FACT
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UNISON success over tribunal fees

After a long legal battle, public services UNISON has won a landmark court victory against the government, which means that employment tribunal fees should now be scrapped.

The Supreme Court — the UK's highest court — has unanimously ruled that the government was acting unlawfully and unconstitutionally when it introduced the fees four years ago.

Anyone in England, Scotland and Wales wanting to pursue a case against their employer has had to find as much as £1,200. This has been a huge expense for many low-paid employees.

The seven Supreme Court judges ridiculed the government's misunderstanding of "elementary economics, and plain common sense", when it claimed higher fees would mean increased demand.

The judges also said fees were set so high, it "has had a deterrent effect upon discrimination claims, among others", and also put off more genuine cases, than the so-called vexatious claims the government claimed fees were meant to deter.

The Supreme Court stressed that the administration of justice is not merely a public service, where courts and tribunals are only of value to the "users" who appear before them and who obtain a remedy. It said access to justice is of value to society as a whole, especially where cases establish legal rules and principles of general importance.

The judges said UNISON's evidence showed the fall in claims when fees came in was "so sharp, so substantial and so sustained" that they could not reasonably be afforded by those on low to middle incomes. It also held that fees particularly deterred the kind of "low-value" claims generally brought by the most vulnerable workers.

However, now, anyone who has been treated illegally or unfairly at work will no longer have to pay to take their employers to court.

The government will also have to refund more than £27 million to the thousands of people charged for taking claims to tribunals since July 2013, when fees were introduced by Chris Grayling, the then Lord Chancellor.

UNISON general secretary Dave Prentis said: "The government is not above the law. But when ministers introduced fees they were disregarding laws many centuries old, and showing little concern for employees seeking justice following illegal treatment at work.

"The government has been acting unlawfully, and has been proved wrong — not just on simple economics, but on constitutional law and basic fairness too."

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TUC general secretary Frances O'Grady said: "This is a massive win for working people. Congratulations to UNISON for doggedly pursuing this case. [The] result shows the value of working people standing together in trade unions.

"Too many low-paid workers couldn't afford to uphold their rights at work, even when they've faced harassment or have been sacked unfairly.

"Tribunal fees have been a bonanza for bad bosses, giving them free rein to mistreat staff. Any fees paid so far should be refunded as soon as possible."

However, as a jubilant but reflective Dave Prentis pointed out: "We will never know just how many people were stopped from taking legal cases as a result of employment tribunal fees. We will never know how many people have been denied access to justice and to legal recourse. Their stories may remain untold and their rights unprotected."

And let's not forget it was the then chancellor in the Conservative-Liberal Democrat coalition government, George Osborne, who told the 2011 Conservative Party conference: "We will double to two years the amount of time you can employ someone before the risk of an unfair dismissal claim.

"And I can tell you today we are going to introduce for the first time ever a fee for taking a case to a tribunal that litigants only get back if they win."

www.unison.org.uk/news/press-release/2017/07/unisons-tribunal-fee-verdict-victory-everyone-work/

www.supremecourt.uk/cases/docs/uksc-2015-0233-judgment.pdf

www.unison.org.uk/news/2017/07/massive-win-union-massive-win-workers/

www.telegraph.co.uk/news/politics/georgeosborne/8804027/Conservative-Party-Conference-2011-George-Osborne-speech-in-full.html

Holiday childcare costs

School's out for summer, as Alice Cooper sang, but that leaves working parents faced with the annual task of finding affordable local childcare during the six long weeks before schools reopen in September.

The findings of this year's *Holiday childcare survey* from the Family and Childcare Trust suggest that this will be a particularly difficult summer, with families facing the double whammy of rising prices and increasing shortages of childcare places.

The trust found that families in Britain will pay an average of £124 for just one week of holiday childcare — a 4% increase on 2016.

The survey also found that the proportion of local authorities reporting sufficient holiday childcare provision was down. In 2017, around three in 10 (29%) local authorities in England said they had enough holiday childcare for four- to seven-year-olds. Last year, the proportion was 33% or one in three.

Finding affordable holiday childcare will be harder for some families than others. The price and availability of holiday childcare varies widely for families depending on where in the country they live, and the type of childcare they need. Parents in the North East of England will be paying on average 10% more than their neighbours in the North West.

Half of local authorities have enough childcare for four- to seven-year-olds in Yorkshire and Humber, but in the East Midlands it's just one in 10.

Across the whole of the country, shortages in holiday childcare are most severe for children with disabilities.

For many families the problem of before and after school care and holiday options can be more challenging than childcare in the early years. Given its importance to families and the economy, it is urgent that the government acts now to solve this problem, the trust says.

The charity has called on the government to expand the financial support available for childcare costs to cover all forms of holiday provision. Parents can only claim financial support for Ofsted registered childcare, but not all holiday childcare has to register with Ofsted, meaning they are excluded from schemes, such as tax-free childcare and Universal Credit. Addressing this would immediately give parents who rely on this support more options during the summer months.

www.familyandchildcaretrust.org/holiday-childcare-survey-2017

Rogue employers beware unless ...

The director of labour market enforcement has warned rogue employers that he would be consulting on how to make full use of powers to jail the worst offenders.

Sir David Metcalf was appointed in January 2017 to oversee a government crackdown on exploitation in the workplace by setting the strategic priorities for the government's enforcement agencies:

- HM Revenue and Custom's (HMRC) National

Minimum Wage enforcement team;
- the Gangmasters and Labour Abuse Authority; and
- the Employment Agency Standards Inspectorate.

In his introductory report, Metcalf said he would work with the government's enforcement bodies to:
- better tackle illegal practices by implementing labour market enforcement undertakings and orders, which came into force in November 2016 and carry a maximum two-year prison sentence for serious or repeat offences;
- identify how best to ensure large employers' supply chains do not breach labour market laws, particularly in the fashion, construction and cleaning sectors; and
- review the effectiveness of current labour market enforcement efforts.

Over the coming months, Metcalf will consult business and worker representatives, industry bodies and enforcement action groups ahead of publishing his first full labour market enforcement strategy later this year.

Metcalf said: "Tackling labour market abuses is an important priority for the government and I am encouraged it has committed record funds to cracking down on exploitation.

"I will be working with government enforcement agencies and industry bodies to better identify and punish the most serious and repeat offenders taking advantage of vulnerable workers and honest businesses."

Metcalf's introductory report was published alongside this year's National Minimum and Living Wage enforcement statistics. The figures show in 2016 to 2017 HMRC's enforcement teams identified a record £10.9 million in back pay for 98,150 of the UK's lowest paid workers – a 6.2% rise in the back pay won and a 69% increase on the numbers helped last year.

Social care While the government was heralding its enforcement successes, it also slipped out an announcement on the National Minimum Wage in social care.

HMRC is currently investigating social care providers for underpayment of "sleep-in" shifts.

However, the stability of the social care is a key government priority. It recognises that the cumulative financial liability of penalties and arrears of wages could pose significant challenges to the social care sector and, in extreme circumstances, providers may be unable to meet their obligations to repay their workers.

So the government is to waive the financial penalties faced by employers who are found to have underpaid their workers for "sleep-in" shifts. These penalties are levied by HMRC and do not affect the arrears of wages to be received by workers in cases of underpayment of the National Minimum Wage.

Still, it's comforting to know that rogue employers in the sector won't have to worry about "sleep-ins" at one of Her Majesty's prisons.

www.gov.uk/government/news/director-of-labour-market-enforcement-warns-rogue-bosses-of-plans-to-use-powers-to-jail-worst-offenders

www.gov.uk/government/uploads/system/uploads/attachment_data/file/630197/nmw-nlw-lpc-evidence-compliance-enforcement-2017.pdf

www.gov.uk/government/uploads/system/uploads/attachment_data/file/632758/nmw-social-care-sector.pdf

Chief executives get 2% rise on basic pay

The median increase to base salaries for FTSE 100 chief executive officers in 2016-17 was 2%, according to research by Fit Remuneration Consultants.

Its *FTSE 100 directors' remuneration report*, which is based on data collected from FTSE 100 organisations' annual reports and accounts with a year end up to and including 31 December 2016, also found that the median (midpoint) salary for a chief executives at a FTSE 100 organisation was £855,000 for 2016-17, compared to £850,000 in 2015-16.

The median base salary for finance directors increased by 2.5% from £533,000 in 2015-16 to £544,000 in 2016-17.

The study says that 32% of chief executives in the FTSE 100 did not receive a base salary increase, compared to 23% of finance directors.

Median annual bonuses for FTSE 100 chief executives decreased from £1,093,000 in 2015-16 to £1,057,000 in 2016-17.

Looking at the single figure total remuneration declarations in remuneration reports, the median was £3,543,000 for FTSE 100 chief executives in 2016, compared to £4,404,000 in 2015-16. For chief executives with a service of three years or more, this figure fell from £4,539,000 in 2015-16 to £3,737,000 in 2016-17 on a median basis.

The single figure total, which *Fact Service* uses in its regular executive pay briefings, includes salary, taxable benefits, pension, annual bonus paid, long-term incentive plan vestings, and any other form of remuneration received during the year.

www.employeebenefits.co.uk/issues/july-online-2017/median-base-salaries-ftse-100-chief-executive-officers-increase/

'Notable slowdown' in UK economy

The economy has experienced a notable slowdown in the first half of this year the Office for National Statistics (ONS) said.

UK gross domestic product (GDP) was estimated to have increased by 0.3% during the second quarter of the year compared with previous quarter – up from the 0.2% quarterly growth posted in the first.

The growth in the second quarter was driven by services, which grew by 0.5% compared with 0.1% in first, the preliminary estimates show.

Manufacturing and construction were a brake on growth, with manufacturing down by 0.5% and construction by 0.9%.

GDP in the second quarter of 2017 was 1.7% higher than the same quarter 2016 – down on the 2.0% growth between the first quarter 2017 and 2016.

www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/grossdomesticproductpreliminaryestimate/aprtojune2017

Unions splash the cash from political funds

The general election in 2015 saw a rise of almost a quarter in the spending of union political funds.

Total expenditure in 2015-16 was up by 24% to £25.6 million from 20.7 million the year before, according to the latest annual report of the union watchdog, the Certification Officer.

Five unions spent over £1 million in the period covered by the union watchdog's annual report and all bar one increased expenditure considerably.

General union Unite upped its expenditure in the 2015 election year by 78% to £8.63 million. The GMB increased its spend by 44% to £4.49 million, while the CWU communication workers' union spent 34% more with expenditure of £2.14 million.

The increase for shop and distribution workers' union Usdaw was only 8%, but took its spend to £2.52 million.

Public services union UNISON ranked second in terms of overall expenditure at £4.87 million, but cuts its spending by 13% or £705,000 compared with the previous year.

Twenty-four unions had political funds with 4,777,168 members paying into the fund – a decrease of 82,410 or 1.7% on the previous year's figure of 4,859,578. However, the previous year 25 political funds were operating. In most cases the Certification Officer's analysis covers 2014 and 2015, although unions may have since filed later annual returns.

Two unions – general union Unite and public services union UNISON – have over a million members paying a political levy: Unite has 1,150,388 members doing so and UNISON has 1,148,655.

The latest figure for total income was £24.54 million for the 24 funds against £24.55 million for 25 funds the previous year. Unity which merged with the GMB over the period dropped out of the listing.

As at 31 March 2017, there were 22 unions which had political fund resolutions in force, the Certification Officer reports. This is a decrease of two from the number that was reported last year. The media union BECTU ceased to exist as a result of its transfer of engagements to Prospect and the construction union UCATT ceased to exist as a result of its transfer to Unite.

Just how the political funds will fare in the future is unclear. The *Trade Union Act 2016* brought in new requirements on political funds. Broadly, this will mean that from 1 March 2018 new trade union members will be exempted from contributing to a political fund unless they have given notice of their willingness to contribute to that fund – that is, members now opt-in, rather than the old system of opting out. A transition period that allows unions to amend their rules to meet the requirements of 2016 Act began on 1 March 2017 and will end on 28 February 2018.

www.gov.uk/government/uploads/system/uploads/attachment_data/file/629399/Cert_Off_Ann_Rep_2016-2017.pdf

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