UNIONLINE NEWS | SCOTLAND
Legal Services Newsletter for GMB and CWU Members and their Families
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UnionLine Scotland WIN £95k pay out for injured care assistant

A care assistant who was badly injured after being attacked while working within a secure mental health unit within Greater Glasgow and Clyde Health Board, has won £95,000 after UnionLine Scotland stepped into take up her case.

The incident occurred when the care assistant Alice (not her real name) took a family, who were visiting a resident, through to the multi-function room. The family had brought food with them for their resident. This attracted the attention of another resident Peter (not his real name), who had unpredictable violent tendencies and was required to be under constant observation on a one to one basis. He entered the room alone, without supervision. Alice was previously aware of his care plan and that he had a propensity for sudden violence, more so towards women. He also did not respond to the word "no" and was motivated by food. His observer was usually male unless they were short staffed, in which case a woman would be allocated.

Alice encouraged Peter to leave the room to come and get his supper with her. She used appropriate language which her colleagues confirmed was compliant with Peter's care plan. He initially made an attempt to leave the room however he then changed his mind, going towards the female visitor.

Alice encouraged him to leave again and he suddenly and without warning, moved speedily towards her, lifting and throwing her against a wall.

She landed on the floor suffering serious injury.

The case had already been turned down by one law firm, when UnionLine Scotland Associate Solicitor, Tracy McKenzie, stepped in pursuing a line based on vicarious liability.

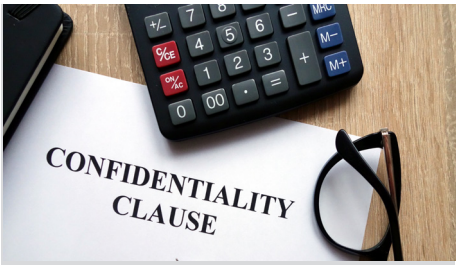
The vicarious liability amounted to Peter not being properly observed in the prescribed one-to-one basis, which would have meant he did not enter the room and the incident would not have occurred.

The case was raised in the Court of Session. The health board initially argued that there had been contributory negligence by Alice, claiming she did not have her obligatory alarm, used inappropriate language toward Peter and shouldn't have dealt with him in the first place.

"We were confident that this argument held little traction as she did have her alarm and there was no evidence of any wrongdoing on her part," said Tracy. "Furthermore, it was not unit policy to sound the alarm, if Peter was found unsupervised. She had been instructed to observe him in the past," said Tracy.

Half way through proceedings, the health board admitted liability and 5 days before the final hearing was due to be heard settlement was agreed in the sum of £95,000, after offers of £40,000 and £50,000 had been turned down.

Alice, aged 66, suffered a displaced, comminuted intertrochanteric fracture of the left neck of the femur. She developed an Adjustment Disorder with Mixed Anxiety and Depressed Mood. She was left with a limp and required the use of a stick. She retired on grounds of ill health one year after the incident and was unable to work again.



Confidentiality Clauses – Proposals for Reform

The government has issued a consultation seeking views on new measures to prevent the misuse of non-disclosure agreements in situations of workplace harassment or discrimination. Confidentiality clauses serve a useful purpose in the employment context.

They can be used primarily in two ways: as part of employment contracts, to protect trade secrets for example, and as part of settlement agreements, for example to allow both sides of an employment dispute to move on with a clean break.

There are some limits on their use: mainly that confidentiality clauses are void if they purport to prevent someone making a protected disclosure, or taking a case to a tribunal (unless within a COT3 or settlement agreement).

The government is now consulting on further measures:-

- **legislating to ban confidentiality clauses which prevent a victim reporting or discussing potential criminal acts to/ with the police**
- **ensuring any confidentiality clauses in employment contracts (as contrasted with settlement agreements) are included in the written statement of particulars of employment issued at the start of the employment relationship**
- **requiring all confidentiality clauses to highlight the disclosures which confidentiality clauses do not prohibit, and making any confidentiality clauses which do not comply with this void in their entirety**

Post Brexit Package travel claims – what next?

With the UK due to leave the European Union in the near future, what does this mean for claims arising from illness on holiday or a defective package holiday?

On the 1st of July 2018, the Package Travel and Linked Travel Arrangements Regulations 2018 came into effect and these new rules cover all package holidays booked after the 1st of July 2018.

A package holiday has to be made up of two separate parts. Usually this would be flights and a hotel but car hire, transfers or another service can make up the definition. The regulations allow a traveller to claim against the operator or booking agency for example TUI or Expedia for travel services that have not been provided appropriately with the required skill and care.

A linked travel arrangement is where, for example, you separately select and pay for a holiday such as a flight then accommodation through different providers or, buy a flight then receive an email 24 hours later to book a hotel or car hire. Be aware that only the company arranging the services can be taken to court and not the companies providing them, if these companies become insolvent.

But what does this mean after Brexit? It means that if a deal is reached, then claims could still be raised in the manner they are now which is to say, we can claim for a gastric illness contracted in Greece in the UK.

If we leave without a deal, it may be that claims will have to be raised in the country where the harmful event occurred. This could be very costly. Ensure if you book through a non-UK based agency, you understand the relevant booking provisions before deciding to book out-with a UK based agency.

All members should ensure they book their holidays through an organisation that provides ABTA and ATOL protection, a simple way to make sure you are covered for any eventuality is to have appropriate travel insurance. Ensure you choose the right policy as insurers will cover you for medical expenses and legal costs. Remember, after Brexit EHIC cards no longer allow you medical treatment in an EU member state country.

One problem is that all of the above is subject to change post Brexit. If you think you have a travel claim, seek legal advice immediately from UnionLine. Call us on 0300 333 0303 before the UK leaves the European Union.

Agency worker seriously injured on first day of work

A distribution company has been fined after an agency worker sustained serious, life-changing injuries whilst working as a delivery driver in Cheltenham.

Cheltenham Magistrate's Court heard how, on 18 May 2017, a 27-year-old agency worker arrived at H&M Distribution Limited's Gloucester depot to begin his first day of work as a multi-drop delivery driver. After a brief induction process, the worker delivered his first drop successfully however the address provided for the second drop was incorrect and so a delivery of 12 beer kegs was not made and remained on the lorry. On his next delivery, the worker used a pallet truck to manoeuvre the beer to gain access to the next load on his list. He fell backwards from the raised tail lift onto the road and several kegs of beer fell and struck him. The worker suffered serious injuries including a traumatic brain injury and facial fractures requiring metal plates to be inserted into his skull. An investigation found the worker had no previous experience in using the type of pallet truck or tail lift involved in the incident. He was not given any practical training in the safe use of this machinery, nor was he made aware of safe working practices for a pallet truck on a tail lift. H&M Distribution Limited pleaded guilty to a criminal safety offence and was fined £60,000 and ordered to pay costs of £7,203.14.

HSE inspector Berenice Ray said: "Employers who use agency workers or contractors have a responsibility to firstly establish the workers' competence, taking into account their level of experience and familiarity with the work and work equipment, and then provide the appropriate level of training to ensure the work is done safely. If appropriate training had been provided, the life-changing injuries sustained by the agency worker could have been prevented."