



# UNIONLINE NEWS

## SCOTLAND

Legal Services Newsletter for GMB  
and CWU Members and their Families

DECEMBER 2018

## PERSONAL INJURY VICTIMS SHOULD BE COMPENSATED FAIRLY AND TRANSPARENTLY



**A person can claim compensation if they are injured through the wrongful behaviour of another person or organisation. The role of compensation is to put the person - to the extent that a financial award can - as close to the position they were in before they were injured as possible. For a person who has suffered catastrophic injuries, unable to work and often requiring constant care it is critical that compensation is obtained to cover all living and care costs sufficient to last a lifetime.**

To date, most cases have settled on a lump sum basis whereby a claimant will receive a figure which they can invest to cover future costs. The claimant will thus receive interest on that

investment. Due to the return they receive this could lead to claimant being overcompensated. Thus a discount rate is applied to the compensation figure to mitigate against this.

Historically, it has been assumed that most claimants are risk averse and will invest in low risk stocks such as Index Linked Government Stocks (ILGS). In 2001 the rate of return used to calculate future damages was set by Government at 2.5%. However, following the stock market crash it was clear that low risk investments such as ILGS were not producing returns anything like 2.5%. This meant that some of the most severely injured and vulnerable claimants were being severely undercompensated and large insurers were receiving a windfall and increased profits as a result.

Trade union lawyers and others campaigned vigorously to have the law changed in order to ensure fairness for their clients and other claimants. In March 2017 both UK and Scottish Governments responded to the calls to remedy this iniquity and the rate of return was reduced to -0.75% to reflect the negative rate of redemption yields on ILGS. There was a major outcry from insurance companies who had remained silent in the previous years as their profits rose at the expense of vulnerable claimants.

However, both claimants and insurers agreed that a more transparent and fairer process of determining the rate of return used to calculate damages for future loss was required. In Scotland this has culminated in the Damages (Investment Returns and Periodical Payments) (Scotland) Bill which has recently been scrutinised by The Economy, Energy and Fair Work Committee at Holyrood.

The Committee agreed with the principles of the Bill, which would reform the law so that the UK Government actuary would now be responsible for setting the discount rate for those receiving compensation, having regard to the actual returns available to claimants. Most importantly the Government Actuary will be required to set out his or her reasons for the rate they set.

The Committee recommended that the discount rate should only be reviewed every five years rather than every three years as set out in the Bill. This is unwelcome news for claimants given the volatility of markets in the current economic climate. It remains to be seen what amendments to the Bill will be made and whether they do indeed meet the objectives of fairness and clarity and thus redress the years of under-compensation suffered by claimants. The Bill is likely to become law in 2019.

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## WHAT'S COMING UP IN 2019

### Use of NDAs in employment disputes

The Government has announced that it will bring forward a planned consultation on the use of non-disclosure agreements in employment disputes. It intends to improve the regulation around such agreements and make it explicit to employees when a non-disclosure agreement does not apply and cannot be enforced. The announcement follows the high profile Court of Appeal decision to stop a newspaper from naming a British businessman accused of the sexual and racial harassment of staff.

### Executive pay ratio reporting requirements

Regulations on executive pay ratio reporting requirements are to be introduced on 1 January 2019 for quoted companies with more than 250 UK employees, applying to financial years beginning on or after that date. First reports will therefore be made in 2020. They will be required to include certain pay ratios for the relevant financial year in the directors' remuneration report. The pay ratios compare

the total annual remuneration of the CEO to UK employees whose pay and benefits are on the 25th, 50th and 75th percentiles. These companies will also have to report how share price changes impact on shares receivable by directors under long-term incentive schemes during the relevant financial year and which corporate governance code or corporate governance arrangements they applied in the financial year. Other requirements are for a statement on how the directors have engaged with employees and had regard to their interests when making business decisions, and how directors have dealt with the duty to promote the success of the business.

### Ethnicity pay gap

A consultation has begun on the introduction of mandatory ethnicity pay gap reporting for large employers, closing on 11 January 2019. The government is asking for views on what information should be reported to prevent undue burdens on business.

## TUC CALLS ON GOVERNMENT TO MAKE EMPLOYERS REPORT THEIR DISABILITY PAY GAPS

The TUC is calling on the Government to make it compulsory for employers to publish their disability pay gaps.

The call comes as new TUC analysis shows that the average pay gap for disabled workers has hit 15.2% – the equivalent of £2,821 a year.

However, for people with mental illnesses (29.8%) and depression (26.3%) the pay gap is even worse.

Last week ministers published a voluntary code to encourage employers to disclose the number of disabled people they employ, their career progression and pay.

But the TUC says that without a legally binding requirement on companies to publish their pay gaps (and set out what action they are taking to address them), progress will be too slow.

### Disability employment gap

The TUC says far more needs to be done to remove the barriers facing disabled people in the workplace.

Just half (50.5%) of working-age disabled people in the UK currently have a job, compared to four-fifths (81.1%) of non-disabled people.

For some disabled people the problem is even worse. Only 3 in 10 (30.4%) people with a mental health disability are in work.

The TUC is calling on the government to introduce a statutory requirement for employers to report on their disability pay gaps and employment rates, and to publish action plans setting out how they will address them.



## Government considering re-introducing Employment Tribunal Fees



It is being reported the government is considering reintroducing tribunal fees. Whilst no detail is given, the Ministry of Justice has said it is confident that a fee system can be found which does not deny Claimants access to justice, for which the government was criticised in the Unison Supreme Court case. This follows on from a written answer in Hansard during the summer, where the Ministry of Justice said it was reviewing how (not whether) it would reintroduce fees.

## Video hearings

Sir Ernest Ryder, the senior President of Tribunals, has given a speech in which he says the Courts & Tribunals Service is considering testing video hearings for case management and simple cases in employment tribunals, together with new sophisticated booking arrangements for judges, hearing rooms and cases.

The national employment tribunal's user group noted that the most recent statistics indicate a 165% increase in single claims (it would take a 200% increase to return to pre-fee levels). Also that at least one tribunal is listing longer cases as far away as 2020, and it is being reported that Croydon and Manchester tribunals are listing longer hearings in 2021. These delays will be alleviated, at least in part, as new salaried and fee-paid employment judges are appointed over the next year or so.



## HMCTS defends intrusive security after 5,000 knives seized

Her Majesty's Courts & Tribunals Service (HMCTS) has defended what some say are overzealous security measures at courts in England and Wales.

**Susan Acland-Hood chief executive** revealed that 8,000 knives were confiscated in 2017 and 5,000 had been seized so far this year from people entering court buildings said she recognised there had been instances where security measures were intrusive, but stressed security staff could not pick and choose who to search.

The fast-track entry scheme, by which solicitors will use ID cards and barristers a smartphone app to bypass security, could be extended to all courts

pending a successful pilot, Acland-Hood said.

*"However, even under the new measures one in ten ID holders (lawyers) will still be searched," she added.*

*"Since August five courts have been piloting the system and last week, the scheme was extended to courts in Chester, Nottingham, Portsmouth, St Albans and Swansea."*

Acland Hood also defended the decision to pilot flexible court operating hours in family and civil courts.

Participation in the scheme will be voluntary.

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