

UnionLine NEWS

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The Legal Services Newsletter for GMB and CWU Members and their Families



The Regulated Care Sector in Scotland

The Scottish Social Services Council (SSSC) is the regulator for the social service workforce in Scotland. All workers in the care sector have to be registered and thereafter regulated by the SSSC. The GMB agree and affirm the principal that it is in the public interest that vulnerable children and adults should be properly cared for and that any person who seriously fails in that duty should be held accountable.

The workers in the care sector who are held accountable are in the main subordinate relatively low paid workers in the private sector. These subordinate workers are held to the same exacting professional standard as Doctors and Dentists but have only a fraction of the education, training and support that these highly skilled professionals receive. In the majority of cases it is private sector employers who will refer care sector workers to the SSSC during or after the workers have been investigated, disciplined or dismissed for alleged misconduct in the workplace. In the year from 2015 until 2016, 61.1% of referrals came from private sector care providers. Only 11% of referrals came from NHS and Local Authority care providers. This glaring anomaly is compounded by the fact that the SSSC's remit is to investigate and discipline workers only. The owners and directors of private sector care are not individually held accountable in the same way as care workers.

When workers are referred to the SSSC, they are then required to attend hearings that will

often be after they have been through lengthy and stressful internal disciplinary proceedings with their employer with no representation. This inequality is then amplified at the SSSC where it is not only the worker's job but career and public reputation at stake. In the last 12 months an average of just 19% of workers had legal representation at hearings before the SSSC. Just one in five workers are getting legal help. At any hearing at the SSSC the panel who adjudicate the proceedings get a Solicitor to assist them. The SSSC get a Solicitor to represent them. The vast majority of workers however have no one to help them. This appears to be a conveyor belt of injustice and unfairness on an industrial scale.

Gary Smith, GMB Scotland Secretary said; ***"GMB Scotland have always been extremely concerned about the lack of legal support for care workers and the daunting task faced by care sector workers when they are referred to the SSSC. When UnionLine Scotland was created in 2016 GMB Scotland immediately created a specialist team of Scottish Solicitors***

to help all GMB members working in the care sector in Scotland. It means that if you are member of the GMB and working in the care sector you are entitled to free expert legal assistance. This is a huge additional benefit for GMB members, the importance of this cannot be overstated."

Brian McLaughlin, UnionLine Scotland said; ***"If a care sector worker is found guilty of misconduct by the SSSC they post all the decisions on a publically available website. This draconian measure is not reserved for the minority of workers who have committed the most serious misconduct and have been struck off the register of care workers. It also applies even if the sanction imposed is a caution or a warning. Is this a proportionate punishment and is it in the public interest?"***

GMB Scotland would encourage all care sector workers to join the Union to receive legal assistance if ever required as well as getting help to become better trained and aware of the highly regulated environment they are working in. Since 2016 the professional regulatory team of UnionLine Scotland have not only had considerable success in their work for the GMB care sector members but, equally as important, have been able to provide support and assistance when they are going through a very traumatic and difficult time.

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EU Withdrawal Bill gets bogged down in political gridlock

The return of the EU Withdrawal Bill to the House of Commons has been delayed until late November at the earliest.

The Bill, formerly known as the Great Repeal Bill, was expected to return to the Commons when MPs came back from the summer recess but failed to do so due to lack of political agreement.

The draft legislation has already passed its second reading, and is now facing several attempts to amend it at the next part of its Parliamentary journey, the committee stage.

Leader of the House of Commons Andrea Leadsom has confirmed there had been “300 amendments and 54 new clauses” proposed and that it was *“taking a bit of time to have proper, thoughtful, well-considered responses”*.

The EU Withdrawal Bill will repeal the 1972 European Communities Act, which took the UK into the then European Community and meant EU legislation took precedence over law passed in the UK Parliament. It will also end the jurisdiction of the EU Court of Justice.

Large parts of the laws won't work post Brexit because they refer to EU jurisdiction – it is to address these irregularities that the government has taken the controversial Henry VIII powers.

These statutory instruments will enable the government to enact “corrections,” without

reference to Parliament. The government estimates that there will need to be between 800 and 1200 such statutory instruments to ensure the Bill functions properly.

The scale of EU laws to be transferred is huge. The government's White Paper says there is “no single figure” but that there are believed to be 12,000 EU regulations (one type of EU law) in force, while Parliament has passed 7,900 statutory instruments implementing EU legislation and 186 acts which incorporate a degree of EU influence.

The total body of European law, dating back to 1958, is known as the Acquis Communautaire.

It binds all member states and in 2010 was estimated to consist of about 80,000 items, covering everything from workers' rights to environment and trade.

Trade unions are concerned that hard won worker's rights could be watered down or lost in the process.

TUC general secretary Frances O'Grady is particularly concerned about holiday pay, agency workers and TUPE regulations. *“Before these rules came in, in 1998, more than a third of part-*

time workers had no right to paid holidays. Any undermining now of paid holiday for part-timers would hit more than 2 million workers,” said Frances. *“We are particularly worried about the rules ensuring that people who aren't in full-time, permanent jobs get properly paid holidays. Employers often seek to undermine these rights – and unions have frequently had to go to court to make sure workers get their holiday pay in full.”*

On agency workers. *“Bosses lobbied hard to water down their protections, and still too few of them get the same pay as the regular staff they work alongside. EU protections have at least granted agency workers equal access to facilities like staff canteens, and some have received pay rises and more paid holidays,”* said Frances.

“Bad bosses will also be keen to dilute the safeguards for workers when companies are restructuring, being taken over or making redundancies. EU rules ensure that management has to consult their workforces when big changes are being planned, and these TUPE rules protect workers from losing their jobs overnight when part of a company is sold off or a contract is transferred.”

Tougher sentences for attacks on emergency staff

Attacks on emergency workers will result in tougher sentences under a new law that has been given government backing.

Labour MP Chris Bryant's private member's bill would double the maximum sentence for common assault against an emergency worker to a year. The Labour MP for Rhondda, called assaults on police and paramedics “a national disgrace”. Policing Minister Nick Hurd told MPs the government was “very supportive” of the principles of the bill, telling the Commons that violence against emergency service workers was “intolerable”. The legislation will cover attacks on police, prison

officers, custody officers, fire service personnel, search and rescue services and certain healthcare workers including ambulance staff. A government spokesperson said: *“This crucial change will send a clear message that we will not tolerate attacks on them, and we will work with Chris Bryant and others to ensure those who are violent face the full force of the law.”* Under the bill, judges will also consider the victim being an emergency worker as an aggravating factor in

offences including common assault, actual bodily harm and grievous bodily harm.

The legislation will also give the power to take blood samples, with consent, from people who have spat at or bitten emergency workers and exposed them to the risk of infection, the government said. It also creates a new offence of failing to provide this blood sample without good cause.



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