and the chance to go to school. Neither promise was kept.

Instead, Houna suffered from physical and verbal abuse, backed up by threats by her employer that Houna would be imprisoned and deported if her illegal status was

ever discovered.

Matters came to a head when water was poured over Houna for failing to cook the children's tea on time and she was thrown out of the house. After spending the night in her wet clothes in the garden, she went to sleep in a supermarket car park, where she was rescued by social services.

Houna began claims against Allen for breach of contract, unpaid wages and race discrimination. Since Houna had no right to work in the UK, her employment contract was illegal.

The employment tribunal ruled that the illegal contract meant that

none of her claims could be heard except her claim for race discrimination. Allen appealed against the tribunal's determination that the race discrimination claim could be heard.

Eventually the case reached the Court of Appeal who decided that Houna's discrimination claim was so inextricably linked to her actions of colluding with her employers to enter the UK illegally that to allow her to bring her discrimination claim would be to condone that illegality (see *Workplace Report*, June 2012).

Houna appealed to the Supreme Court, with the support of UK charity Anti-Slavery International.

### The ruling

In a landmark decision, the Supreme Court ruled in favour of Houna. Her illegal contract was not inextricably linked to the discrimination, said the judges. On the contrary, it simply provided the context in which the abuse was able to take place.

The majority of the judges went even further. They pointed out that the basis of the test which removes protection against discrimination where that discrimination is "inextricably linked" to illegality is one of public policy — the public policy of making sure the law does not condone illegal behaviour, such as working illegally. But in a case like this, there is a second public policy, said the judges. This is the public policy of preventing human trafficking.

At least three of the International Labour Organisation indicators for forced labour were present in this case. These included: physical harm or threats of it; withholding wages; and threats of denunciation of Houna's irregular employment status.

The UK is also a party to the Council of Europe Convention on Action against Trafficking in Human Beings, which it ratified in April 2009. Following the Convention, the UK is now legislating to bring in a *Modern Slavery Bill*, presented to parliament in December 2013.

In cases such as this, the public policy of making sure the law does not condone illegality should give way to the public policy against human trafficking, ruled the Supreme Court, by a majority.

**Houna v Allen [2014] UKSC 47**

## Cost and burden of proof on disability falls on claimant

### Case 5: The facts

Ms Ling, was employed as an "Asda Ace Janitor" for City Facilities Management, an outsourcing company that held the contract to provide on-site cleaning, engineering and general support services to supermarket chain Asda. Ling was dismissed for capability as a result of sickness absence. She suffered from depression and anxiety.

Ling issued a tribunal claim alleging disability discrimination. Under the 2010 *Equality Act*, where an employer denies that a claimant is disabled, it is up to that claimant to prove their disability. Ling provided all her GP records but no expert medical evidence of her disability.

In a telephone pre-hearing review, an employment judge ruled that he could not be satisfied that Ling was disabled without expert medical evidence, and that the GP records were not enough. The judge

wanted an expert, preferably a consultant psychiatrist, to review the GP records and advise.

Under the tribunal rules, judges must follow a basic principle known as the "overriding objective". In particular, this principle expects judges to do their best to "put the parties on an equal footing".

This judge decided that the best way to achieve this was to order the employer to pay the whole cost of the medical report, on the basis that it was a large organisation, whereas the claimant had few resources and could have to abandon her claim if forced to contribute half the costs. The employer appealed.

### The ruling

The Employment Appeal Tribunal (EAT) agreed with the employer and reversed the order. There was no basis for ordering the employer to pay the full cost of the medical re-

port, ruled the EAT. It is up to a claimant to prove that they are disabled — and a tribunal is not obliged to search for medical evidence if none has been provided.

In any event, this judge made a mistake, said the EAT, because he should have started by questioning whether expert medical evidence was needed at all.

There is no rule, said the EAT, that expert medical evidence is always needed. Sometimes a combination of the GP records plus a claimant's own evidence showing the impact of the impairment on her normal day-to-day activities is enough.

In addition, this Judge should have considered whether the lack of clarity in the GP record could have

been resolved simply by asking the GP to explain.

The judge could also have suggested that the claimant ask for help from the employment tribunal administration with funding the expert medical report.

Finally, said the EAT, the judge misinterpreted the overriding objective. This principle did not allow the tribunal to order the employer to take on the cost of the report. Moreover, in so doing, the judge forgot other features of the overriding objective, such as dealing with the case proportionately, expeditiously, fairly and saving expense.

**City Facilities Management (UK) Limited v Ling [2014] UKEAT/0396/13/MC**

## Claimant picked on wrong age group as comparator

### Case 6: The facts

Royal Bank of Scotland (RBS) decided to restructure its specialist advice division, where the claimant worked. Ms Palmer was aged 49, but was very close to her 50th birthday.

In the past, the bank had operated a generous pension scheme under which employees aged 50 or over could take voluntary early retirement (VER) with a pension that was not reduced to reflect early receipt, as an alternative to voluntary redundancy. However, eight days before launching its restructuring proposals, the bank changed its pension rules, so that only those aged 55 or over qualified for the enhanced early pension.

The recognised union objected and after collective consultation, the bank changed its position, announcing that the pension scheme changes would only be made after the restructuring had been completed.

RBS had originally given its employees a variety of choices in the redundancy exercise, based on the options that were then available. To take account of the change of position in relation to the pension benefit for employees aged between 50 and 55, RBS allowed this group of workers to revisit their original choices. They were now given the chance to take VER, as an alternative

to voluntary or compulsory redundancy. Other groups of employees, including the claimant, were not given the chance to re-visit their original choices.

The claimant had 30 years' service with the bank. When offered the choice between voluntary redundancy or redeployment, she had opted for voluntary redundancy. She had not been offered VER because at 49, she was too young to qualify.

However, she realised that under the revised proposal, if she could change her preference to redeployment instead of voluntary redundancy, there was a good chance that there would be no suitable roles available, but that by the time the redeployment process was completed, she would have passed her 50th birthday and would qualify for the enhanced pension.

She argued that it was unlawful age discrimination to give the employees aged between 50 and 55 the chance to revisit their choices, but not to give her the same chance.

The tribunal ruled that her position was not comparable to that of the employees aged between 50 and 55. Firstly, she was 49, and secondly, her route to gain the enhanced pension was very different from theirs. They had an entitlement under the pension rules, whereas

she had no such entitlement — unless the bank failed to redeploy her by her 50th birthday.

In any event, ruled the tribunal, even if there was age discrimination here, the bank's policy was a proportionate means of meeting the legitimate aim of avoiding compulsory redundancies and could be justified. She appealed.

### Ruling

The Employment Appeal Tribunal (EAT) agreed with the tribunal: employees aged between 50 and 55 were not appropriate comparators.

Whereas this group of employees now had a third option available to

them as of right as a result of the bank's change of position, namely the right to access the enhanced pension, in the case of the claimant her choices had not changed. Palmer still had the same options as before — between voluntary redundancy and redeployment.

Only if the bank failed to redeploy her after her 50th birthday would any question of an enhanced pension have arisen. This was a material difference between the claimant and her comparator group, so her claim failed.

**Palmer v Royal Bank of Scotland PLC [2014] UKEAT/0083/14/MC**

## Severe obesity can amount to disability if obstacle at work

### Case 7: The facts

Mr Kaltoft worked as a childminder for his local municipal government. He was severely obese. When his employment was ended, he issued a claim against his employer for disability discrimination, alleging that he was dismissed because of his obesity.

The Danish courts referred the case to the Court of Justice of the European Union. They asked the Court to rule as to whether obesity is a disability for the purposes of European law. As a first step, the advocate general issued his written opinion, as follows.

### AG opinion

According to the advocate general (AG), there is no general principle of European Community law to prohibit employers from dismissing workers on grounds of obesity. However, severe obesity can amount to a disability if it hinders someone's full and effective participation in professional life on equal terms with other work-

ers. It is for national courts to decide whether this is the case, suggested the AG.

### Commentary

UK courts have already reached the same conclusion, in the case of *Walker v Sita Information Networking Computing Limited [2013] UKEAT/0097/12* (see *Workplace Report*, April 2013). Walker weighed 21 stone and had many different mental and physical health problems, exacerbated by his weight.

The Employment Appeal Tribunal ruled that obesity is not a disability in its own right, but that the presence of obesity can make an impairment more likely to amount to a disability. It can also lead to claims based on perceived disability, where an employer jumps to conclusions about an obese person's health.

**FOA (on behalf of Karsten Kaltoft) v Kommunernes Landsforening (on behalf of the Municipality of Billund) Case C-354/13**

**LAW AT WORK 2014**  
**The indispensable guide to**  
**employment law — £29.50 a copy**  
**Order at [www.lrd.org.uk](http://www.lrd.org.uk)**



## MENTAL HEALTH

# Unions want more help for workers with problems

DAME SALLY DAVIES, the government's chief medical officer (CMO), has called for more support for those with mental health problems at work in her annual report on the nation's mental health.

Davies said that the number of working days lost due to stress, depression and anxiety has risen by 24% since 2009, yet 75% of people with a diagnosable mental illness get no treatment at all. She added: "Anyone with mental illness deserves good quality support at the right time. One of the stark issues highlighted in this report is that 60% to 70% of people with common mental disorders such as depression and anxiety are in work, so it is crucial that we take action to help those people stay in employment to benefit their own health as well as the economy."

One of the recommendations made by the annual report is for the National Institute of Health and Care Excellence (NICE) to assess the costs and benefits of providing a new fast and efficient service for those with mental illness at work. The aim of the service would be to try and keep those suffering with mental illness at work.

Unions are also calling for more help for those with mental health problems at work. Speaking at the TUC's annual congress in Liverpool, Paddy Lillis, deputy general secretary of the retail union Usdaw, said: "Evidence shows that since the onset of austerity there's been a surge in the numbers of people diagnosed with depression and anxiety."

There has been a four-fold increase in the number of people reporting symptoms and seeking help.

And this has been reflected in an increase in the numbers of enquiries the union receives from members struggling to cope, together with a growing demand for advice and guidance from reps doing their level best to support members with mental health problems in the workplace.

Industry-wide cuts to budgets and staffing levels have left Usdaw members feeling overstretched, overworked and undervalued.

"Unions have a key role to play tackling the stigma that surrounds mental health, not least because stigma stops members coming forward and talking to us at an early stage. This can lead to members getting caught up in disciplinary procedures and facing action that could and should have been avoided," Lillis said.

## SKIN CANCER

## Don't let the sun catch you frying

CONSTRUCTION union UCATT is telling building workers that they are at a particular risk of developing skin cancer because they regularly work outdoors in the sun.

Recent figures published by Public Health England have revealed that the number of hospital admissions for skin cancer have increased by 41% in just five years.

In 2007, 87,665 people were admitted to hospital suffering from skin cancer, but by 2011 that figure had risen to 123,808.

Public awareness campaigns have focused on the dangers of sun exposure while on holiday abroad and when using sun beds. However, given the time construction workers work outside in the sun they are also at risk.

UCATT advice is that building workers should take simple measures to protect themselves against sun damage. This includes always keeping a top on and wear a long-sleeved T-shirt made from a close-woven fabric that stops the UV rays coming through to the skin.

Workers should also apply sun cream, even if the sun doesn't appear to be strong.

Construction workers also need to regularly check their skin for unusual spots or moles that change size, shape or colour or that start bleeding. If a worker does spot anything of concern they should seek medical advice straightaway.

UCATT general secretary Steve Murphy said: "Construction workers are exposed to the sun on a daily basis. It is vital that workers and employers put in place simple measures to ensure that they do not suffer skin damage which could cause skin cancer later in life."

Further advice can be found at: [www.ucatt.org.uk/heat-and-sun-protection](http://www.ucatt.org.uk/heat-and-sun-protection)

## SELF-EMPLOYED

# Coalition tries to turn the clock back over 40 years

MEDIA and entertainment union BECTU says the Conservative Party is trying to turn the clock back by watering down health and safety protection for the self-employed.

It is now 40 years since Harold Wilson's Labour government introduced the *Health and Safety at Work etc Act 1974* which gave workers protection over their health and safety. However, the Con-Dem coalition want to water down the law by excluding the self-employed from health and safety legislation. It is aiming to do this through a clause in the *Deregulation Bill*, which reaches its final stages in the House of Lords towards the end of October.

Outside a few areas of the economy, self-employment used to be relatively rare, while the latest figures put

4.6 million workers into this category, equal to 15% of the entire workforce and twice the level of 1975.

This growing group of workers, many of them forced into self-employment against their will in order to save employers the costs and obligations of a proper contract, is now about to lose the protection of health and safety legislation, unless their activities are on a "prescribed list" drawn up by government.

In a consultation which closed at the end of August, the TUC and its member unions that now represent many self-employed workers highlighted the shortcomings of this very limited list.

However, there may be one last chance in the House of Lords to beat the change in the law, viewed by most

specialists as the worst backward step in health and safety since 1974.

Unions need to keep up lobbying efforts on behalf of the self-employed who don't need an exemption from the legislation, but who instead should benefit from roving safety reps to help enforce existing law.

John Handley, a member of BECTU's national executive committee, told the TUC's annual congress in Liverpool: "Health and safety should not be negotiable. Hundreds of thousands of workers suffer from work-related injury and disease. The *Health and Safety at Work Act* is the only piece of legislation that protects all working people including the self-employed. No one should go home from work in an ambulance or a coffin."

## NEWS IN BRIEF

**Robust welcome to new HSE chief executive**

DR RICHARD JUDGE has been appointed as chief executive of the HSE and will take up the role in November 2014.

Unions and safety campaigners have urged Judge to ensure that the HSE uses its legal powers, people and skills to protect workers.

The Unite general union has called on Judge to reverse the recent trend of removing Approved Codes of Practice (ACOP) and the cut in health and safety guidance at work. It also called for full involvement of workers and their representatives in developing ACOPs and to deal with the problem of under-reporting of accidents and ill health by employers.

Unite national health and safety adviser Bud Hudspith said: "We have been urging HSE to act against employers who fail to report workplace accidents, but it has not been willing to do so. This is why we are calling on Dr Judge to act as chief executive and ensure more is done to protect workers."

The Hazards Campaign has asked people to support them by printing off and sending their template letter to Judge with the message "Don't pimp our watchdog", responding to government plans for a more commercialised HSE.

**Use of lifting equipment**

A CONSULTATION on the proposed draft Approved Code of Practice (ACOP) on the *Lifting Operations and Lifting Equipment Regulations 1998* is being held by the HSE.

The draft ACOP brings the document up to date with the law and other changes and to make the ACOP easier to understand, particularly in terms of which equipment is subject to the regulations, as well as the role of the competent person.

The consultation is open from 20 August until 14 October.

[www.hse.gov.uk/consult/condocs/cd275.htm](http://www.hse.gov.uk/consult/condocs/cd275.htm)

## FEE FOR INTERVENTION

# Backing for scheme, but union wants new model

AN INDEPENDENT review of the Fee for Intervention (FFI) scheme, which was introduced in 2012, has said that the scheme should stay.

An independent panel set up to carry out the review was chaired by Alan Harding, professor of public policy at Liverpool University. Other members of the panel included representatives from the GMB general union and, from the employers' side, the Federation of Small Businesses.

The Triennial Review of the HSE's activities, published in January 2014, raised a number of concerns about the FFI scheme, after its introduction was identified as one of the biggest issues raised by stakeholders. It said that a planned review of FFI should look at a number of areas on the FFI including the way in which it was operated and would work in the future.

The Triennial Review also queried whether "the link between funding and fines" inherent in FFI damaged "the positive relationship between HSE and business".

The panel considered the issues raised by the Triennial Review about

the FFI and found that the system was effective in shifting the cost of regulation from public funds to businesses which break health and safety laws.

Its assessment did find some evidence that the FFI had affected the relationship between HSE, its inspectors and businesses. It said that some inspectors did not like FFI and their job had become more challenging since it had been introduced. The independent report described this result as an "undeniable 'down side' of the introduction of a principle – that the cost burden of regulation should shift to non-compliant duty-holders".

However, the panel found that, overall, the FFI scheme had been "introduced and embedded effectively and applied consistently", and that there was no compelling evidence to support the view that the FFI system was being used as a "cash cow".

The independent report made a number of recommendations, including extending the FFI scheme to other businesses covered by other enforcement regimes "to further level the regulatory playing field".

Other recommendations included more clear guidance on FFI for businesses, for example, by using case studies, as well as a more clearly worded "Notice of Contravention" highlighting the breach of health and safety law and any action that needed to be taken.

Prospect, the union representing HSE inspectors, said it was "not satisfied that reasonably practicable steps were taken to establish the views of stakeholders". Health and safety officer Sarah Page said there was "far more discontent among inspectors and duty-holders, most of who share considerable concern about the adverse impact of FFI on their relationships, than was reported by the panel".

She said that the time constraints on the panel prevented it "from adequately exploring alternative models of cost recovery to FFI, such as via the *Employers' Liability (Compulsory Insurance) Act*, which Prospect believes is viable".

A copy of the independent panel's report is available at: [www.hse.gov.uk/fee-for-intervention/independent-ffi-review-panel-final-report-2014.pdf](http://www.hse.gov.uk/fee-for-intervention/independent-ffi-review-panel-final-report-2014.pdf)

## SAFETY REPORTING

# HSE has form for breaches

THE HSE has issued a new form for union appointed health and safety representatives. The form should be used where the safety rep believes that health and safety law has not been followed. Any issues should be first raised with a senior union rep or union official.

In addition to health and safety breaches within the workplace, safety reps may also see a serious health and safety breach outside the place of work, with a risk of harm. Where a workplace is unionised, the

safety rep should contact the relevant union. In cases of a very serious risk of harm, the HSE form should be used immediately.

The new form can also be used to flag up concerns about health and safety laws not being followed within a particular sector or industry. These issues should first be raised with a senior union rep or union official before contacting the HSE.

The HSE has said that it will consider any information received from a union appointed health and

safety rep, but they may not take action in all cases.

If the health and safety breaches are enforced by a local authority or other regulator, such as the Office of Rail Regulation, Maritime and Coastguard Agency or Civil Aviation Authority, safety reps should contact the appropriate authority or regulator.

The new form for union appointed health and safety reps is available at: [www.hse.gov.uk/involvement/hsrepresentatives.htm](http://www.hse.gov.uk/involvement/hsrepresentatives.htm)

# What new parents can expect in best pay and practice policies

The introduction of a new right in 2015 to Shared Parental Leave means that paternity and maternity policies will need to be modified in the coming months. *Workplace Report* examines what the best policies offer in the way of entitlements.

The present statutory entitlement to maternity leave is 52 weeks, regardless of length of service. Employees with 26 weeks service are entitled to six weeks, paid at 90% of earnings, followed by 33 weeks paid at £138.18 a week (or 90% of average weekly earnings if lower) in 2014-15.

According to a 2013 TUC analysis, only about one in four mothers receive extra occupational maternity pay from their employer. Labour Research Department's (LRD) Payline database has about 280 collective agreements with recent maternity information — half of which are public sector.

## Maternity

The great majority of these agreements (84%) offer occupational maternity pay. However, very few agreements give any occupational maternity pay to employees with less than 26 weeks' service.

Two that do are **Queen's University Belfast** and defence manufacturer **BAE Systems**, both of which pay 18 weeks at full pay with no service qualification. **BP Oil Drivers (logistics contracts)** with less than 26 weeks' service get 16 weeks at full pay — this increases to six months at full pay for staff with five years' service.

Enhanced occupational pay was only available to employees with a full year of service in 35% of agreements. Reducing the service requirement will be particularly beneficial in sectors with high staff turnover.

Almost four out of five maternity agreements offered more than six weeks of enhanced pay. The most generous entitlements are at **Ford** and **Rolls-Royce Motors** which offer 52 weeks at full pay. The median (mid-point) is 18 weeks of enhanced pay.

About two-thirds of the agreements (63%) pay the first six weeks at 100% of pay, rather than the statutory 90%. Half the agreements (50%) offered more than six weeks paid at 100% — the median (mid-point) period was 12 weeks paid at 100%.

Relatively few improved entitlements to maternity pay have been reported since the

start of 2013. The Usdaw retail union negotiated improved maternity pay with **Tesco**, a very significant employer of female staff. Occupational maternity pay was increased in stages between October 2013 and April 2014 from eight weeks up to 12 weeks and will increase up to 13 weeks in October this year and then to 14 weeks in April 2015.

At rail group **Greater Anglia**, occupational maternity pay increased from 6 weeks full pay and 20 weeks half pay to 12 weeks full pay and 14 weeks half pay. Meanwhile, home delivery group **Expert Logistics**, which previously had no occupational maternity pay, introduced it for staff with three years' service (six weeks at full pay, followed by 12 weeks at half pay).

In the public sector, the **NHS Agenda for Change** occupational maternity entitlement for staff with one year's service is eight weeks at full pay followed by 18 weeks at half pay.

The **Local Government Green Book** occupational maternity entitlement is six weeks at 90%, followed by 12 weeks at 50%, for staff with one year's service.

**Fire Service (Grey Book)** entitlement is the same as the local authority Green Book. **School teachers** with one year's service, are entitled to four weeks at 100%, followed by two weeks at 90%, then 12 weeks at 50%. **Police officers** with 63 weeks' service are entitled to 18 weeks at full pay.

These are minimum entitlements. A good example of an agreement which improves on the Green Book entitlement is **Edinburgh City Council** where staff with 26 weeks' service can take up to 63 weeks maternity leave, the first 14 weeks of which are paid at 100%.

At **Shropshire Fire and Rescue** the occupational maternity entitlement for staff with one year's service is 26 weeks at full pay, followed by six weeks at half pay.

In higher education, occupational maternity pay varies — **Birkbeck, University of Manchester, University of Oxford** and the **University of Southampton** have 26 weeks

paid at 100%. Many universities offer staff flexibility between taking a period of leave paid at full pay or taking a period twice the length paid at half pay.

Entitlements to occupational maternity pay also vary in the civil service — the best entitlement on LRD's Payline is at the **Department for Culture, Media and Sport**, where staff with one year's service get 39 weeks at full pay.

In further education, the best paid entitlement on Payline is at **Weymouth College**, which pays four weeks at 100%, followed by two weeks at 90%, then 12 weeks at 50%.

Elsewhere in the public sector, employment relations service **Acas**, the **Bank of England, National Assembly for Wales** and **Network Rail** all give 26 weeks paid at 100%.

Occupational maternity pay varies greatly in the private sector. On Payline just over a quarter (27%) of private sector agreements do not offer any occupational maternity pay. Half (51%) pay the first six weeks at 100% of pay. The table on page 16 shows the private sector agreements paying 14 weeks or more at 100% of pay.

Some of the most generous entitlements are in male-dominated industries, where good maternity pay is seen as a way of getting a better gender balance in the workforce.

## Paternity

The statutory entitlement to paternity leave is one or two weeks paid at £138.18 a week (or 90% of average weekly earnings if lower), for employees with 26 weeks' service (Ordinary Paternity Leave).

Unfortunately, many fathers do not take any paternity leave. In a recent survey of employers by Norton Rose Fulbright, a quarter (26%) of respondents reported that in their organisation the vast majority of employees eligible for ordinary paternity leave do not take it — less than two in five (38%) of respondents paid occupational paternity pay.

On the other hand, a recent survey by XpertHR found that over half (52%) of respondents did pay occupational paternity pay.

Occupational maternity pay		
Agreement	Service requirement	Weeks at 100% of pay
Ford (manual)	26 weeks	52
Rolls-Royce Motor Cars	n/k	52
Babcock Intn'l Marine & Tech Div (Rosyth)	26 weeks	26
BP Oil Drivers (Logistics contract)*	5 years	26
Eaton Electric	26 weeks	26
Rolls-Royce Submarines (Derby)	26 weeks	26
Amnesty International UK	26 weeks	26
AXA UK	26 weeks	24
First Capital Connect	1 year	22
Save The Children Fund	26 weeks	21
British Psychological Society (BPS)	n/k	20
Meggitt Aircraft Braking Systems	26 weeks	20
Atradius	1 year	18
BAE Systems	none	18
BASF (Bradford)	1 year	18
Spirit Aerosystems (Europe)	26 weeks	18
EMAP Public Sector	1 year	16
Chiltern Railways	n/k	15
Prudential (UKIO)	26 weeks	15
Association of Chartered Certified Accountants	26 weeks	14
Heathrow Express	26 weeks	14
Nationwide Building Society	26 weeks	14
Thames Water	n/k	14

\* Also pays 16 weeks with no service requirement; n/k — not known

While there may be issues of organisational culture which can discourage men from taking paternity leave, the low rate of statutory paternity pay is the most obvious cause for the low take-up of paternity leave. According to the 2013 TUC analysis, better paid fathers are 50% more likely to take paternity leave than those on lower incomes, so getting good occupational paternity pay is particularly important in lower paying sectors.

Payline has about 280 agreements with recent paternity information — three-quarters (75%) pay occupational paternity pay. Occupational paternity pay is mostly paid at 100% of pay, but the number of days of enhanced pay varies.

The most generous entitlement is at the **City and Guilds of London Institute**, which pays 20 days at 100%. The **Homes and Communities Agency**, **National Assembly for Wales**, **Natural England**, **Queen's University Belfast**, and **Serco (Docklands Light Railway)** all pay 15 days at 100%.

Over a third (36%) of agreements paid 10 days at full pay and three in 10 (29%) paid five days at full day.

The majority (72%) of agreements for which service requirement is known required 26 weeks' service to qualify for oc-

cupational paternity pay. Most of the agreements which do not have a service requirement were in higher education.

Relatively few improved entitlements to paternity pay have been reported since the start of 2013. At **Greater Anglia**, **Expert Logistics** and **Scottish Midland Co-op** occupational paternity pay has been increased to two weeks at full pay.

Negotiators wanting to compare entitlements to maternity and paternity pay will find LRDS' Payline database a useful resource. For information on how readers to access the Payline, see the back page of the magazine.

## Additional Paternity Leave

Since 2011 mothers have been able to share between two and 26 weeks of their statutory maternity leave with their partner — known as Additional Paternity Leave (APL).

### Ford case over Additional Paternity Leave

The legality of paying Additional Paternity Leave (APL) at a lower rate than maternity leave was tested at a recent tribunal case (*Shuter v Ford Motor Company*). Ford pays women on maternity leave 52 weeks at 100% of basic pay, while paying men on APL at the statutory rate.

Ford argued that the policy was justified as a part of their long-term plan to increase the proportion of women in their workforce. The company presented detailed statistical evidence to back up its argument. The tribunal accepted Ford's argument.

APL cannot start until the 20th week after the child's birth and the mother has to return to work before their partner can take APL. The employee taking APL is required to have 26 weeks' service.

APL is paid at the same low rate as statutory maternity and paternity pay, £138.18 a week (or 90% of average weekly earnings if lower) for 2014-15. Pay stops when the mother's maternity (or adoption pay) would have ended.

Take-up of Additional Paternal Leave has been very low. In 2011-12, only 0.6% of eligible fathers took any APL. Take-up has only increased slightly since then — in 2013 1.4% of eligible fathers took some APL.

A recent XpertHR survey found that three-quarters of employers had not had any employees take APL. And a recent Norton Rose Fulbright survey similarly found that no employees at two-thirds (67%) of respondent organisations had taken APL and a further one in five (22%) said that only a very small number had done so.

Government advice is that it is not necessary to enhance the pay for APL to the same level as maternity pay. A recent tribunal case at **Ford Motor Company** where occupational maternity pay is full pay for 52 weeks and APL is only paid at the statutory rate considered whether this was discriminatory (see box below).

LRD contacted workplace reps about the impact of APL at their workplace — none thought that it had had much impact.

The government seems to share this assessment and is replacing the right to Additional Paternity Leave with a new right to Shared Paternity Leave.

## Shared Parental Leave

Shared Parental Leave (SPL) will apply for babies due/adopted from 5 April 2015.

Shared Parental Leave allows more flexibility to couples in how leave is shared. The mother must take a minimum of two weeks' maternity leave following the birth (four if she works in a factory) but the remainder (up to 50 weeks) can be taken as SPL by either or both partners.

Both partners can take SPL at the same time. Each partner can make three requests to their employer for a block of leave. They



can request either a continuous block, or a discontinuous block of leave – an example of a request for a discontinuous block of leave would be an employee requesting to take six weeks of SPL by working every other week for a 12-week period. An employer must accept a request for a continuous block of leave, but can refuse a request for a discontinuous block of leave.

Statutory Shared Parental Pay (SPPL) will be paid at the same low rate as Statutory Maternity Pay (SMP) after the first six weeks. There is no entitlement to 90% of pay during SPL, so mothers in receipt of SMP will not be able to convert the first six weeks of maternity leave to SPL without financial loss.

The big unknown at the moment is to what extent employers will enhance Statutory Shared Parental Pay. More employers have said that they intend to pay SPL at a higher rate than they paid APL.

Almost a quarter (23%) of respondents to the Norton Rose Fulbright survey said that their organisation intended to pay SPL at the same level as they paid Occupational Maternity Pay. Three in 10 (30%) said that they would continue to pay Occupational Maternity Pay but would only pay SPL at the statutory rate. A few (2%) of respondents said that they would stop paying enhanced maternity pay.

The government view is that employers who pay maternity at above the statutory rate are not legally required to pay SPL at higher than the statutory rate. It seems inevitable that those employers who enhance maternity pay but do not enhance pay for SPL, will at some point face a legal challenge.

**How Nordic countries get men to take parental leave**

The Tavistock Institute has compared the impact of different systems for transferable leave in many countries and concluded that the introduction of SPL will have little effect, as most men do not take paternity leave if it is poorly paid and transferable leave is generally taken by the mother

The countries that have been most successful in getting fathers to take parental leave have introduced a well-paid non-transferable allocation of leave for fathers.

In 1995, Sweden introduced a “daddy month” and the proportion of fathers taking a month or more of leave increased from 9% to 47% – parental leave is paid at 80% of previous earnings.

Iceland in 2000 introduced a system where each parent gets three months of non-transferable leave and the remaining three months are transferable. Parental leave was paid at 80% of previous earnings, although the financial crisis led to cuts in payment levels. Fathers on average take 100 days of leave. A 2012 report on gender equality in Iceland concluded that the policy resulted in closer father/child relationships and more equality between men and women at work.

The government expects that around 285,000 couples will be eligible to share leave from April 2015. The changes to parental leave have not been well publicised as yet: a recent survey of 1,000 parents for Good Care Guide found that 65% of parents were unaware of the changes. And many employers are not yet prepared for SPL – three quarters (76%) of respondents to the Norton Rose Fulbright poll said their organisation had taken no actions to prepare for SPL.

New and prospective parents will not be in a position to decide whether to take advantage of SPL until they know how it will operate in their workplace and crucially at what rate it will be paid. LRD contacted reps and none reported that discussions had taken place with their employers on the rate at which SPL would be paid.

Workplace reps will want to ensure that employees are well informed about how SPL will work. The rules on notifying employers are quite complex. Information is available on the GOV.uk website and the employment relations service Acas website. LRD will also be publishing a new booklet on leave and pay for working parents this October.

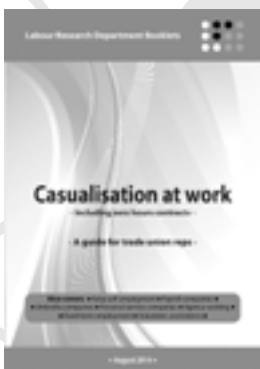
The government estimates that take-up of SPL will be between 2% and 8% of those eligible to do so. Given the low statutory rate of pay for SPL, higher take-up SPL is likely to depend on negotiators’ success in getting a high rate of pay for occupational pay during SPL, as so many have done for both maternity and paternity leave.

Perhaps the government should take a look at how they cover parental leave in the Nordic countries (see box above).

**OUT NOW**

**Casualisation at work - a guide for trade unionists**

**includes zero-hours contracts**



**88 pages and only  
£9.45 per copy**

This LRD booklet looks in detail at the main forms of casualisation that have developed over the last six years and the actions being taken by trade unions to fight back.

It covers the use of payroll companies, false self-employment, the spread of umbrella companies and personal service companies, the growth of zero-hours contracts and agency working, the position of volunteers and interns, as well as detailing workers’ basic statutory rights.

**To order your copy/ies today call 020 7928 3649  
or visit [www.lrdpublications.org.uk](http://www.lrdpublications.org.uk)**

Substantial discounts on orders of 2 or more copies — call us to find out more.

# Key issues for the many workers who want to do their job at home

**Extended rights to request flexible working, coupled with cost-cutting pressures, are helping to drive an expansion in the number of employees working from home. A *Workplace Report* survey looks at the benefits and elements of a homeworking policy.**

Homeworking can help reduce unnecessary travel, and support work-life balance, but crucially it can also help cut costs by enabling better use of workplace accommodation for example through “hot desk” arrangements where employees share a reduced number of work stations, or reduced parking space.

**Uttlesford District Council** (DC) in Essex is one among many that wants to deploy a “lean, agile and diverse workforce” through homeworking.

The same philosophy is being deployed on a far larger scale at **Cambridgeshire County Council** (CC). Its 2014 flexible working policy and procedure aims at maximising its two largest resources — people and property. According to the public service union UNISON it is trying to raise the ratio of employees-to-desks to 2:1.

In a Payline survey of 60 policies, half (32) were from the local authority sector, with most of the rest scattered across the service sector, education, police, health, the voluntary sector and theatre.

There was only one example from manufacturing — **Rolls-Royce Aerospace** — but **Jaguar Landrover** is currently looking at the viability of a scheme.

Nationally, there’s been a steady increase in the number of people who spend at least half of their work time using their home, from 1.3 million in 1998 to 4.2 million now. More than a third of these (1.4 million) are employees, the rest are self-employed or in family firms.

## Benefits

The advisory service Acas says homeworking should be based on a comprehensive statement, so both employer and employees are clear about what is expected. It should define homeworking; set out an application process; cover factors for assessing role suitability, jobholder suitability and the suitability of the home. And it should cover risk assessments; who will make and pay for changes; what happens if concerns are not addressed; what the company or employees will provide; employer access to the employee’s home; employee performance; attendance at the main office; and security.

Homeworking can clearly be useful to business and employees alike, even if some employer policies present it solely as an employee “benefit” or privilege. However, like many other employers with a homeworking scheme, **Rolls-Royce** lists the potential company benefits: in its case a wider catchment area for recruitment; possible retention of employees who move out of the immediate area of the workplace; employees who do not have to commute starting their working day more mentally alert; and less distraction and more focus.

Calvin Allen, a researcher at the professionals’ union Prospect, told *Workplace Report*: “We’re monitoring the issue of homeworking very closely. The key issues for us are that there must be a good agreement in place to facilitate homeworking; and that homeworking must be a voluntary process. Otherwise, the undoubted organisational benefits which homeworking generates are unlikely to be realised in practice”.

The union’s members’ guide to homeworking highlights the importance of establishing homeworkers’ terms and conditions in a formal agreement, allowances, equipment and career development as well as health and safety, risk assessments and financial matters, such as insurance and tax.

## Policies

Homeworking policies usually begin by defining what sort of work they apply to, either setting out a detailed framework or simply outlining who is or is not eligible to be a homeworker. Acas research suggests that a mix of working from the office and home gives the best results in terms of job satisfaction, work performance and reducing stress. But, while some of the policies in the *Workplace Report* survey take that approach, others focus mainly or exclusively on permanent or “contractual” homeworking. This is likely to be reflected in what they require and what they offer to employees.

Employers looking to make savings through homeworking are adopting more complex work classifications. **Cambridgeshire CC**, for example, fits all roles into four types: fixed — specific locations like post

room; flexible — any location enabled by appropriate technology and flexible within and between buildings, such as a research officer; field — significant customer service contact out in the community/field such as social worker; and home — tasks predominantly carried out at home, such as revenue and benefits adviser.

**Westminster Council** defines six workstyles for flexible location work: home-based workers, frequent home workers, street-based workers, mobile workers, flexible office workers and fixed office workers.

Employees now have the right to request flexible working, which may include homeworking, and if an employer refuses a request it should be able to explain why objectively, without discriminating against an employee because of a protected characteristic under the *Equality Act 2010*, or failing to make any reasonable adjustments.

Reasons for refusal likely to be given under a homeworking policy might include cost, detrimental effects on customers or performance, the inability to reorganise a team’s workload, insufficiency of work, planned structural changes or inability to meet health and safety minimum standards.

If home working is accepted, a trial period may be required. At **Westminster Council** it is three months initially and then six months. The **Environment Agency** says “to be successful and to realise its full potential flexible home working should represent a long-term commitment but arrangements will need to be reviewed at least annually”.

If an employer wants to terminate homeworking then notice should be given, with scope to appeal, and a clear policy on what happens next. The notice period at finance group **Aviva** is four weeks.

## Suitable job

Not all jobs will be suitable for homeworking. **Ryedale DC** says: “Jobs that involve project work or identifiable output, or those which provide services across the District may particularly lend themselves to this type of work”. At **Uttlesford DC**, the policy favours information-gathering and processing roles rather than manual work; a limited require-

ment to be in designated places; minimal need for supervision; work that can be measured by defined objectives, milestones and outputs; work that requires high levels of concentration; and work that doesn't need any large business equipment. Managers should "keep an open mind and only refuse a request if there are objective business or health and safety reasons to do so".

Employees wanting to work from home may find their own "suitability" being assessed and homeworking policies frequently include a description of the desired attributes. **Ryedale DC** staff should be self-motivated, able to organise working time properly, confident to work away from office environment, able to work without direct supervision, and have a flexible approach. **Mendip DC** says the skills required for remote working can be very different from those required when working in an office as part of a team.

Union reps may be surprised to find that the assessment could include whether the employee has caring responsibilities and if so what arrangements they have made. **Coventry City Council** points out that homeworking is no substitute for child/family care, and normal care arrangements should be in place.

The approach at human rights group **Amnesty International UK** is a bit more sympathetic: "If staff have personal or other responsibilities such as child care or elder care they are expected to manage these responsibilities in a way that allows them to successfully meet their work obligations. Working from home will offer greater flexibility but cannot be a substitute for suitable care."

## Home

The suitability of the home will certainly come under scrutiny, not least on health and safety grounds as it remains the employer's responsibility under the *Health and Safety and Work etc Act 1974*, but it will probably be the homeworker who does the risk assessment.

Life assurance group **Friends Life** says the home workstation should be in a room, preferably a "non-family" area, such as a study or spare bedroom, which can be made secure, free from noise and other distractions, although if part of the property is exclusively used in that way, a capital gains tax liability could arise.

Mortgage policies or tenancy restrictions may need checking by a homeworker, along with council tax liability and insurance. Credit insurance firm **Atradius** says it will consider a contribution to any additional insurance premium required, on a case by case, basis but the employer's public liability insurance should apply.

Homeworking policies can be explicit about the sort of desk, chair, computers and

other equipment needed, and how much of it – if any – might be paid for or provided by the employer. The 1992 *Display Screen Equipment Regulations* are relevant and if laptops are provided they may need a standard screen, keyboard and mouse attached.

**Sheffield City Council's** policy points out that an employee is entitled to have reasonable adjustments made by their employer to any physical aspect of the workplace – including working from home – such as specialist software or a particular type of chair.

The home will need to be secure too. Homeworking policy for staff at **Gloucestershire Police** includes advice on what to do if work is interrupted, the need for a lockable container, no confidential material to be taken home, limitations on photocopying, secure destruction of waste, and phone security.

Most employers pay an allowance to cover day-to-day costs arising from being a homeworker such as heating and lighting, although some employers in the survey have moved away from that principle. Conservation charity **National Trust** pays £525 annually, others refer to tax-free allowances based on HMRC revenue and customs limits. Currently the level is set at up to £4 a week (or £18 a month).

## Suitable management

A good system of management is just as important to ensure that homeworkers remain happy, productive, unstressed and integrated with the office-based workforce. Good contact is the homeworker's "mantra". As Prospect puts it: "Choose deliberately and consciously to maintain it, never lose it and ensure that people know they can contact you (in working hours): contact will help you overcome isolation and any suspicions from your colleagues that, while at home, you're not actually working."

Policies usually place the burden on employees to keep in touch, for example by keeping their Outlook Calendars open – as required by the **London Borough of Bexley** – and checking emails regularly such as **Medway Council's** stipulation that they are checked at the start of every working day and a minimum of four times a day at regularly spaced intervals. But, while being contactable, homeworkers are also entitled to their privacy; they should also be able to screen out business calls at times when they aren't at work.

It is important to have a forward work plan or schedule, and it is in the homeworker's interest to remain "visible" or risk losing out on promotion or being professionally isolated compared with employees seen to be at work regularly, that's a scenario known as "passive face time". Yet, as **West Sussex CC** points out: "presence does not equal performance".

It is also in their interests to be appropriately managed. **Fife Council's** guidelines note that homeworkers require a style which is focussed on outputs and outcomes rather than inputs, and that they have an even greater requirement for individual and/or team meetings.

Homeworking policies invariably insist on attendance at workplace meetings when required and the need to allow for supervisor visits. But **Atradius** says that business meetings involving a third party must not be conducted in the home and Coventry City Council's policy simply says: "No meetings shall be held in the employee's home."

Line managers cannot abdicate their responsibilities towards homeworkers. **Westminster Council's** policy says: "If an employee's performance deteriorates, find out why. Is it because of the new working arrangements or is it something else? Give employees a chance to adapt to their new way of working as things may settle down after a few weeks."

**Fife Council** says homeworkers and their managers should be particularly vigilant regarding signs of isolation and stress from working without the usual social contact. **Sheffield City Council** adds that where employees begin to suffer stress from being too isolated the manager must intervene, meet or speak to their employee and offer an alternative workplace.

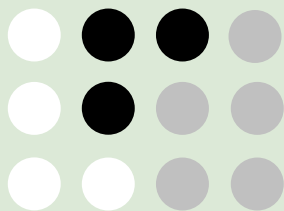
## Working time

Prospect advises members to maintain discipline on hours of work - at both ends of the day: "A little flexibility is always good - but otherwise ensure that you start, and end, work at sensible times."

Some policies set firm limits on a homeworker's hours of work, but others say they are free to perform the agreed work at times that suit them, in line with the requirements of the business unit. At the **Environment Agency**, flexible working hours need to be booked manually and if homeworkers are working a full day, it is expected that the "day" is the standard 7 hrs 24 minutes (with any variations clarified by both parties). But at cultural services group **Glasgow Life**, staff working at home are simply required to complete enough working hours per accounting period, equivalent to standard hours.

If the employers' demand for "agile" working and flexible work locations including homework is increasing, this may be a good time to negotiate or improve on home working policy.

Acas guide on homeworking is available at: [www.acas.org.uk/index.aspx?articleid=4860](http://www.acas.org.uk/index.aspx?articleid=4860)  
Information on tax allowances is available at: [www.hmrc.gov.uk/incometax/relief-household.htm](http://www.hmrc.gov.uk/incometax/relief-household.htm)



# Labour Research Department

## WORKPLACE report

*Workplace Report* is published 11 times a year by the Labour Research Department, 78 Blackfriars Road, London SE1 8HF

tel: 020 7928 3649  
 fax: 020 7902 9815  
 email: [pay@lrd.org.uk](mailto:pay@lrd.org.uk)  
 web: [www.lrd.org.uk](http://www.lrd.org.uk)

### Prices

#### Single copy

£5.90 to LRD affiliates  
 £7.55 to not-for-profit organisations

#### Subscription

£55.50 to LRD affiliates  
 £70.50 to not-for-profit organisations

There are special discounts for trade union workplace contacts who supply LRD with information for published surveys and inclusion on Payline. Contact LRD for details.

### Acting Editor

Neal Moister

### Staff writers

Lina Bhatt  
 Ali Brown  
 Lewis Emery  
 Stefano Fella  
 Lionel Fulton  
 Nerys Owen  
 Stephanie Peck  
 Clare Ruhemann

### Electronic services

Nina Cole

### Payline

Lewis Emery  
 Jean Hindmarsh  
 Cheryl Zimmerman

### Printed by

RAP Spiderweb Ltd, Clowes Street, Hollinwood, Oldham OL9 7LY

## LRD Payline

If you find *Workplace Report* useful, you may be interested in another of our services: LRD Payline, an internet database allowing users to compare pay and conditions across a range of industries.

Based on more than 2,300 collective agreements, with more being added all the time, LRD Payline can be accessed from our website ([www.lrd.org.uk](http://www.lrd.org.uk)) and from some union sites.

To produce LRD Payline, we analyse agreements supplied by union reps across the country, and input the key elements into a database. Pay increases, pay rates, hours, holidays, regional allowances and maternity/paternity arrangements are already covered, and other areas will be included in the future.

*Workplace Report* uses this material in some of its articles and surveys, but LRD Payline has the advantage of always being up to date.

Users can compare, for example, their own pay increase with others in their industry or region. They can widen or narrow the search as much as they want — and if they find an agreement of particular interest, a single click provides the full picture.

For many activists, access to LRD Payline is free. The service is paid for at national level, and a number of unions — including Unite, the GMB, the RMT, TSSA, PCS and Community — make it available to all their activists. If you are a member of one of these unions, e-mail [pay@lrd.org.uk](mailto:pay@lrd.org.uk) for details and a password.

## Main topics featured in *Workplace Report* in the past five years

absence management	115 07/13	equality bargaining	74 11/09	Payline	112 04/13
adoption leave	see maternity leave	European bargaining	65 01/09, 76 01/10, 87 01/11, 98 01/12, 109 01/13, 120 01/14	pay round analysis	95 10/11, 100 04/12, 106 10/12, 112 04/13, 117 10/13, 123 04/14
adult learners	102 05/12	facility time	80 05/10, 113 05/13	pensions	59 06/08, 83 09/10, 85 11/10, 94 09/11, 116 09/13
agency workers	67 03/09	fit notes	79 04/10, 91 05/11	personal injury claims	111 03/13
Annual survey of hours and pay	108 12/12	first aid provision	89 03/11	pre-retirement schemes	119 12/13
apprentices and their pay	69 05/09, 100 03/12	flexible working	126 07/14	public sector pay and conditions	66 02/09, 75 12/09, 99 02/12
bargaining predictions	76 01/10, 87 01/11, 98 01/12, 109 01/13	health and safety review	71 07/09, 82 07/10	redundancy policies	60 07/08, 92 06/11
bereavement leave	91 05/11	health, safety and equality	100 04/12	relocation	94 09/11
bus drivers' pay	115 07/13	industrial action ballots	93 07/11	severe weather	118 11/13
callout payments	88 02/11	information disclosure	105 09/12	service-related pay/leave	54 01/08, 55 02/08
capability procedures	116 09/13	inflation	89 03/11, 113 05/13	shift work	86 12/10, 96 11/11, 107 11/12, 119 12/13, 120 01/14
car industry	67 03/09	living wage	107 11/12	sick pay	114 06/13
casualised working	110 02/13	London weighting/ regional allowances	81 06/10, 93 07/11, 103 06/12, 114 06/13, 125 06/14	sickness absence policies	115 07/13
climate change	70 06/09	maternity leave	90 04/11, 104 07/12	skills payments	125 06/14
collective bargaining	100 03/12	meal allowances	97 12/11	standby payments	88 02/11
corporate manslaughter	123 04/14	mental health	74 11/09, 102 05/12	teaching assistants' pay	77 02/10
domestic violence	78 03/10	mergers and takeovers	78 03/10	toilet breaks	80 05/10
drug/alcohol policies	61 09/08, 86 12/10	minimum wage	82 07/10	voluntary sector	88 02/11
earnings	104 07/12	monitoring and surveillance	97 12/11	whistleblowing	103 06/12
employee health & well-being	108 12/12	multi-employer agreements	122 04/14	working time	61 09/08, 105 09/12
employment tribunals	96 11/11	nhs pay	118 11/13	Workplace employment relations	110 02/13
employee engagement	70 06/09	organising	81 06/10	works canteens	85 11/10
energy sector pay	111 03/13	outsourcing	126 07/14	young workers' pay	99 02/12
equal pay	66 02/09	overtime	122 04/14		
Equality Act	83 09/10	paternity/parental leave	see maternity leave		