

# FACT

S E R V I C E



125 UNISON success over failure to consult  
Survey finds pay cuts at top for once

126 Single parents hit by benefit cap

127 Divide in different ethnic groups' incomes  
Firms fined over asbestos in school

128 Courier a worker not independent contractor  
Enforcing the National Minimum Wage

Annual Subscription £90.05 (£76.00 for LRD affiliates)

Volume 79, Issue 32, 10 August 2017

## UNISON success over failure to consult

Organisations should consult unions before making changes to contracts that will affect their members, the Court of Appeal has said, in a ruling that could have wide-ranging repercussions for employers.

The ruling came in a case brought by public service UNISON, along with two park police officers – Maurice Vining and Stephen Francis – who had been made redundant by the London Borough of Wandsworth.

In 2013, an employment tribunal decided that not only could the two officers bring unfair dismissal claims, but UNISON could also bring a claim over the borough's failure to consult on the redundancies. In December 2015, the Employment Appeal Tribunal decided that none of the three parties had any right to bring a claim.

The Court of Appeal found the two officers had no right to claim unfair dismissal. However, it also decided that, because of European human rights legislation, UNISON could take action against the borough for the failure to consult on the redundancies. It added that the union could also bring a claim if the terms and conditions of contracts or the rights of their members had been affected more generally.

UNISON said the ruling would make it much harder to ignore unions when changes were being made in the workplace.

Prior to the Court of Appeal ruling, employers only had to consult with unions where the law explicitly said they must – for example, in TUPE or redundancy negotiations. The decision means unions may now need to be consulted in decisions about issues, such as holiday pay and working hours, where they affect union members.

“The message to bosses is they will have to treat their staff more fairly over pay and working conditions,” said UNISON general secretary Dave Prentis. “If they fail to consult unions then they will be acting unlawfully and could be taken to court.”

[www.unison.org.uk/news/2017/07/unison-court-appeal-victory-employers-fail-consult-unions/](http://www.unison.org.uk/news/2017/07/unison-court-appeal-victory-employers-fail-consult-unions/)  
<http://www2.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2017/07/31/employers-should-consult-unions-on-changes-to-contracts-says-court.aspx>

## Survey finds pay cuts at top for once

The average pay package of a chief executive of FTSE 100 company has dropped by almost a fifth, but still remains extraordinarily high, an annual survey of rewards at the top shows.

The analysis, from the High Pay Centre, the independent think tank, and the CIPD professional body

**LABOUR RESEARCH DEPARTMENT**

Published weekly by LRD Publications Ltd, 78 Blackfriars Road, London SE1 8HF. 020 7928 3649 [www.lrd.org.uk](http://www.lrd.org.uk)

for HR and people development, shows that the average FTSE 100 chief executive (CEO) now receives an annual pay package of £4.5 million. This represents a 17% drop from £5.4 million in 2015.

While this may represent a significant drop in CEO pay packages, it would still take the average UK full-time worker on a salary of £28,000 (median full-time earnings) 160 years to earn what an average FTSE 100 CEO is paid in just one year and 1,718 years to earn what Sir Martin Sorrell, CEO of advertising and PR multinational WPP, received last year alone (£48.1 million).

Key highlights from the joint analysis include:

- in 2016, the pay ratio between FTSE 100 CEOs and the average pay package of their employees was 129:1 – so for every £1 the average employee is paid, their CEO receives £129. In 2015, the ratio was 148:1;
- 60 of the FTSE 100 CEOs are paid more than 100 times the typical annual pay of a UK worker which currently stands at £28,000 per year (mean earnings);
- in contrast to the generous pay packages awarded at the higher levels, just over a quarter of the FTSE 100 are accredited by the Living Wage Foundation for paying the voluntary Living Wage to all their UK-based staff; and
- there are just six female FTSE 100 CEOs. While women make up 6% of the FTSE 100, they earn just 4% of the total pay. Male CEOs in the FTSE 100 earned on average £4.7 million last year, compared with £2.6 million on average for women.

Stefan Stern, director of the High Pay Centre, said while the fall was “welcome”, it was also “so far, a one-off”.

The CIPD/High Pay Centre's analysis highlights how the gap between the highest and lowest FTSE 100 pay packages has closed as companies “chase the median”, which currently stands at £3.45 million.

The average pay package of the 25 highest paid CEOs has dropped by 24% to £9.4 million in 2016. Conversely, the 32 lowest paid CEOs in the FTSE 100 have seen an increase in their overall package.

The CIPD and High Pay Centre have warned that this trend of “chasing the median” needs as much attention from the government and investors as is given to earners at the top end of the scale.

<http://highpaycentre.org/blog/reality-bites-average-ftse100-ceo-pay-package-down-17-on-previous-year>

[http://highpaycentre.org/files/2016\\_CEO\\_pay\\_in\\_the\\_FTSE100\\_report\\_%28WEB%29\\_%281%29.pdf](http://highpaycentre.org/files/2016_CEO_pay_in_the_FTSE100_report_%28WEB%29_%281%29.pdf)

## Single parents hit by benefit cap

The number of children and babies affected by the government's benefit cap policy continues to rise – despite a High Court ruling the policy unlawful.

In June, Mr Justice Collins ruled that the benefit cap discriminates against single parents with children under two. Collins argued that the application of the policy was “causing real misery for no good purpose”.

The latest figures shows that nearly 3,000 more single parent families with a child under two have been capped in the last three months alone. This means that, to date, 28,630 single-parent families with under-twos have been hit by the cap. Single parents make up nearly two-thirds of the total households affected.

The government's justification for the policy is that it encourages those without work to seek employment, but the continuing rise in the numbers of families affected suggests that for many this is simply not an option. This is in line with the evidence that the single-parent charity Gingerbread submitted to the High Court case – that the high cost of childcare alongside a lack of flexible work makes it exceptionally difficult for single parents to move into work.

In particular, single parents with the youngest children struggle the most to juggle finding suitable employment with affordable childcare. While two-thirds (65%) of coupled households where the youngest child was under two have been able to move off the cap to date, only two out of five (41%) of equivalent single-parent households were able to do so.

Instead, the benefit cap places these families at risk of poverty. Already, nearly half (47%) of children in single parent families are living in poverty.

Rather than acknowledge the evidence and High Court ruling, the government has instead decided to appeal the ruling – meaning that vulnerable single-parent families will continue to be affected by the cap.

Dalia Ben-Galim, director of policy at Gingerbread, said: “The High Court ruling on the benefit cap was unambiguous: single-parent families with babies and children should be exempt from this policy. The figures show that even greater numbers of

the most vulnerable families are being affected by the cap for no good reason. It is not too late for the government to withdraw its appeal. The current policy is driving families into poverty rather than into work."

<https://gingerbread.org.uk/news/350/Babies-Toddlers-Benefit-Cap>

## Divide in different ethnic groups' incomes

There are still large gaps in living standards between different ethnicities living in Britain, research from the think tank, the Resolution Foundation, suggests.

There are large differences in typical household incomes by ethnic group. A typical Bangladeshi household incomes is £8,900 a year (35%) lower than the white British median; Pakistani households £8,700 less (34%) and typical Black African households £5,600 less (22%).

These income gaps get wider after accounting for housing costs, given that around three out of five (58%) of white British families own their own home, while only around one in four Bangladeshi, black and other white (primarily European) families do. After taking housing costs into account, the disposable income gap between a typical white British household and Bangladeshi household increases to 44% or £9,800.

These large income gaps are persistent, but have narrowed. Between 2001-03 and 2014-16, typical incomes grew in real terms by 38% for Bangladeshi households and 28% for Pakistani households, compared to 13% for the white British group. Growth for black African households was 11%.

The other white group had the lowest growth, with an 8% fall in typical income after housing costs. This likely reflected compositional change, with relatively large immigration from Eastern Europe coming into this group.

Employment differences provide part of the reason for household income differences. Employment rates for Pakistani and Bangladeshi women at 37% and 31% respectively, are well below the white female rate (72%). However, there has been a steady catch-up, with increases of between 10 and 18 percentage points over the past 14 years. Black African female employment rates have also increased substantially, while the black Caribbean female employment rate – always high – has risen

too and exceeded that of black Caribbean men for a period after the crisis.

Male employment rates have also risen dramatically for ethnic minorities. Black male employment rates fell substantially post-crisis and were slow to recover, but since then have rebounded to record highs.

Sustained employment growth for Bangladeshi and Pakistani men – with increases of 17 and 10 percentage points respectively since 2001-03 – has also supported household incomes, as has real growth in typical weekly earnings of 28% compared to 1% for other male employees.

Unemployment rates, however, for black, Bangladeshi and Pakistani men (at 8% to 12%) remain higher today than was the case for white men even during the recession.

The Resolution Foundation cautions that its report is not an attempt to offer comprehensive analysis, but it does explore some of the causes including differences in the labour market, pointing to the need for further work.

[www.resolutionfoundation.org/app/uploads/2017/08/Diverse-outcomes.pdf](http://www.resolutionfoundation.org/app/uploads/2017/08/Diverse-outcomes.pdf)

## Firms fined over asbestos in school

Three companies have been fined a total of more than £1.2 million after workers were exposed to asbestos while refurbishing a school in Waltham Forest, London.

Southwark Crown Court heard that in July 2012 a worker removed part of a suspended ceiling in one of the ground floor refurbished rooms at St Mary's school and identified suspect asbestos-containing materials. Asbestos fibres were subsequently found in numerous areas in the school.

The court heard that the Waltham Forest council had a contract with NPS London Limited to manage development and refurbishment of its estate. At the time of the incident, the principal contractor for the work was Mansell Construction Services (part of Balfour Beatty) and the subcontractor was Squibb Group Limited.

A Health and Safety Executive (HSE) investigation found that although an asbestos survey was completed, there were multiple caveats and disclaimers which were not appropriately checked.

Balfour Beatty Regional Construction Limited (previously Mansell Construction Services Limited) of Canary Wharf, London was fined £500,000 plus costs, NPS London £370,000 plus costs and Squibb of Stanford-le-Hope, Essex £400,000 plus costs over breaches of the *Health and Safety at Work etc Act 1974*.

HSE inspector Sarah Robinson said: "The principal contractor and contractors on site did not review the survey report in detail, and did not take into consideration the multitude of caveats.

"Therefore, the work undertaken did not adopt the high standards of control expected for working where there was the potential to expose workers to asbestos."

<http://press.hse.gov.uk/2017/companies-fined-after-workers-exposed-to-asbestos/>

## Courier a worker not independent contractor

A former cycle courier who worked for Addison Lee was employed as a worker, not as an independent contractor. He should, therefore, have been entitled to employment rights, including holiday pay and the National Minimum Wage (NMW), an employment tribunal has ruled.

Christopher Gascoigne, who worked for Addison Lee as a cycle courier for seven years, contended that he should be classified as a worker rather than an independent contractor, and was therefore entitled to receive holiday pay, the NMW and protection against discrimination. His claim was supported by the Independent Workers Union of Great Britain (IWGB).

Employment judge Joanna Wade highlighted Addison Lee's use of contradictory language in

its contract to avoid the courier being treated as a worker.

Wade also said she was saddened that the contract included a clause "designed to frighten him off from litigating". It stated that he should "indemnify Addison Lee against any liability for any employment-related claim or any claim based on worker status brought by you". This, said Wade, "suggests they knew the risk of portraying the claimant as self-employed".

The amount of holiday pay owed to Gascoigne by Addison Lee will now be decided at another tribunal hearing.

[www.employeebenefits.co.uk/issues/august-online-2017/employment-tribunal-rules-addison-lee-worker-status-case/](http://www.employeebenefits.co.uk/issues/august-online-2017/employment-tribunal-rules-addison-lee-worker-status-case/)

[www.theguardian.com/uk-news/2017/aug/02/addison-lee-suffers-latest-defeat-in-legal-row-over-gig-economy-rights](http://www.theguardian.com/uk-news/2017/aug/02/addison-lee-suffers-latest-defeat-in-legal-row-over-gig-economy-rights)

[www.bailii.org/uk/cases/UKET/2017/2200436\\_2016.pdf](http://www.bailii.org/uk/cases/UKET/2017/2200436_2016.pdf)

## Enforcing the National Minimum Wage

Effective enforcement of the National Minimum Wage (NMW) is essential so that all workers with an entitlement receive it.

The TUC has produced a useful guide aimed at advisers and union representatives helping low-paid workers secure their rights on the NMW. The guide examines who is covered, how to calculate the NMW, and how NMW rights can be enforced.

Many of those who are not receiving the NMW will not be in a trade union, so unions have an opportunity to recruit new members while helping workers to secure their rights, the TUC says.

[www.tuc.org.uk/workplace-issues/employment-rights/your-rights-work/enforcing-national-minimum-wage-practical-guide](http://www.tuc.org.uk/workplace-issues/employment-rights/your-rights-work/enforcing-national-minimum-wage-practical-guide)

**JUST PUBLISHED — LRD'S NEW BOOKLET**

**TIME OF FOR TRADE UNION DUTIES AND ACTIVITIES  
— A GUIDE TO FACILITY TIME**

**£8.30 a copy**

**Order online and check for discounts at [www.lrd.org.uk](http://www.lrd.org.uk) or phone 0207 928 3649**