

# WORKPLACE report

No.189  
April 2020

## Coronavirus and you

Everything you need to know as a worker and trade unionist

- Unions protecting workers
- Transport workers impacted by crisis
- Pay: the Covid agenda
- Implementing furlough

### Health and safety

Keeping pregnant workers safe during the outbreak

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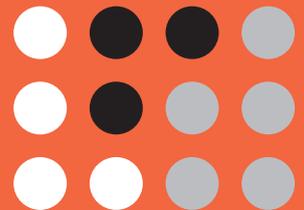
Unions confront challenge set by air fleet closures

### Recruitment and organisation

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### Europe

Deals postpone pay increases but improve Covid compensation



The Labour Research  
Department monthly  
for union reps and  
negotiators

# March pay flat as prices rise

PAY SETTLEMENTS remained fairly consistent in March, suggesting that the coronavirus crisis is yet to have a major impact on bargaining.

In March, the median pay increase in collectively agreed settlements from LRD'S Payline database remained at 2.5% — down from the revised lower figure of 2.6% for January. The private sector matched the overall increase, but the public sector increase was 0.3 percentage points greater.

Official figures for average weekly earnings in January for the regular pay (excluding bonuses) in the whole economy showed 2.7%, a continuation of a downward trend this year. However the public sector saw a 3.5% increase.

## Full-time weekly average earnings

All workers	£597.20
Male	£641.60
Female	£538.90
Managers	£880.50
Professionals	£784.50
Assoc professional	£637.00
Admin & secretarial	£467.80
Skilled/craft	£552.80
Services	£400.30
Sales	£403.10
Operatives	£516.60
Other manual	£403.90

ASHE 2019 median updated by AWE.

## XpertHR

### Median increases for three months to February 2020

Whole economy	2.4%
Private sector	2.4%
Manufacturing	2.2%
Services	2.5%

## Labour Research Department's Payline Database

Percentage increases on lowest basic rates (by agreements covered)

	For the three months up to and including:										This pay round,		
	2019					2020					Aug-	Mar	
	Apr	May	June	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Mar
All agreements	2.8	2.8	2.8	3.0	2.9	2.8	2.7	2.8	2.6	2.6	2.5	2.52	2.6
Private sector	2.7	2.7	2.8	3.0	3.0	3.0	3.0	2.9	2.8	2.5	2.5	2.5	2.6
Public sector	3.0	3.0	3.0	2.5	2.5	2.5	2.6	2.6	2.6	2.8	2.8	2.8	2.6
Manual	2.8	2.8	2.8	3.0	3.0	3.0	2.9	3.0	2.9	2.5	2.5	2.5	2.6
Non-manual	2.7	2.7	2.7	2.7	2.6	2.7	2.7	2.7	2.6	2.5	2.6	2.5	2.6
All industries	2.7	2.7	2.7	3.0	3.0	3.0	2.9	2.8	2.8	2.5	2.5	2.5	2.5
All services	2.8	2.8	2.8	3.0	2.7	2.7	2.6	2.7	2.6	2.6	2.7	2.6	2.6

For the 12 months up to and including:

	Apr	May	June	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
By agreements	2.7	2.7	2.7	2.7	2.9	2.8	2.8	2.8	2.8	2.8	2.8	2.7
By workers covered	3.9	3.9	3.8	3.9	3.9	3.7	3.7	3.8	3.8	3.8	3.8	3.8

The figures show median (midpoint) pay settlements among all the agreements monitored through LRD's Payline database. The weighted median (by number of workers covered) appears in the 12-monthly table.

## Average weekly earnings (AWE)

Regular pay excluding bonuses. Percentage annual increases

	Whole economy	Private sector	Public sector	Public sector excl financial services	Services	Finance & business services	Manufacturing	Construction	Wholesaling, retail, hotels, restaurants
December (r)	3.3	3.4	2.8	2.8	3.5	3.8	1.5	4.0	3.1
January 2019 (r)	3.7	3.9	2.8	2.9	3.9	4.9	2.2	4.0	3.0
February	3.2	3.5	2.2	2.2	3.2	3.3	2.2	4.9	2.6
March	3.1	3.3	2.3	2.4	3.2	4.1	2.2	3.2	2.0
April	4.0	3.9	4.4	4.3	4.1	4.5	2.4	5.2	3.0
May	3.8	3.8	3.8	3.9	3.9	4.3	2.7	5.2	3.0
June	4.0	4.1	3.5	3.6	4.2	5.2	2.3	5.2	3.4
July	3.8	3.9	3.1	3.2	3.8	4.2	2.4	5.7	3.3
August	3.6	3.6	3.2	3.3	3.5	4.6	3.0	5.6	2.7
September	3.6	3.6	3.4	3.4	3.6	4.7	2.5	5.4	3.5
October	3.2	3.2	3.3	3.4	3.2	4.5	2.7	5.1	1.4
November (r)	3.2	3.2	3.4	3.4	3.3	4.0	2.9	3.3	1.6
December (r)	3.2	3.2	3.3	3.4	3.4	3.9	2.8	2.0	1.4
January 2020 (p)	2.8	2.7	2.9	3.0	3.0	2.6	1.5	2.7	2.9
February (p)	2.7	2.5	3.5	3.6	3.0	2.9	2.0	1.9	2.2
Headline rate <sup>1</sup>	2.9	2.8	3.2	3.3	3.2	3.5	2.4	2.7	2.0

<sup>1</sup>The latest three-month average. Source: Office for National Statistics, (r) revised, (p) provisional.

## Prices

	Retail Prices Index (RPI), Jan '87=100	% annual increases		Retail Prices Index (RPI), Jan '87=100	% annual increases		
		RPI	RPI excl. mortgages		RPI	RPI excl. mortgages	
Feb 2019	285.0	2.5	2.4	September	291.0	2.4	2.4
March	285.1	2.4	2.4	October	290.4	2.1	2.1
April	288.2	3.0	3.0	November	291.0	2.2	2.3
May	289.2	3.0	3.0	December	291.9	2.2	2.2
June	289.6	2.9	2.8	January 2020	290.6	2.7	2.8
July	289.5	2.8	2.7	February	292.0	2.5	2.5
August	291.7	2.6	2.6	March	292.6	2.6	2.7

## 2020 forecasts

	RPI <sup>1</sup>	Average earnings <sup>2</sup>
Median	1.6%	2.4%
ITEM Club	1.8%	3.3%
Oxford Economics	2.4%	2.7%
NIESR	2.7%	3.7%
OBR <sup>3</sup>	2.1%	3.3%

Source: HM Treasury, Forecasts for the UK economy, April 2020.  
<sup>1</sup> Fourth quarter <sup>2</sup> Calendar year <sup>3</sup> Coronavirus scenario

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### IN MAY'S Workplace Report:

- Logistics pay and conditions
- Safety reps and Covid-19

Workplace Report is published by the Labour Research Department. For subscription details and other information, see the back page.

## CORONAVIRUS

# Transport workers impacted by crisis

This Easter weekend, general trade union Unite secured sick pay at full pay from day one for all of London's bus staff. Unite regional officer, Joe Murphy said that the victory, which affects 20,000 bus workers, means that they no longer have to "face the terrible choice between health and hardship" which comes with only receiving statutory sick pay at a time of national health emergency.

The win for the workers follows intense pressure from the union on bus operators, Transport for London (TfL), London mayor Sadiq Khan and the national government.

During the crisis, transport workers are playing a key role in keeping people and goods moving and putting their lives at risk every day. Despite this, employers are continuing to fail in their duty to provide workers with protection from exposure to the virus. A problem compounded by the fact that the government's latest action plan for the supply and delivery of personal protective equipment (PPE) does not allocate any to transport workers. In one case, workers for First South West Buses were forced to improvise screens from shower curtains.

Transport union the RMT has issued advice to its many thousands of members in the rail and bus industries throughout the UK telling them to stop work on safety grounds if employers do not provide protection from Covid-19. "That means that if they are not provided with PPE they should not be working," said general secretary Mick Cash.

The advice is to walk off the job and invoke the "safe work procedure if employers do not follow key protection measures" including "only conducting activities and tasks that are necessary for running the essential services for key workers and movement of freight during the emergency."

Manuel Cortes, who is head of the transport union TSSA, wishes to see the public transport system stripped down to a skeleton service. He said: "Very sadly we have seen some deaths amongst public transport staff and I'm now urging the government to make it clear that all non-essential public transport workers should be stood down. This must be a matter of priority. We need a standard approach on this across our railways and the wider transport network. We know that some companies continue to have booking offices and gateline staff working at stations – this flies in the face of the government's own advice."

### Railways

Being stood down is not without its issues for transport workers, however. This month, Arriva,

the operator of Grand Central, followed FirstGroup and Hull trains in temporarily suspending all its services, as coronavirus restrictions continue to affect its passenger numbers.

The company placed its 250 plus staff on the furlough scheme and said that it will not pay more than the 80% wage rate that it will get back from the government, despite the scheme's encouragement to do so. They anticipate the measure, which amounts to a huge wage cut for workers, will last for at least two months.

As an open access operator rather than a franchisee, Arriva is not covered by the Department for Transport's temporary suspension of the normal franchise agreements, which transfers all revenue and cost risk to the government and protects the terms and conditions of franchised rail workers.

Mick Cash of the RMT said his union was appalled. "Arriva, who own Grand Central, are a wealthy company which can afford to make up the 20% difference".

### Maritime

Meanwhile, in maritime transport, employers have been also caught taking advantage of this time of reduced activity to undermine the terms and conditions of workers.

RMT has reacted with anger as P&O Ferries proposed a series of changes for ratings, including pay cuts, replacement of UK seafarers with foreign crew, no-strike clauses, statutory redundancy, cuts to the sick pay scheme, scrapping benefits for long service, and leave restrictions.

Cash said of P&O Ferries, whose ultimate owner is the global corporation DP World, based in the United Arab Emirates: "Threatening permanent cuts to seafarers' jobs, pay and conditions and the maritime supply chain at a time of national crisis sends a message of utter contempt to my members and the country as a whole." The union is asking the government to intervene to protect jobs.

Swedish ferry company, Stena Line, has announced it is going to furlough staff and issue redundancies, despite a lack of certainty over whether seafarers have access to the UK government job retention schemes.

Their aim is to stand down 600 staff from its 2,000 plus strong seafarer, dock and port service workforce in the UK and Ireland and seek a further 150 redundancies. Cash said: "This is another major employer of UK seafarers reacting to flatlining demand by gambling with key workers' jobs and future at a time of national crisis."

## NEWS IN BRIEF

**New template lockdown agreement**

Unite is offering new tools to help workers during the pandemic. One is a template lockdown agreement that reps and negotiators can adapt to suit their circumstances.

The draft collective agreement includes clauses on the three major changes that are now being introduced:

- temporary home working;
- temporary lay-off period (furloughing); and
- essential work.

It is available in MS Word format so it is easy to edit and available to all. Find it at <https://unitetheunion.org/work-voice-pay/work-voice-pay-guides>

**Police cleaners avoid pandemic pay cut**

UNISON members at Staffordshire Police branch have persuaded construction and buildings management company Kier to rethink proposed wage cuts for cleaning staff.

Kier was due to cut the pay of workers who provide building maintenance services to Staffordshire Police by up to 20% for the next three months as a pandemic response. The company is doing the same to its entire workforce, including board members “to allow the group to continue operating as efficiently as possible”.

UNISON had described Kier’s move as “unacceptable” and advised its members to reject the pay cut.

The move would have affected at least 10 cleaners in supervisory roles, along with others providing services to local authorities.

Branch secretary Rob Birch, said that the pay cut would have affected supervisors – including those who are having to do cleaning shifts themselves because of vacancies.

“Some of them are having to work up to 60 hours a week. They’re not getting paid overtime, so they’re effectively already being paid below the minimum wage.”

## CORONAVIRUS

# Unions confront challenge set by air fleet groundings

THE IMPACT of the grounding of airline fleets and massive reduction in air travel due to the Covid-19 pandemic has had mixed results for workers in civil air transport.

At the positive end of the scale, Unite members who work for British Airways have overwhelmingly voted to approve a deal to furlough the airline’s workers and preserve employment.

The deal sets out to mitigate the impact of enforced pay cuts and protect employment. The terms of the agreement are:

- British Airways will introduce a modified version of the government’s job retention scheme, with workers furloughed on 80% of pay. However, unlike the government scheme, there will be no cap on earnings. Workers will be able to divert their pension contributions into their pay for a short period of time (contributions are between 9 and 18 % of earnings);
- there will be no unpaid temporary layoffs; and
- there will be no redundancies during this period and the redundancy process that had already begun has been halted.

The scheme will affect more than 30,000 workers and runs until 31 May.

Unite assistant general secre-

tary, Howard Beckett, said: “Unite members at British Airways have recognised the seriousness of the situation facing the aviation sector during this unprecedented crisis, and so have voted to accept the deal negotiated by their union.”

Unite has also reached a furlough agreement for 250 workers at Leeds Bradford Airport (LBA) who work in security, car parking, cleaning and passenger assistance. The workforce challenged the original deal being proposed by management at LBA and will now bank 20% of their wages to top up the government-backed scheme to take them up to 100% of pay.

On return to work, the airport staff will work back the banked hours at overtime rates, with a cap of 84 hours.

Other workers in the industry have not been so lucky. Heathrow workers were threatened with the sack if they rejected ‘voluntary’ 15% pay cuts. In a leaked letter to staff, bosses said the door would be left open for their reinstatement, but this would likely be on worse terms and conditions.

Heathrow has already imposed a 10% pay cut on unionised staff, members of the GMB and Unite, while around a quarter of senior

managers are expected to be made redundant

Meanwhile, the outsourcing giant Mitie has used the crisis an excuse to refuse to keep their word of a coming pay rise for the lowest paid workers at Heathrow.

The workers, who clean shared spaces such as seating areas and toilets at Heathrow Terminal 5 for the minimum wage of £8.72 an hour, were told that their hourly rate will not now rise from 1 April to the London living wage of £10.75, as had been promised. The company said this was a necessary cost-cutting measure and gave no date as to when the decision will be reversed.

Unite regional officer, Clare Keogh, said: “Unite is incredibly disappointed that our members, working on the frontline to keep things operating at the airport, will stay on minimum wage rates. Without them, Heathrow Airport could not safely function during this crisis.

“Mitie can afford to shoulder the costs of introducing the London living wage, which is acknowledged as the least an individual needs to have a reasonable standard of living in the capital, and should do so. Unite will be taking all available action to ensure that Mitie keeps its living wage promise.”

## AGENCY WORKERS

## CWU celebrates derogation loophole closure

FROM 6 APRIL, the UK’s more than 700,000 agency workers can secure a better working deal, thanks to the abolition of “pay between assignment” contracts, otherwise known as “the Swedish derogation”.

The legal change comes after a decade of campaigning by unions such as the Communications Workers Union (CWU), who first noticed these exploitative contracts designed by the recruitment industry being used with their members in BT

(British Telecom).

The so called Swedish derogation loophole allowed employment agencies to side-step the equal treatment aims of the European Union’s *Temporary Agency Workers Directive* on account of the way the exemption had been introduced in UK law by the then coalition government.

*The Agency Workers Regulations 2010* state that temporary agency workers must earn the same basic pay, and enjoy the same working

conditions, as any staff who are on permanent contracts. That is, so long as the agency workers have been working in the same role for 12 weeks

However, the loophole allowed employers to bypass this obligation if the agency permanently hired and paid the worker directly instead of being the middle agent between client and employer.

It meant that often agency workers were paid less than others doing the same job, creating a two-tier

workforce and undercutting the terms and conditions of workers who had bargained for their pay. It also saved unscrupulous employers a lot of money.

Now long-term agency workers will be entitled to the same pay and conditions as their directly employed colleagues.

Other new rights for agency workers include:

- all agency workers will be entitled to a key information document

## CARE SECTOR

# Scottish government recognises care workers' role

THE SCOTTISH government has recognised the vital contribution of care workers with a u-turn on PPE and an instant pay rise to the real living wage.

Following a meeting with health workers' union UNISON, general unions GMB and Unite, and local government (COSLA), it has issued fresh advice saying that care workers should be given face masks to protect themselves from coronavirus.

The move comes amid a general shortage of PPE and after UNISON claimed that initial guidelines sent to care homes had left many workers confused. The guidance had stated that care workers only needed gloves and an apron if the person under their care was not suspected of having Covid-19.

Unison described the guidelines as "dangerous", especially as more than a third of Scottish care homes are now dealing with confirmed cases. The new agreed position will

that more clearly sets out their employment relationships and terms and conditions with their agency; and

- agency workers who are considered to be employees will be protected from unfair dismissal or suffering a detriment if the reasons are related to asserting rights associated with the Agency Worker Regulations.

CWU assistant secretary Sally Bridge said: "The fact that PBA [pay between assignments] contracts

have, at last, been consigned to history represents a complete vindication of years of hard work by the CWU on an issue on which we've led the trade union movement from the outset. Many thousands of agency workers across the UK are finally achieving equal treatment on pay in very large part because of the pressure exercised by the CWU, which culminated in their exploitation being highlighted in the Taylor review of modern employment practices."

be that social care staff should wear protective masks where they feel appropriate, in line with their professional judgement. The Scottish Trades Union Congress (STUC) said the change had resulted from an "incredibly effective union intervention".

Shortly afterwards, the government announced it is giving all frontline staff an immediate pay increase and enhanced sick pay provision. The pay rise to the real living wage rate of £9.30 an hour for all hours worked, including sleep-overs and hours worked by personal assistants, amounts to a 3.3% pay increase for care workers and will be backdated to 1 April.

The move, agreed between the Scottish government and Convention of Scottish Local Authorities (COSLA), means staff will not need to wait for the pay to be backdated at a point later in the year following negotiations, as is usually the case.

The Scottish government will also provide funding to third sector and independent providers specifically to ensure that staff receive sick pay if they are off work ill or because they are self-isolating. Providers will be free to distribute the extra funding as they wish, giving them the option to increase wages across their organisations, and not just to frontline staff.

Commenting on the announcement, Mike Kirby, UNISON Scotland secretary, said: "We welcome today's announcement of the updating pay rise for social care workers and the additional assurances on sick pay.

"While the Scottish living wage has been policy over recent years, there has been a protracted contracting process and delays in money reaching care workers. This deal should remove these obstacles. This deal begins to recognise the real value in society of this workforce."

## NEWS IN BRIEF

### Scots public sector workers' 3% rise

In the midst of the Covid-19 emergency and worries about the availability of staff, the Scottish government and trade unions carried out bargaining over public sector pay at a national level. The aim was to ensure that public sector workers receive their increase in a timely manner. It is intended that public bodies implement the basic award elements of the public sector pay policy as soon as is practicable (or at the appropriate pay award date if this is after 1 April).

The public sector pay policy in Scotland is a single year one. Its key features are:

- providing a guaranteed basic pay increase of 3% for public sector workers who earn below £80,000 a year;
- continuing the requirement for employers to pay staff the real living wage, now set at £9.30 per hour;
- providing a guaranteed cash underpin of £750 for public sector workers who earn £25,000 or less;
- limiting to £2,000 the maximum basic pay increase for those earning £80,000 or more;
- allowing flexibilities for employers to use up to 0.5 per cent of pay bill savings on baseline salaries for addressing clearly evidenced equality issues in existing pay and grading structures.

The 2020-21 pay policy continues to require Scottish public sector employers to pay the real living wage and provides a guaranteed cash underpin of £750 for all staff who earn £25,000 or less.

It will remove the £36,500 pay threshold from previous years and provide a guaranteed minimum 3% pay increase for public sector workers who earn up to £80,000. The increase for those earning £80,000 or more will be limited to £2,000.

## CORONAVIRUS

# Workers continue to fight for furlough deals

UNITE says that it has negotiated a deal for British engine manufacturer Rolls-Royce's global workforce which puts safety first. In March, the company was forced to close its UK civil aerospace facilities in Derby for one week, while continuing to pay its 15,000 workers. [See page 16 for how health and safety has been protected in the deal]

All workers have accepted a 10%

pay delay for the year from April 2020, which will be paid back in the year starting April 2021. Others will be put on the government's job retention scheme which guarantees 80% of pay, with the company paying the rest.

Elsewhere employers are coming under fire for forcing workers to take a pay cut. Greencore, a Northampton-based food manufacturer, is furloughing a number of staff due to a

reduction in demand. However it has not agreed to top up the government's 80% for its low paid workforce.

George Atwall, regional officer for the Bakers Union, said: "The union is asking for 100% pay, which is a 20% top up on the furlough pay. The majority of people who have been furloughed are on minimum wage and shouldn't be forced to take a pay cut. The union wants clear answers."

## AGEISM

# Culture shift needed on age prejudice

LAST MONTH health secretary Matt Hancock called on 65,000 retired doctors and nurses in England and Wales, to return to the NHS to help tackle the coronavirus outbreak. In the same month a study by think tank the Centre for Ageing Better found that the UK's attitudes to ageing are overwhelmingly negative, with older people subject to a litany of damaging stereotypes.

So, while the outbreak has led to the public heaping praise on NHS returners and the existing NHS workforce, of which half are aged over 45, the think tank's findings show that traditional attitudes to-

wards older workers are that they have lower levels of performance, less ability to learn, and are costlier than younger workers.

The report *Dodderly but dear: Examining age-related stereotypes* found that stereotypes in health and social care are even more negative, with attitudes focusing on death and physical decline.

It reports that the media is a key driver of negative attitudes, representing ageing as a crisis or a societal burden, with the ageing population described using metaphors such as "greysunami" and "demographic timebomb". Often, older

people are depicted as "villains" unfairly consuming too many of society's resources.

These attitudes, the study found, can affect some groups more, with women and people from black and minority ethnic groups facing a "double jeopardy" of discrimination as they get older.

Ageing Better is calling for a "fundamental shift" to overturn what it calls an "ingrained culture" of "pity and dislike" towards older people.

Anna Dixon, its chief executive, said: "Ageism, like any other form of prejudice, has a profound effect on our self-esteem, our wellbeing and

the way we experience day-to-day life. Our new research shows that, in spite of the progress we've made towards challenging discrimination in Britain, we still have an ingrained culture of pity, dislike and disassociation towards older people."

She said the attitudes revealed in the research are preventing people from making the most of those extra years: "Ageism is deeply damaging, and yet all too often it isn't taken as seriously as other forms of prejudice or discrimination. Britain is long overdue a fundamental culture shift to overturn these attitudes."

## WORKING PARENTS

## Working parents in 'desperate need' during outbreak

WORKING parents desperately need more support during the pandemic, according to a report by the charity Working Families that highlights the challenges caused by schools and childcare settings closing. The charity says many parents are being forced to take unpaid leave or are losing their jobs, bringing economic uncertainty and hardship at the worst possible time.

*Weathering the storm: the Covid 19 pandemic and working parents* is informed by queries to the charity's free legal advice helpline, which have quadrupled since the start of the pandemic. Since mid-March, over 36,000 people have accessed

the charity's coronavirus-focused legal advice web pages.

As a result, the charity is requesting clear guidance from the government on whether or not parents can be furloughed when their childcare commitments make working from home impossible. Otherwise it warns that they will have to rely on unpaid leave and benefits.

It also draws attention to the lack of an option for employers to top up the income of parents who may have reduced their hours because they are caring for their children, and urges the government to explore options enabling employers that need to, to claim for the hours par-

ents can't work, so they aren't disadvantaged compared to furloughed employees who aren't working at all.

The charity recognises that not all employers will be able to support parents to work at home or make use of furloughing, and so is calling for a significant uplift in Child Benefit payments for the duration of the pandemic to assist parents who have taken unpaid leave or been dismissed as a result of Covid-19.

Working Families has received a raft of enquiries from pregnant women, particularly those unable to work from home, given that the government has said they may be particularly vulnerable to the virus.

It has said the government must make it clear that if they cannot work from home, employers should be suspending pregnant women on full pay until their maternity leave starts.

Jane van Zyl, the charity's chief executive, said: "Parents have been thrust into a 'new normal' of holding down a job whilst looking after children. These parents need employers that support homeworking and are willing to have pragmatic discussions about output and deadlines. We're deeply concerned about the unwillingness of some employers to be flexible."

The full report is available on the Working Families website.

## YOUNG WORKERS AND APPRENTICES

## New app targets at-risk young workers

A NEW app to help apprentices and other young workers stay safe in the workplace, with particular focus on workplaces where unions are not recognised, has been launched by the Greater Manchester Hazards Centre (GMHC).

GMHC developed the app, Training Safe, with the help of the Union Learning Fund (ULF), the TUC's learning and skills arm.

The need for an app was made

clear by the latest TUC report on young workers, which showed that every month a worker aged under 25 is killed at work and over 300 suffer a major injury.

Speaking to *Learning Rep* magazine, GMHC project worker Janet Newsham said: "It's absolutely imperative that apprentices and all young workers are better educated about health and safety because we know most of them are not going into

union-organised workplaces.

"That means they're in really vulnerable positions, so it's essential to get them direct support, which we can do through the app."

Newsham added that recent apprenticeship reforms have not always supported health and safety: the removal of the requirement on training providers to undertake detailed risk assessments of the workplaces where their apprentices

are working has, for example, led to thorough checks being replaced by form filling.

The Unite general union and the BFAWU foodworkers' union, which both represent young workers in the target workplaces, were involved in the consultation for the app.

The app includes an A-Z of advice; statistics on pay rates and workplace injuries; a newsfeed; updates, and a chat function.

## LEARNING

## Learn at home during Covid-19

UNIONLEARN has launched a Learning@home campaign to support workers who are self-isolating, working from home, or find themselves out of work during the pandemic.

The campaign's webpage takes workers through six tips for learning at home: who; how; when; where; why; and what.

Unionlearn director Kevin Rowan explained: "This is a very challenging time for workers across the country. Many are working from home, while others face an uncertain future as their workplaces close down for the duration of the Covid-19 crisis."

The TUC's learning and skills organisation, unionlearn, is able to support workers by providing online learning opportunities that can help develop their skills from home.

Over the coming months, it will be

highlighting learning opportunities that union members, their families and others can access from home. These vary from free qualifications through unionlearn's partnership with The Skills Network, to online assessments, resources and webinars.

The information is accessible via the unionlearn website, but there will also be regular posts on social media signposting online offers from partner unions and education providers.

The pages have interactive tools which people can use to review their skill levels, and help point learners towards a diverse range of inspirational training opportunities. The page is packed full of resources, including:

- the SkillCheck initial assessment tool;
- free distance learning qualifica-

tions from The Skills Network;

- unionlearn's Climbing Frame;
- apprenticeship essentials – advice and guidance for apprentices;
- the Careerzone one stop shop; and
- TUC Education.

To register go to: [www.unionlearn.org.uk/learning-home](http://www.unionlearn.org.uk/learning-home)

● *The government and unionlearn have both issued guidance on apprenticeships during the pandemic. A key point is that apprentices' learning may continue (probably remotely) if they have to remain away from work or are "furloughed". Separately the government has said that, if apprentices are furloughed, employers must make up their pay to the statutory minimum that applies to them. See May's Labour Research for more details.*

## RESKILLING

## Skills for the 21st century

A FORTHCOMING LRD booklet, *Skills for work*, examines the skills challenges that the fourth industrial revolution poses for the UK economy and how unions are responding.

The TUC says that with automation and new technology changing the way many work, millions will need the chance to reskill over the next 20 years.

The guide looks at the scale of the learning and skills crisis being faced due to the challenge set by automation, and how unions are tackling the rapid changes.

A central development driving change is the effect of the climate crisis and growing environmental awareness on the economy.

The booklet can be ordered from: [www.lrdpublications.org.uk](http://www.lrdpublications.org.uk)

## NEWS \_ RECRUITMENT AND ORGANISATION

## ORGANISING

## Unions organising digitally

EVIDENCE is emerging that some groups of workers are joining unions in increased numbers during the Covid-19 crisis, and unions are keen to keep new members and activists on board for the longer term.

The UNISON public services union says that "there continues to be a significant growth in recruitment to the union as public service workers worry about the impact of the current crisis on their jobs, terms and conditions and, of course, their health." And the PCS civil service union says that "more non-members are joining PCS than in any other time in the union's history".

In UNISON, work is taking place through the union's Strategic Organising Unit to ensure that this membership growth is maintained once the current health crisis ends. The union says: "As face-to-face organising has all but ceased for the time being, this work includes the trial of

digital methods of organising that can be used once the initial emergency diminishes."

PCS, meanwhile has issued advice to its activists on keeping members engaged and branches active during the lockdown while many reps and members are at home.

It is urging them to set up digital branches and branch executive committees, as some have already done. The union suggests they set up a WhatsApp or Facebook group of the branch executive committee. This can be followed by including further reps or PCS "advocates" in the branch so all activists can keep in touch with each other.

The advice goes on to suggest that reps ask members if they want to be added to these groups, partly to enable them to receive quick updates but also so members can inform reps what is taking place in their workplaces. The PCS guidance

also urges activists to ask non-members to join the union.

Other suggestions in the guidance are to:

- get members to update their personal contact information;
- produce a regular branch bulletin; and
- encourage members to get involved in the union, for example as advocates.

The union also urges activists to set up "PCS locals" – where members across all branches and workplaces come together in the communities where they live and work to help others and continue to campaign on pay, equality and job security. The union says dozens of PCS Locals have already been set up, adding: "Organising locally has never been more crucial – mutual aid and support networks have already started forming across the country."

## MEMBER BENEFITS

## STUC survey

Unionised workers in Scotland feel safer and better able to weather the coronavirus lockdown than non-unionised ones, according to a Scottish TUC survey.

The March/April survey of 1,500 workers found that union members were only half as likely to feel their job was at risk as those who weren't unionised (19% compared to 37%). While over half (59%) of non-unionised workers were worried about paying bills, only a third (33%) of unionised workers were – perhaps not surprisingly, as only 35% of non-trade union members had been told they would be paid in full if off-sick with Covid-19, compared to 62% of union members. Unionised workers also felt safer, had some degree of better access to PPE, and were more likely to be working in places with clear policies on dealing with the virus.

## ITALY

**Unions agree return to work arrangements**

THE METAL working unions of the three Italian union confederations, CGIL, CISL and UIL, have signed an agreement with motor manufacturer FCA (formerly Fiat) on the health and safety measures to take when factories reopen. The 9 April deal provides for the cleaning of the plant before work resumes and periodically thereafter; social distancing of at least a metre in the factory and communal areas; working from home where possible; masks for all employees; temperature checks before entering the premises; protection of the most vulnerable and the introduction of procedures to prevent large numbers of workers congregating in locker rooms and canteens.

The deal also contains a plan for groups of work to be rotated so that numbers in the plant at any one time are kept low, and a commitment that local authorities will be approached to ensure safe transport to and from the plant.

## IRELAND

**Redeployment to nursing homes agreed**

IRELAND'S biggest union, SIPTU, has reached agreement with Irish health service the HSE (Health Service Executive) which will allow health workers to move temporarily to nursing homes to tackle Covid-19 clusters. Transfers will be voluntary and those transferring will continue to be managed by the HSE and be provided with adequate PPE. SIPTU organiser Paul Bell said: "Our members want to help deal with the virus among the most vulnerable service users in the nursing home sector. However, until now, there was no protocol for members asked to provide assistance to private nursing homes." The agreement was signed on 15 April.

## FRANCE

**Renault reaches restart deal**

FRENCH motor manufacturer Renault has reached a deal with unions on pay during the lock-down and the terms of a return to work. But, although unions representing a majority of the around 36,000 workers spread across France are in favour, the CGT, the largest single union, is opposed.

The agreement, which was signed with the representatives

of three union confederations, CFDT, FO and CFE-CGC on 2 April, provides for the standard level of state support for laid off workers – normally 70% of gross pay – to be increased to 100%. This is partially financed by workers giving up a day of their future paid holiday for each week that the plants are not working.

In addition, once work has restarted, the unions have

agreed that the company can operate a six-day working week rather than the normal five, although only on six occasions over 2020. The company can also change holiday dates.

For the CFDT, which supports the deal, this is a "very balanced agreement". But for the more militant CGT, which has not signed, it means workers are paying for their own support.

## GERMANY

**Deals postpone pay increases but improve Covid compensation**

GERMAN unions have reached a series of deals with employers which generally postpone bargaining on pay increases until next year, but improve pay levels during the crisis

The largest deal, covering 3.8 million workers in the metalworking sector, was agreed by IG Metall, Germany's largest union. Originally signed as a pilot agreement in the state of North-Rhine Westphalia on 19 March, it has subsequently been extended across the country, with some regional adjustments.

The deal, like the others signed by German unions, builds on the country's existing system of state payments during short-time working. This pays 60% of a worker's net pay – 67% where there is a child in the household – for the hours when the worker is not working, including where work has stopped completely.

The metalworking deal improves on this by bringing forward the holiday and year-end bonuses, which together are worth more than a month's pay, and paying them on a pro-rata basis over 12 months. Together with an additional payment from the employers of €350 a head, this takes the average net payment up to around 80%. Compulsory redundancies cannot take place during short-time working.

The deal also helps employees with children to cope with the closure of schools and nurseries by extending the opportunity for workers to exchange some of their pay for extra time off, as agreed in the 2018 settlement. This now becomes possible for parents with children aged 12 and under – previously up to age eight – and the notice period required to ask for this is cut to 10 days. In addition, all parents with children aged 12 and under get an extra five days' leave to look after them, where nurseries and schools are closed, although they must previously have exhausted other leave possibilities.

The agreement runs until 31 December 2020 and the two sides have agreed that they will then look at the issues that, in normal circumstances, would have been at the centre of the negotiations – a pay increase and dealing with the challenges posed by digitalisation and automation.

The agreement for 115,000 workers at car-maker Volkswagen, signed on 9 April, is similar. It also delays negotiations on a pay increase until the end of the year and makes it easier for workers to choose extra time-off rather than extra money. However, there is no need to improve the level of pay

received at Volkswagen during short-time working, as an agreement already in place guarantees that employees will be paid between 78% and 95% of their normal net wages, with the lowest paid getting the highest percentages.

Negotiations for workers in central and local government have been temporarily suspended, but unions and the employers have reached an agreement on short-time working in local government. The deal, signed on 30 March, benefits workers in areas like museums, libraries, and some parts of local transport, who face the loss of some or all of their normal work. It provides for short-time pay to be increased to 95% of normal for those in the lowest-paid grades, and 90% for the rest. It does not apply to those working in health and social care, who, rather than short-time working, face an increased workload

Similar agreements have been reached for workers in fast-food restaurants – up to 90% of net pay; and parts of the film industry – up to 100%. However, as a recent study by the research body WSI notes, these deals are not universal: "Particularly in the classic low-paid sectors, there is often no collectively agreed top-up to state short time pay."

# Contracts and procedures

The latest tribunal and court decisions are analysed by Labour Research Department's legal specialists

## Interim relief granted despite disputed employment status

### Case 1: The facts

Dr Hancock, a dentist, entered into an agreement, described as an "associate agreement", with a dental practice called Simply Smile Manor House Limited, to practice at its premises. The contract, terminable with three months' notice, provided equipment, furniture, a dental nurse, staff, materials, drugs, supplies and the services of a dental lab. Under the contract, Hancock had to give Simply Smile notice of his planned holiday dates, carry out a set number of dental procedures, follow the practice's rules and policies and pay his own tax and national insurance. The contract entitled him to paternity and adoption leave. A locum could be appointed to replace Hancock in some circumstances, as long as they were acceptable both to Simply Smile and the local NHS Trust.

Hancock developed serious concerns about the competence of a fellow dentist at the practice. He raised his concerns, first informally and then formally, including to the regulator. However, instead of meeting him to discuss his concerns, Simply Smile ended the agreement.

Hancock issued a tribunal claim for automatically unfair dismissal for making a protected disclosure (whistleblowing) under the Public Interest Disclosure Act 1998 (PIDA). He also made an application for interim relief under section 128, Employment Rights Act 1996 (ERA 96). He asked for his employment to be continued (that is, his wages and other benefits to be paid) pending the final hearing.

Simply Smile argued that since only employees can claim interim

relief, the tribunal could not consider Hancock's application until after a preliminary hearing to decide his employment status. The tribunal disagreed, pointing out that a preliminary hearing was inconsistent with section 128(5), ERA 96, which says interim relief applications must not be postponed except in "special circumstances".

The statutory test for success in an interim relief application is whether the claimant is "likely to succeed" in their claim. Simply Smile argued that this test applied only to the issue that triggers eligibility for interim relief – in this case, the likelihood of Hancock proving he was dismissed for making a protected disclosure. The tribunal disagreed, ruling instead that a tribunal can consider the claimant's likelihood of success regarding any important contested issue. In Hancock's case, employment status was disputed, but in other cases, the employer might dispute, say, the termination date, or that there was a dismissal at all. All these issues are relevant to whether a claimant is "likely to succeed" with their claim.

After reviewing the evidence, the tribunal concluded that Hancock was "likely to succeed" both in showing that he was an employee and that he was dismissed for making a protected disclosure. The interim relief application was granted. Simply Smile appealed

### The ruling

The EAT agreed with the tribunal. There is no limit to the disputed issues a tribunal can be asked to decide before concluding that a claimant is likely to succeed in their claim

## Contracts and procedures Employment tribunals during the pandemic

Like most aspects of life, the employment tribunal system is affected by the coronavirus pandemic. The ET president has asked parties to approach the situation creatively and in a spirit of mutual cooperation to maximise the hearings that can take place, in line with the tribunal's objective of dealing with matters fairly and proportionately.

From 23 March until at least 26 June 2020, all in-person tribunal hearings have been converted into case management hearings by phone or other electronic means, to decide how best to proceed. The phone hearing will take place on the first day of the scheduled hearing, unless the tribunal tells the parties otherwise. The position will be kept under review. Some tribunals may not even be able to run electronic case management hearings. During the pandemic, employment tribunals will be using telephone, video and skype conferencing and for all types of hearing, where available.

Where necessary, tribunal judges will write to the parties before the telephone hearing, with questions about the claim and information for unrepresented claimants, so that virtual hearings work as well as possible.

The parties will be expected to agree a written statement of agreed facts and issues, so everyone knows exactly what is in dispute and needs deciding.

All legal submissions must be in writing, with each side getting to comment on the other side's submissions in writing. Under tribunal rules some claims (such as discrimination or trade union detriment) normally need a three-person tribunal panel, unless both sides agree to a hearing by a judge alone. The tribunal president has asked for parties to consider agreeing to this during this exceptional period.

When requesting extensions or postponements for coronavirus-related reasons, the parties should provide evidence to prove the reason is valid (for example, an Isolation Note – see <https://111.nhs.uk/isolation-note>). The party requesting the postponement should say what they have done to try to avoid it.

Under normal rules, a judge can dismiss a claim if a party does not attend (including an electronic hearing). A party who cannot participate in their electronic hearing for pandemic-related reasons should email the tribunal office in advance to let the judge know.

The Employment Appeal Tribunal (EAT) will not be conducting any hearings (including telephone or Skype hearings) from 25 March 2020 until 15 April 2020. During this time appeals can only be lodged by email.

Importantly, in both the employment tribunal and the EAT, tribunal claim and appeal deadlines have not changed.

Acas has produced important guidance for employers and workers about coronavirus at: <https://www.acas.org.uk/coronavirus>.

The situation is fast moving and the latest information can be found on the Ministry of Justice website: <https://www.gov.uk/government/organisations/ministry-of-justice>

## Tribunal procedures – key developments

- An application for interim relief can consider the chances of success of any disputed aspect of the claim, including the claimant's employment status, not just whether a dismissal was automatically unfair for one of the reasons covered by the interim relief jurisdiction (Case 1).

## Contracts — the basic legal rules

- Employment rights depend, as a minimum, on the presence of an “employment relationship”. There are important legal distinctions between an employee, a worker and someone who is genuinely self-employed. Individuals have different statutory employment rights depending on their employment status. Whereas contractual rights can be enforced by anyone who has a contract, whether or not it is in writing, statutory rights can only be enforced by those specified in that statute.

Contract terms can be “express” (clearly stated, either orally or in writing) or “implied”. Express terms are terms that have been specifically agreed by the employer and the employee. An express agreement cannot take away a minimum statutory right, for example the statutory right to annual leave under The Working Time Regulations 1998.

An implied term can arise through conduct, custom or practice. Where there is no express term, implied terms can be identified by looking at the surrounding circumstances to work out what the parties must have intended at the time the contract was entered into. In addition, implied terms can include terms which are so central to a contract that it would not exist without them. For example, every contract of employment has an implied term that the employer will

take reasonable care of an employee’s health (including mental health).

Terms can also be “incorporated”. This occurs if a term agreed between two parties (typically the employer and the union) becomes part of individual employees’ contracts.

If a contractual term is breached, a legal claim can be brought against the party that caused the breach. A constructive dismissal occurs when the employer does something that amounts to a fundamental breach of contract and the employee resigns in response to the breach.

## Key developments

- a right to “release” your delivery slot via an App, in circumstances where, if nobody comes forward, you still have to perform it, is not a valid right of substitution preventing worker status (case 2);
- even if an employee has performed their contract illegally in the past (for example, not paying tax), once the situation has been regularised they can enforce the contract for the period when the performance was no longer illegal (Case 3).

and is therefore eligible for interim relief.

### Commentary

Interim relief is very important for dismissed trade union reps and activists. It can be sought whenever a union certifies in writing that the dismissal was for carrying out lawful

trade union activities. If successful, it requires the employer to continue paying the member’s wages until the hearing. If the claim is unsuccessful at the final hearing, the member does not have to repay these wages. The application must be submitted urgently, within seven days of the effective date of termination. No

extensions are allowed.

Interim relief hearings always happen quickly, normally without testing witness evidence. The outcome is based on a tribunal’s provisional assessment of the strength of the case. In practice, this means an interim relief order is unlikely to be made in a case with lots of compli-

cated issues in dispute. This tribunal felt able, given the facts and caselaw, to conclude that Hancock stood a good chance of showing he was an employee, so his application succeeded.

*Hancock v Ter-Berg and NHS England Midlands and East [2019] UKEAT/0138/19/BA*

## Moped delivery driver was a worker

### Case 2: The facts

Mr Augustine worked for three months as a moped courier for Stuart Delivery Limited, part of DPD group. Stuart describes itself as a technology platform connecting “courier partners” with clients or users to facilitate the movement of goods around large urban areas. They promise “maximum freedom and flexibility of work”.

Stuart describes its offering as “aggregating supply and demand in a density-based model”. The tribunal rejected Stuart’s description of its business, concluding that it was a delivery company requiring a reliable fleet of couriers.

Augustine applied online to work for Stuart. He had a 10 minute interview and provided his documentation and details of vehicle, address, right to work in the UK, phone and

bank account. After a background check and a 90 minute “on-boarding” session, he began signing up for slots on the Staffomatic app.

Stuart relied on its general conditions of use – a three-way contract between Stuart, Augustine and the user client, as the source of its contract terms, but the tribunal applied the landmark Supreme Court ruling of *Autoclenz v Belcher [2011] UKSC 41* to conclude that this agreement did not reflect the true agreement between the parties.

Stuart couriers could choose between “ad hoc deliveries” as and when they wanted and “commit[ting] to being online in certain places, for certain amounts of time, for a guaranteed minimum payment”, referred to as signing up for “slots”. Couriers could mix and match between the two, but most preferred

slots, as the pay was guaranteed and much better. This tribunal ruling only concerned Augustine’s employment status while working slots, which he did nearly all the time.

Stuart released slots weekly via its app, covering the zones with the highest concentration of users and projected peak demand. To encourage couriers to sign up, it paid a guaranteed minimum £9 an hour a shift, regardless of how many deliveries were carried out, provided the courier stayed in the zone. Stuart hoped this would increase its market share compared to its competitors.

Having signed up to a slot, a courier who no longer wanted to work it could send a “release notification” via the app. The slot would then become available to other couriers, on a first come first served

basis. The courier releasing the slot would not know who accepted the vacated slot. Slots could only be released via the app.

If nobody came forward, the original courier remained liable to complete the slot or else take the consequences. Two missed slots a week disqualified a courier from “delivery rewards” (a type of performance-related bonus) and adversely impacted on their courier performance score. If this fell below a reasonable average, the courier was given a brief period to improve, or else face suspension from the app.

The purpose of this carrot and stick approach was to ensure a reliable supply of couriers at times of peak demand. “If the rewards and penalties were not real, and not perceived to be so by the couriers, [the business model] would not work”.

Having accepted a slot, the courier had to stay in the zone for the entire slot. Logging off for more than six minutes or refusing more than one job during the slot would mean forfeiting the guaranteed hourly rate.

A delivery, once accepted, could only be cancelled in very limited circumstances. The algorithm provided a recommended route and although the courier did not have to follow it, in reality, deliveries were time pressured.

Augustine issued tribunal claims for unauthorised deduction of wages, holiday pay, the national minimum wage and breach of the *Part-time Workers (Prevention of less favourable treatment) Regulations 2000*. A preliminary hearing took place to decide on his employment status, since his claims all depended on him being either an employee or a worker.

The key issue for the tribunal was whether he had a free and unrestricted right to send a substitute to perform his slot. If so, he could not be a “worker” (*Pimlico Plumbers v Smith* [2017] SC 0053).

The tribunal concluded that there was no genuine right of substitution in this case. Augustine could only be released from his shift via the app by another Stuart courier taking it on. If nobody came forward, he remained obliged to perform it or else face the consequences. And he had no idea of, or control over, who came forward.

Stuart also argued that Augustine was a self-employed business or undertaking, and that Stuart was his client or customer. Unsurprisingly, the tribunal disagreed, pointing out, for example, that the end customer’s details were wiped automatically at the end of each journey. In reality, Stuart managed the entire delivery relationship, to ensure its customer was not let down.

The tribunal accepted that Augustine could register on other platforms or work directly for any users, and that this was a genuine choice (unlike the case of *Uber v Aslam* [2018] EWCA Civ 2748, where Uber’s market dominance meant that the choice to work for other platforms was not real).

However, the tribunal said, the “bottom line”, was that Stuart Delivery Limited was a delivery business

– “the clue is in the name”. Its model depended on a reliable fleet of couriers in the right place at the right time, achieved through a combination of rewards and penalties, and by setting performance standards and issuing warnings. Performance was monitored during each shift and Augustine’s pay and access to the app relied on him following the rules.

In addition, he had no freedom to negotiate any charges. He was fully integrated into Stuart’s business and he agreed to subordinate himself to its rules to access the app. And he carried zero business risk. Stuart insured him and guaranteed the minimum hourly rate, regardless of how many deliveries he made. He was clearly not self-employed.

Stuart’s marketing material, full of references to “our couriers”, “we can deliver” and so on, was also relevant. Finally, couriers were not obliged to use Stuart’s branded gear, but neither could they use gear from other courier businesses.

Augustine argued that he was both an employee and a worker. In support of his claim for employee status, he argued either that each slot was an individual free-standing employment contract or that there was an “umbrella contract” creating contractual obligations in between each slot.

The tribunal ruled that Augustine was not an employee because there was insufficient “mutuality of obligation”. He was genuinely free to work for other courier companies between slots. The tribunal did not specifically address his arguments based on an umbrella contract or a series of individual employment contracts.

However, the tribunal ruled that Augustine had “worker” status while working each slot. In reaching this conclusion, the key disputed issue was the “substitution” provision. The tribunal concluded that there was no unfettered right of substitution in this case. Augustine remained obliged to perform his shift if nobody stepped in to work it. He could not control whether this would happen or who might do this. This was not a sufficient right of substitution to remove his personal obligation to work for Stuart during each slot.

Stuart appealed. Augustine also

cross-appealed. He argued the tribunal did not address his arguments on employee status.

### The ruling

The EAT agreed with the tribunal. Augustine was a worker during each slot with statutory worker rights. There was no right of substitution here because Stuart retained absolute freedom over whether Augustine worked the slot, since only couriers from its pool could use the Staffomatic app to access the slots. “It is not a right of substitution at all. It is merely a right to hope that someone else in the pool will relieve you of your obligation. If not, you work the slot yourself. You cannot, for example, get your mate to do it for you, even if s/he is well qualified”, said the EAT.

As regards Augustine’s arguments that he had employee status based on an “umbrella contract” or a series of free standing employment contracts, the EAT said there was no need to decide this point because in his case, his employment rights would not be improved even if he was an employee, as opposed to a worker. The EAT did, however, acknowledge that it is “perfectly possible for short engagements to amount to individual free-standing employment contracts” and for employee status to be based on an “umbrella contract” where there is evidence of a legal obligation to provide and do some work between slots or shifts.

### Commentary

This is a good case study showing exactly how technology has been used to strip out employment protections. The unintended consequences of this are now being laid bare by the unfolding coronavirus pandemic, with gig economy couriers risking their health and that of their families to continue deliveries, with zero income security.

In particular, this case illustrates the absurdity of requiring a legal obligation to provide personal service as a pre-condition to worker status. In general, an unfettered right of substitution is fatal to worker status under UK law, a principle utilised by food courier service Deliveroo to prevent cycle couriers seeking statutory recognition through their union (*R (on the appli-*

*cation of the IWGB) v Central Arbitration Committee* [2018] EWHC 3342). This “right of substitution” needs to be consigned to the legal history books fast.

It is worth noting that in 2019, another employment tribunal referred a test case to the European Court of Justice (ECJ) challenging this insistence on a legal obligation to do work personally and the legal effect of “substitution clauses” (*B v Yodel Delivery Network Limited ET Case Number: [2019] 2411079/2018*). The ECJ must deliver its ruling despite Brexit, because the UK was a member state when the reference was made. Once the Brexit transition period ends, UK tribunals will not be bound by ECJ rulings. Even so, a positive ruling should add to the pressure on the UK government to urgently reform these laws.

**Stuart Delivery Limited v Augustine** [2019] UKEAT/0219/18/BA

## Morrisons’ workers left empty handed

Staff at supermarket chain Morrisons were left disappointed by the long-awaited Supreme Court ruling in the case of internal auditor Andrew Skelton, who leaked the supermarket’s entire payroll data, including the personal data of around 100,000 workers, to an open access online forum. Skelton wanted to get back at his employer after being given a formal warning for using the Morrisons post-room for his eBay parcels. He executed the data dump at home on his personal computer on a Sunday, several weeks after secretly downloading the data at work onto a personal memory stick.

5,518 Morrisons staff brought a group action for breach of data protection law, privacy and confidentiality. Despite succeeding all the way to the Supreme Court, staff lost at the final hurdle when judges ruled that Morrisons was not vicariously liable because Skelton, a rogue employee motivated by a desire to harm his employer, was not acting in the course of his employment.

**(Morrisons v Various Claimants** [2020] UKSC 12).

## Unfair dismissal claim allowed despite past illegality

### Case 3: The facts

The Claimant, Mrs Robinson, worked as a housekeeper for a member of the Saudi royal family for ten years, from 2007 to 2017, looking after his UK properties. When the arrangement was set up in 2007, the appointment letter stated: “You will be paid a management fee for undertaking the work at the rate of £34,000 a year. You will be responsible for your tax on that payment”.

In 2011, Robinson’s employer engaged a firm of accountants to review his UK affairs and in 2014, Robinson met with one of his employer’s managers who told her that the accountants had advised that she was probably an employee, and that her employer should be deducting PAYE tax and national insurance from her earnings at source. At this point, Robinson revealed that she had paid no tax or national insurance on any of her earnings for the last seven years. Without telling her employer, she had chosen not to declare her income to HM Revenue & Customs, creating a potential tax liability of between £50,000 to £100,000.

After the meeting, Robinson began claiming that she was an employee, and despite the explicit wording in the letter of appointment, that the pay mentioned in it (£34,000, since increased to £37,000) was a net, not a gross amount, and that her employer was liable for all the unpaid tax. The dispute went on for three years, from 2014 to 2017.

The Crown Prince did not accept that Robinson was an employee but just in case, over the three years when the two sides were in dispute over the historic tax liability, he deducted from her earnings a sum equal to potential HMRC liabilities and paid it into a bank account, to account to HMRC if needed.

Over that three-year period, Robinson wrote emails and letters suggesting that her employer had deliberately set up his affairs to avoid tax. At the same time, the two sides argued about who was liable to pay the historic tax bill.

Eventually, in 2017, Robinson was

dismissed by letter without notice. The main reason in the dismissal letter was Robinson’s refusal to accept that she was liable for the debt to HMRC. There was no meeting before sending the dismissal letter, and no chance to appeal.

Robinson issued tribunal claims for unfair and wrongful dismissal, whistleblowing detriment and automatically unfair dismissal for making protected disclosures. She argued that she was dismissed for revealing that her employer had set up his affairs so as to avoid tax and national insurance in the UK.

The employment tribunal rejected Robinson’s whistleblowing claims. Even though her letters and emails alleging that the Crown Prince was trying to avoid his obligations to HMRC could be protected disclosures, she was dismissed not for making protected disclosures but instead for a different reason, namely the two sides’ inability to resolve their dispute over the outstanding tax.

As regards her claim for ordinary unfair dismissal, the tribunal ruled that she was dismissed for “another substantial reason” under section 98(1)(b), Employment Rights Act 1996 (ERA 96), namely, the parties’ inability to resolve the dispute. The dismissal was unfair because there was no final meeting or opportunity to appeal. However, the tribunal concluded, after listening to the evidence, that Robinson would have carried on insisting her wages were net not gross, meaning that she could have been fairly dismissed within a month, with ten weeks’ notice of termination.

Finally, the tribunal turned to the question of illegality. There is an established public policy principle

that people who participate in illegality should not be allowed to access the tribunal to profit from that illegality. There was illegality here, because although the appointment letter spelled out that Robinson was liable for the tax, for seven years she declared no tax at all, not even on a self-employed basis. In the circumstances, she could not have believed that the tax was being paid for her. Her claims for unfair and wrongful dismissal were both dismissed due to her illegal performance of the contract.

Robinson appealed to the EAT.

### The ruling

As regards the reason for dismissal, the EAT said the tribunal was entitled to conclude that the reason for dismissal was the dispute over whether Robinson’s pay was net or gross and to reject Robinson’s claim that she was dismissed for blowing the whistle over her employer’s tax affairs.

The EAT then turned to the tribunal’s rejection of her claim on the basis of illegality. In this case, Robinson performed the contract illegally for seven years up to 2014, not paying tax in circumstances where the agreed payment was clearly gross, and she had agreed to make payments to HMRC. Her employer did not realise she was not paying tax over this period. The tribunal was correct not to allow Robinson to enforce her employment contract over this period. However, from 2014 until her dismissal in 2017, the contract was no longer being performed illegally. Both sides were in dispute over Robinson’s employment status, but her employer was putting money aside to pay the tax if necessary and had since dis-

charged the liability. Importantly, Robinson was not dismissed when her illegality first came to light. Instead, she was kept on for a further three years while her employer tried to resolve the dispute over the tax.

The existing cases on illegality recognise, said the EAT, that even if an employee has done illegal acts during their past performance of the contract (such as not paying tax), they may nevertheless be able to rely on the contract to enforce any part of their contract performance that is not illegal.

No public policy reason justified barring Robinson from relying on her employment contract from 2014 to 2017. She could bring her claims for wrongful and unfair dismissal and claim her notice pay and compensation for the extra month’s earnings when she would have remained employed until being fairly dismissed.

However, any basic award for unfair dismissal must be confined to the three years during which the contract was being performed lawfully. No basic award could be claimed for the seven-year period of illegal performance.

### Commentary

This case confirms that even if an employee has actively participated in the illegal performance of their employment contract (for example, working more hours than their visa permits), they can still enforce their contractual rights with regard to any performance that is not illegal, such as the final three years of Robinson’s contract in this example.

**Robinson v Al Qasimi [2020]**  
**UKEAT/0106/19/RN**

## LEGAL DISCLAIMER

**These case reports are provided for information only. They do not amount to legal advice to any person and must not be relied on as such.**

**Readers needing legal advice are encouraged to contact their trade union or other legal adviser.**

## WORKERS' MEMORIAL DAY

# Call to action for Workers' Memorial Day

NHS UNIONS UNISON, the RCN and RCM have called on the country to observe a minute's silence at 11am on 28 April, International Workers' Memorial Day (IWMD), to remember all the health, care and other key workers who have lost their lives to coronavirus.

The Hazards Campaign says it has never been more important to mark IWMD and "Remember the dead and fight for the living", as the

crisis makes clear the dirty, exploitative, unfair, insecure, unsafe and unhealthy aspects of much work, particularly for essential workers on low pay.

Many public events will not be possible this year due to measures to contain Covid-19, but the campaign is calling on activists to put up Heartbroken window posters in their homes and workplaces; take selfies; hold short, safe, physically-dis-

tanced workplace or on-line meetings, and light a candle in their window at 9pm on 28 April to remember the workers killed by Covid-19. It is also urging people to use the real figures in *The Whole Story* report on death at work, tell Hazards and the TUC what they are doing, and "create a huge wave of #IWMD posts on social media with demands and union action".

"For #IWMD, workers and unions

are fighting for workers' health to be paramount; for liveable sick pay, job and income protection; for high standards of PPE; all necessary measures to stop #Covid to save lives now," says the campaign. "We're not going back to unsafe, unhealthy and potentially deadly business as usual." Find out more at: <http://www.hazardscampaign.org.uk/blog/28-april-hazards-campaign-call-to-action>.

## CORONAVIRUS AND PREGNANCY

## Keeping pregnant workers safe during the outbreak

THE TUC has called on the government to protect the health, jobs and income of pregnant workers during the coronavirus outbreak. It makes clear that employers have a legal duty to keep pregnant employees safe. The law says that if they can't do that in their workplace, they should allow them to work at home. If they can't work in their current role, their bosses must offer them other suitable work, that can done safely, for the same rate of pay, or suspend them on full pay to protect their health and that of their unborn baby. However, it is concerned employers do not understand their legal responsibilities and is calling on the government to raise awareness of existing legal

protections for pregnant workers. Putting them on statutory sick pay (SSP) rather than full pay is legally wrong and so low it means workers would not qualify for vital statutory maternity pay once their baby is born. It is also demanding the government extends the job retention scheme so employers can reclaim 80% of these workers' wages.

These measures must apply to all pregnant workers, the TUC is demanding.

The Royal College of Midwives (RCM) has issued advice for pregnant women working in the NHS and other settings during the crisis. It says all pregnant women should be offered the choice of whether to work in direct patient-facing roles.

Women who are less than 28 weeks pregnant should practise social distancing but can choose to continue working in a patient-facing role, provided the necessary precautions are taken, it adds. Women who are more than 28 weeks pregnant, or have underlying health conditions, should avoid direct patient contact and it is recommended that they stay at home.

The guidance, issued jointly by the RCM and Royal College of Obstetricians and Gynaecologists, calls on employers to respect pregnant women's choices.

Based on evidence from other respiratory infections, pregnant woman who contract significant respiratory infections in the third trimester are more likely to

become seriously unwell. This may also lead to pre-term birth of the baby. The RCM says it is actively seeking more evidence and will update the guidance when this is available.

RCM chief executive, Gill Walton, called on NHS Employers to "do everything possible to maintain the health and wellbeing of their pregnant employees" and said the "central aspect of this protection is based on risk assessment of each individual pregnant worker's working environment and the role they play".

The guidance can be found at: <https://www.rcog.org.uk/globalassets/documents/guidelines/2020-03-26-covid19-occupational-health.pdf>

## CORONAVIRUS AND WORKPLACES

## Unions set conditions for school reopenings

RESPONDING to media speculation that schools may soon re-open, the teachers' NEU union has set out a list of demands in a letter to prime minister Boris Johnson.

NEU joint general secretaries Mary Boustead and Kevin Courtney have demanded information about modelling, evidence and plans "well before any proposal to re-open schools". They have asked the government to share its modelling of the increased number of cases and

deaths due to coronavirus among children, parents, carers and their extended families, as well as teachers and support staff if schools were to re-open.

They make clear that any modelling based on "some notion that social distancing could be implemented" would be "a foolhardy assumption". They request information about the government's plans for the regular testing of children and staff, contact tracing and quaran-

tine, the availability of PPE and enhanced levels of cleaning.

The NASUWT teaching union carried out a snapshot survey of teachers earlier this month. This found that more than half (51%) who thought either they or someone in their household had coronavirus were still being asked to attend work for at least some of the time during the first week of the partial school closure, which began last month. A further 39% of those classed as be-

ing in a vulnerable group, said they were asked to attend. Nearly a third (31%) said there was not adequate provision of soap and hot water for handwashing in their school, and nearly one in four (39%) said they had not been provided with appropriate guidance on social distancing.

By 20 April, more than 166,000 people had signed an NEU petition to "open schools when it's safe" (<https://actionnetwork.org/forms/open-schools-when-it-is-safe>).

## NEWS IN BRIEF

**UK government out of step with Scotland and Wales, says STUC**

Unions have welcomed news that the Welsh government will put into law a two-metre social distancing requirement in the workplace, as well as “toughened up” Scottish government guidance on social distancing. But the Scottish TUC (STUC) also condemned the starkly contrasting UK government approach, which, it says, “could put further lives at risk in the pursuit of short-term gain”.

Earlier this month, #Shutthesites campaigners laid flowers to mourn construction workers who will lose their lives unnecessarily during the coronavirus pandemic and called on the UK government to immediately close all non-essential building sites. “Construction workers often travel on packed public transport or in shared minibuses, eat together in site canteens, live in huge accommodation blocks and generally work in close proximity,” it said. “No building worker in the country believes that construction can continue in any meaningful manner while complying with the two-metre social distancing rules.”

General union Unite also called on food minister George Eustace to make mandatory the two-metre social distancing guideline for food industry workers on production lines as well as in retail outlets such as supermarkets. The call followed walkouts by food workers over concerns about basic health and safety protections (see page 17).

“The Scottish guidance clarifies what work is considered essential and provides for engagement with unions in all sectors to ensure that safety standards are met,” said STUC general secretary designate Roz Foyer. “We intend to use this new Scottish guidance, in conjunction with public health authorities, to challenge every instance of dangerous practice we encounter and to ensure a consistency of approach across all sectors of the economy.”

The new guidance can be found at: <https://www.gov.scot/publications/coronavirus-covid-19-business-and-social-distancing-guidance/pages/be-responsible>.

More information about #Shutthesites is at <https://siteworker.blogspot.com>

## ENFORCEMENT

**Enforce Covid safety HSE is told**

THE HEALTH and Safety Executive (HSE) must “step up” and enforce the legal duty on employers to protect workers’ health and safety during the coronavirus outbreak, say unions and safety groups.

Last month, unions representing HSE staff – FDA, PCS and Prospect – wrote to the safety regulator’s senior management urging them to “fulfil their duty as the independent regulator in charge of enforcing health and safety at work”. They expressed concern about “apparent inaction” and “the potential reputational damage this will cause to HSE as an independent regulator in the longer-term”.

Prospect welcomed a move from a “passive” to a “more robust” approach after the HSE issued new

guidance in a joint statement agreed with the TUC and employers’ organisation the CBI (Confederation of British Industry).

This says that, if companies remain open, they must take practical steps to minimise the threat of workers being exposed to the virus wherever possible, including by enabling social distancing. It warns employers that if they do not comply with the latest Public Health England (PHE) guidance, they face being hit with enforcement notices and potential closure.

The joint appeal also encourages workers to raise any concerns about working conditions with their employer or union, and if they cannot be resolved, to approach the HSE or their local authority.

The Hazards Campaign also called on the HSE to step up and enforce health and safety law.

“All workers including vulnerable zero hours [ones] and the bogus self-employed need reassurance and access to information and support in the workplace,” it said. “This means they need a health and safety enforcer to listen to their concerns, raise their issues and challenge negligent employers. We need them to close down employers who are putting people’s lives at risk.”

The joint HSE/CBI/TUC statement can be found at: <https://www.tuc.org.uk/news/employers-staying-open-must-guarantee-safe-working-conditions-including-social-distancing-say>

Workers can report their concerns to the HSE at: <https://www.hse.gov.uk/contact/concerns.htm>

## CORONAVIRUS

**New coronavirus advice from HSE**

THE HSE has issued new information and advice on health and safety during the coronavirus outbreak, covering issues ranging from fitting respiratory protective equipment (RPE) to carrying out the examination and testing of equipment.

It says it is vital that healthcare workers using RPE for the first time pass a fit test for the model and size of respirator they are going to use. This is to ensure it fits their facial characteristics. Carrying out a fit test should be done in line with government advice on social distancing.

It warned the incorrect fitting of a protective face mask can increase the risk of COVID-19 infection and

“lead to immediate or long-term ill-health” and even put lives in danger. The fire brigades’ FBU union reported that specially-trained and experienced fire and rescue personnel will fit face masks for frontline NHS and clinical care staff working with patients infected with Covid-19.

New HSE guidance also covers reporting work-related Covid-19 incidents, illness and deaths under the RIDDOR regulations. It has also issued guidance on carrying out the thorough examination

and testing of lifting and pressure equipment, first-aid cover and qualifications, and health and medical surveillance during the

coronavirus outbreak, as well as arrangements for driver welfare and hours of work.

This makes clear all drivers must have access to welfare facilities in the premises they visit as part of their work. The Department for Transport has announced a temporary and limited relaxation of the enforcement of drivers’ hours rules in England, Scotland and Wales for drivers delivering food, other essential household goods and over the counter pharmaceuticals. However, the HSE says driver safety must not be compromised and they should not be expected to drive while tired.

## CORONAVIRUS

**Union launches legal action over safety**

PRIVATE hire drivers’ union UPHD has launched a legal challenge against government and local authority failure to protect licensed private hire drivers and their passengers from Covid-19 infection. The move came after one member died and others became seriously ill after

being infected.

The union says Uber and other private hire operators promised to distribute sanitiser and PPE to drivers but have largely failed to do so.

“Industry efforts to manage risk responsibly have been woefully inadequate and amount to little more

than lip service,” the union added. “Transport for London and other licensing authorities have failed in their primary duty to protect passengers by not insisting upon separation distance requirements, PPE, detailed safety protocols and driver training.”

# Unions protecting workers

**Last month the government ordered thousands of businesses and organisations to close their workplaces to slow the spread of Covid-19. But millions of critical health, social care and other workers are still working, often without adequate PPE. And some employers in non-essential areas are forcing their staff to come to work. *Workplace Report* looks at what unions are doing to protect workers.**

A fatal combination of missed opportunities, ignored warning signs and a failure to stop non-essential work have made the coronavirus crisis “bigger and more deadly” in the UK, according to a new analysis prepared for the Hazards Campaign by Stirling University professor Andrew Watterson.

Health secretary Matt Hancock confirmed on 11 April that 19 UK health workers had died after contracting coronavirus. Two days later, the death toll among London transport workers had reached 18. Public and commercial services PCS union general secretary Mark Serwotka reported that members delivering frontline services in prisons, the Department for Work and Pensions (DWP), the HMRC tax office and the Home Office had also died after becoming infected with the coronavirus.

“We are weeks into the pandemic and frontline staff are dying from a negligent government who are failing to provide basic personal protective equipment (PPE), never mind a standard of PPE that would keep all health and care workers and all essential workers safe,” said Hazards Campaign spokesperson Janet Newsham.

## Unions expose PPE crisis

There has been widespread condemnation of the lack of PPE for frontline NHS staff, highlighted by their unions. Public services union UNISON says thousands of people working in the NHS, social care and other services have contacted its PPE hotline expressing anxiety about the lack of gloves, masks, eye protectors and gowns.

“Staff from across the UK’s public services say they’re scared that without the right protective equipment, they risk catching the virus and passing it on to their families, or the elderly and vulnerable people they work with and care for,” said the union.

“No-one doubts the pressures the government is under,” said UNISON general secretary Dave Prentis. “But the time for excuses has passed. Ministers have been saying for weeks that the PPE situation is in hand. That there’s enough to go around and it’s just a matter of logistics. But it isn’t good enough”.

Prentis described Office for National Statistics figures showing there have been hundreds of coronavirus-related deaths in care homes as a national scandal and said

elderly and vulnerable residents face a death sentence because staff lack PPE.

“Care workers report that protective kit is still being locked away, having to make single-use masks last all week and being told they don’t need masks because residents aren’t displaying virus symptoms,” he added. “Many talk too of there not being enough essential items like hand sanitiser, gloves and visors to go around. Care staff working in residential homes and out in the community feel like they – and the people they care for – are bottom of the priority list for PPE.”

General union the GMB has launched a *Get Me PPE* toolkit to support key workers (<https://www.gmb.org.uk/protect-protectors>). This includes a health and safety law factsheet highlighting section 44 of the *Employment Rights Act 1996*, which provides protection for those refusing to carry out work that puts them at “serious and imminent danger”.

It contains a guide to getting the correct PPE based on government guidelines. This should not be used as a “definitive guide” to PPE, it advises: “You and your job need to be

## Coronavirus: the government’s response

The Covid-19 crisis has been caused by a novel, never-before-seen strain of coronavirus, first reported to the World Health Organization (WHO) from Wuhan in Hubei Province, China, on 31 December 2019. In late January 2020, the WHO declared the outbreak a public health emergency of international concern, and on 11 March 2020 it reported “Covid-19 can be characterized as a pandemic”.

The virus spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes and, although the WHO says more than 80% of people infected will be asymptomatic or will have mild disease and recover, in around 3-4% of reported cases the virus is fatal.

The government strategy to slow the spread of the virus has focused on self-isolating (or quarantine) and social distancing, while shielding the most vulnerable and emphasising the importance of hand hygiene. Those who are 70 years old and over, those under 70 with an underlying health condition, and pregnant women are likely to be more seriously affected.

Social distancing means reducing day-to-day contact with other people. From 23 March 2020, members of the public have been instructed not to meet friends or relatives they do not live with. They should only leave home to buy essential food and medicine; exercise once a day; seek medical help; or, for those unable to work from home, travel to work. When leaving home, they should stay two metres away from people outside their household wherever possible.

Anyone with a high temperature or a new, continuous cough must stay at home – self-isolate – until the symptoms have ended, and in all cases for at least seven days. Everyone else in the household must stay at home for at least 14 days after the first person’s symptoms first appear, even if they themselves do not have symptoms. If anyone else develops symptoms during that time, they must stay home for an additional seven days from when they developed symptoms.

With more than one in five UK deaths being linked to coronavirus, and with hundreds dying each day, the government is facing considerable criticism over its response, including the lack of testing and PPE, and its failure to close down non-essential workplaces.

“Continually over the last few weeks, government officials have said that testing is coming,” said Hazards Campaign spokesperson Janet Newsham. “And weeks before, international experts declared that the only way to win the battle against the virus spread was to test and track. Only this will save the lives of both the front-line workers and the rest of society. We have to attack the spread of the virus and test, track and quarantine is the only way proven way to achieve this”.

properly risk assessed by a competent person to identify: how the job can be done safely; what control measures should be introduced; and what PPE should be provided.”

The toolkit includes updated healthcare guidance from Public Health England (PHE) but makes clear: “This guidance is not GMB guidance – it is from government. It’s therefore the minimum level of PPE required. Always get a risk assessment. Always go by what you think you need for your safety.”

It advises:

1. work from home if at all possible, especially if you or someone you live with is pregnant or has underlying health conditions;
2. stay two metres away from all colleagues and the public on your way to and from work and at all times during work;
3. if you can’t do either 1 or 2 your employer must put protective measures in place;
4. stick to all infection control procedures at work including frequent rigorous hand washing. Time must be allowed for this;
5. ensure if you are in close proximity to patients or residents going to and from hospital environments that they have been issued with a surgical mask, if they can tolerate it;
6. ensure you are not being called into any workplace meetings where you will be in a crowded room with others; and
7. ensure all shared equipment is wiped down before and after use.

The RMT transport union’s advice on coronavirus to members in the rail and bus industries is that employers should use risk assessments and a five-step hierarchy of

control. They should:

- eliminate or remove the hazard, by postponing or cancelling the work for example;
- substitute or replace the process with a less hazardous one, by moving workers further away from each other, for example, while ensuring the new process is not more risky;
- use work equipment or other measures to prevent or reduce the risks, such as screens to reduce contact between workers and the travelling public, with priority given to collective over individual measures;
- use administrative controls such as reducing the time workers are exposed to the hazard, through job rotation, enforcing the two metre social distancing rules, and performing risk assessments; and
- provide PPE. Although this should be used as a last resort, PPE to control Covid-19 transmission should, as a minimum, include gloves and goggles, masks and visors.

There is also fury among unions and safety campaigners that the government and regulators have failed to crack down on companies continuing to operate in unsafe conditions in non-essential areas (see HSE Monitor in this issue).

With input from the TUC and trade unions, the government has put in place a package of financial support to help businesses, self-employed people and workers affected by the crisis. Many companies have closed their workplaces because they are not able to comply with social distancing rules. Scottish food company Tunnocks, for example, agreed to pay its staff 90% of their wages when it closed, after considering every alter-

native, to protect its 600 staff against the spread of the disease and to allow them to self-isolate.

But Newsham pointed out: “We have workers side-by-side building luxury hotels when almost every hotel in the land is shut down and in crisis, and building power stations that won’t go on line for years. How can these jobs have been considered ‘essential?’”

### Work should be critical or unavoidable

Employers should not expect workers to go to work at their normal workplace unless it is absolutely not possible or they are a critical worker, says new UNISON bargaining guidance (<https://www.unison.org.uk/content/uploads/2020/04/Homeworking-model-policy-and-bargaining-guidance-April-2020.pdf>).

“The emphasis should be on trying to find ways of working from home wherever possible in order to comply with the government advice ‘stay at home, protect the NHS, save lives’,” it adds.

Rail and bus unions have called for public transport services to be provided for essential key workers only.

“Transport workers have the right to be protected from non-essential travellers who will only contribute to the spread of the virus,” says the RMT. The TSSA has also called for all transport workers not essential to the safe running of services to be stood down without further delay.

Government advice is that businesses and workplaces should make every possible effort to enable working from home as a first option, and where working from home is not possible, they should make every effort to comply with the social distancing guidelines. Where they cannot follow in full those guidelines, they should consider whether the activity needs to continue for the business to operate, and, if so, take all the mitigating actions possible to reduce the risk of transmission.

Workplaces should avoid crowding and minimise opportunities for the virus to spread by maintaining a distance of at least two metres (three steps) between individuals wherever possible. Other measures include providing places for workers to wash their hands with soap and water, and encouraging everyone to do so regularly, as well as providing hand sanitiser and tissues for staff and encouraging them to use them. Employers should frequently clean and disinfect objects and surfaces that are touched regularly (<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/guidance-for-employers-and-businesses-on-coronavirus-covid-19>).

## Unite highlights good practice at Rolls-Royce

Unite has agreed a package with engineering company Rolls-Royce that includes a “stringent health and safety regime”, including a one-way system, to enable required employees to continue to work during the current emergency.

Rolls-Royce has major plants in Derby, Bristol, Glasgow and Barnoldswick, Lancashire. It closed production at Derby but opened up gradually from early April under a new safety regime, and up to 60% of the workforce could be employed on a rotation shift system.

“A week’s shutdown allowed management and safety representatives to walk the plant and look at every task,” Unite regional officer, Tony Tinley, told Workplace Report. “They looked at how many people could work on every task in every area and for two-person jobs, what PPE they would need. They also looked at other ways of doing tasks to reduce the number of people.”

This has been done nationally for a workforce of over 20,000.

“One of the key things was how to decide how many people could work safely per shift and debate whether a job was necessary,” he added. “Between 8% and 60% of the workforce will be coming into work in different plants. Canteens are closed and the company is ensuring people can socially distance while they are on their breaks.”

There is also a break between shifts when all touchpoints are cleaned with sanitiser.

Unite is working with other employers to share the good practice developed at Rolls-Royce.

“First and foremost is safety and our reps are driving this message,” Tinley added.

“Rolls Royce have recognised they need the union on board in order to give credibility to the measures they have put in place.”

## Shock surveys

But union surveys show many employers are failing to put in place these basic measures.

A GMB union survey found up to 98% of the 4,000 people working at the online fashion retailer Asos warehouse in Grimethorpe, Barnsley felt unsafe at work amid the pandemic. Workers reported no social distancing measures, a complicated clocking-in system which means large numbers of people gather in a small area, and hundreds of workers all breaking for lunch at the same time.

At the giant JD Sports warehouse in Rochdale, shopworkers' union Usdaw says hundreds of staff have expressed fears that it is a breeding ground for coronavirus, due to poor hygiene and crowded working conditions. It called on the company to close the warehouse to protect 5,000 staff and the wider Rochdale community.

Preliminary results from a survey of over 2,000 call centre workers in Scotland, by Strathclyde University professor Philip Taylor, found 57% of those still working have been designated as essential but only 18% believe they actually are. Over a third continue to be required to work despite not being informed they are essential workers, and half of all workers surveyed said they are working face-to-face with a co-worker. Government guidance says staff should work side by side, or facing away from each other if possible. Where face-to-face contact is essential, it should be kept to 15 minutes or less wherever possible.

Only a third of workers report that their employer is successfully implementing workplace distancing; three quarters said they were not provided with hand-sanitiser; and over half are dissatisfied with the cleaning of work surfaces. Two thirds of respondents have asked to work from home, but only two per cent have had their request granted.

"Even where workers are essential, vital safety precautions are not being taken," said Scottish TUC (STUC) general secretary designate Roz Foyer. "People report being crammed into lifts, working in environments with no proper ventilation, working face to face with colleagues and being required to continue to have meetings and 'huddles'."

She called on "every call centre in Scotland, unionised or not, to offer immediate access to union health and safety reps to conduct a full assessment of working conditions in the sector".

## Departments fail on distancing

A PCS survey of almost 10,000 members, carried out at the end of March, showed even the government is not following its own advice. It found a third of government depart-

ments were still not observing social distancing measures and around 15% do not have clear policies on handwashing at work.

Serwotka said there were reports that members coming into work to deliver frontline services are under extreme pressure, with some private contractors acting in a "very poor way" and telling people not to observe social distancing measures. He has written to the Cabinet Office with the following urgent and immediate demands:

- where there is a Covid-19 case in an office or workplace, including a suspected case, it must close immediately and not reopen until there has been a deep clean and risk assessment agreed with the union;
- social distancing must be implemented in workplaces at all times; and
- the default position must be that everyone should work from home. Only those in critical roles, which should be clearly defined and agreed with the union, should report for work in the workplace.

The general Unite union has reported examples of workplaces where things are so bad that workers have walked out. Around 80 "essential" employees at ABP Meats in Lurgan refused work over fears for their safety. They demanded adequate social distancing and deep cleans on workstations where workers have self-isolated with coronavirus symptoms. Another 60 workers refused to start shifts at Linden Foods in Dungannon, pointing to the absence of social distancing for workers on the boning line, in the canteen and changing areas, and at entry and exit points. Unite said management had provided no additional washing facilities and failed to stagger breaks.

"Workers have been reporting to Unite that those exhibiting symptoms are still allowed to work as are those with family members who are self-isolating as a result of being in the high risk health category," said Unite regional officer Brian Hewitt.

Although the situation remains dire for many, unions are winning improvements. Communications workers' union the CWU reports a "totally unacceptable" response from Royal Mail's chief executive and senior management team to its proposals for a comprehensive crisis-working plan, but says "any progress that has been made on safety in offices across the UK has been delivered by the hard work of our representatives' structure".

The union is calling for a suspension of all non-essential D2D (unaddressed mails) delivery, priority for medical equipment and services to the vulnerable, and alternating individuals' working days to reduce numbers in the workplace at the same time.

It also told its members: "If PPE is not in

place for all employees, or in any workplace, then that office should cease its operations until the equipment has been provided to all employees. This includes gloves and hand sanitisers. If social distancing measures are not in place, in line with the government advice, then the office should be closed until this is rectified."

A vibrant #ShutTheSites campaign in the construction industry appears to be having some impact on closing non-essential workplaces (see *HSE Monitor in this issue*). And Serwotka reported that as a result of the union intervening, twice as many PCS members are working at home; more than 76% of staff according to a Cabinet Office estimate (<https://www.pcs.org.uk/news/read-the-latest-update-on-pcs-cabinet-office-talks-on-coronavirus>).

Unions in Scotland have negotiated an agreement with the Scottish government that the UK-wide guidance on PPE applies to the country's care workers. The unions stepped in after a letter from its chief nursing officer said masks were unnecessary. This would have meant home and social carers receiving less protection than colleagues in other parts of the UK. The advice is now that care workers can wear a fluid-resistant face mask along with any other appropriate PPE that they feel is necessary in carrying out their work.

## Bus staff at risk

Unite has secured company sick pay from day one for London's bus staff following intense pressure from the union on bus operators, Transport for London (TfL), the London mayor Sadiq Khan, and the government for better protection for bus workers. At least 12 of the capital's bus workers have lost their lives to the virus and the union is concerned they are being hit disproportionately by the disease.

Securing company sick pay from day one, regardless of length of service, means that bus workers fearful of having contracted the illness can stay home safe in the knowledge that they will not be plunged into immediate hardship, the union said. It is also fighting for the best in PPE, masks and gloves to be available for bus workers, and for rear door entry trials to be abandoned and sealed front doors rolled out immediately across the capital's buses.

The union points to the agreement it has reached at engineering company Rolls Royce as an example of good practice (see *box on page 17*).

On 28 April, unions will be marking International Workers' Memorial Day to "Remember the dead and fight for the living", and will be spreading the message that, during this pandemic and generally, union workplaces are safer workplaces. (see *page 13*).

# Pay: the Covid agenda

As the UK reels from the pandemic, health and safety have become our chief concerns. But, after a difficult “lost decade”, and with a new recession expected, protecting jobs and earnings has to be a high priority too.

Keeping ahead of inflation is often the main objective but since mid-March and the lockdown, new priorities have risen up the agenda:

- rewards: public support for essential workers has put the spotlight on what they are paid;
- furlough: protecting those who simply can't work because their work has dried up;
- paid leave: time off for carers and those who are sick or self-isolating; and
- homeworkers: protecting those who now have to work at home.

Earnings data from the Office for National Statistics (ONS) and the results of over 440 settlements from *LRD Payline* suggest that, up until the lockdown on 23 March, many workers were seeing modest but positive gains. It was a contrast with years following the 2008-09 recession, when real earnings lost ground against inflation with the freezes and pay curbs in the public sector.

Between August 2019 and January 2020:

- RPI inflation averaged 2.37% (from 2.1% in October to 2.7% in January);
- CPI inflation averaged 1.58% (from 1.3% in December to 1.8% in January); and
- average weekly earnings (excluding bonus pay) averaged 3.27% (dropping from 3.6% to 2.8% by November-January).

Compared with those figures, settlements recorded by *LRD Payline* since the beginning of August 2019 were similar:

- the private sector median was 2.5% (most grades or workers) or 2.6% (on lowest basic rates); and
- the public sector median was 2.5% (most grades or workers) or 2.68% (on lowest basic rates).

But, since mid-March the outlook for jobs and pay has changed almost beyond recognition, with almost a million new claims for Universal Credit in a fortnight and an expected rise of two million unemployed (Office for Budget Responsibility), with the economy to shrink by 35%. By 6 April a quarter of businesses had temporarily closed or paused trading (ONS).

Four out of 10 adults reported having work-related concerns, mainly about the availability of work and decreased hours (36%), being asked to work from home (32%) and the potential or actual closure of their own business (16%).

## Implementing furlough

The rules of the furlough scheme were widely drawn but leave plenty of scope for negotiation. There have been a number of revisions, extending it up to the end of June, and moving the qualifying date (when an employee had to be on the employer's payroll) from 28 February to 19 March. But the broad outlines have been widely reported.

Employers can lay off or “furlough” workers (including temporary and agency workers) for three weeks at a time, and claim 80% of their wages up to a cap of £2,500 per month. The scheme is open to all businesses, charities, recruitment agencies and public authorities (although the government doesn't expect many public sector organisations to use it). The portal for grant applications opened on 20 April.

If the employer has an existing lay-off scheme they may be able to use that, but if they're using furlough, they must get the employee's agreement (as it may involve a

20% cut in wages). The grant cap will be based on actual salaries as at 28 February 2020 (which can include past contractual commission and overtime but not discretionary commission, bonus or non-monetary benefits).

For variable pay/zero hours workers with at least one year's service, it can be based on the higher of their actual earnings in the equivalent month of 2019 or average monthly earnings for the 2019-20 tax year. It is not necessarily a breach of the law to pay less than the National Minimum Wage on furlough (although still on the payroll, they'll be doing no work for the employer).

Objective criteria should be used to put workers on furlough, but prioritising older workers or those with a health condition is likely to be lawful and non-discriminatory. Other rules cover volunteering and other work; apprentices; furlough and sick leave, maternity/parental leave, or annual leave; and re-employing/furloughing previous employees.

These threats prompted unprecedented government action to protect jobs and incomes, including the “furlough” Coronavirus Job Retention Scheme (CJRS) and the parallel Self-employment Income Support Scheme (SEISS). Among the three-quarters of businesses still trading, on average 21% of staff are furloughed (ONS). A significant minority of firms (31%) have furloughed 75-100% of their workforce, a British Chambers of Commerce (BCC) survey found.

## The effects on pay bargaining

Many groups had already settled their pay for 2019-20 when the lockdown came into force, including many groups of essential workers (see below). But for others the Covid crisis has already brought delays and disappointments.

The RMT has blasted cleaning and facilities contractor **Mitie (Merseyrail)** for withdrawing a £9 per hour pay offer, costing members £500 in back pay. A 2% pay offer – balloted on and accepted – at the **Centre for Health and Disability Assessments (Maximus)** won't now be implemented, but may be revisited later in the year. Fortunately all non-consolidated bonuses will be paid in June.

At **Scottish Power Energy Retail** negotiations have also been put on hold. That is also the case at the Ministry of Defence's (MOD's) **Defence Equipment and Support** agency which has been playing a significant role in setting up the new Nightingale hospitals and ordering ventilators and PPE.

At **Trelleborg Sealing Solutions** a two-year pay deal (2.5% each year) was agreed on the understanding that the reviewed grading structure would be implemented. However, restrictions due to Covid-19 mean that progress has stalled. **Nottingham Community Housing Association** has imposed a 1.5% pay award, because some of the lowest salaries would have fallen below the new National Minimum Wage (up by around 6% this month). However, negotiations with Unite can continue after the end of lockdown.

**Glasgow Prestwick Airport** and the **National Trust of Scotland** have delayed pay negotiations and entered into 100%-of-pay furlough agreements. So has **Edinburgh Airport**, but it has also reduced employer pension contributions to the auto-enrolment level, and removed income protection for a year.

The **National Trust** (England, Wales and

Northern Ireland) is one of many other employers to have applied furlough at 100% of pay (including for zero-hours staff) while agreeing with Prospect that staff continue to accrue contractual annual leave, and pension entitlements will be paid in full. Adoption of this approach meant re-negotiating the 2020 pay deal (to be reviewed later in the year). Pay increases apply only to the lowest grades (6.2%, to bring Grade 11 up to the statutory National Living Wage, and 2% for Grade 10 to protect the differential).

**Wheatley Group** housing association agreed a 2.2% pay rise while also topping furlough pay up to 100%. Staff will be paid their basic pay, shift allowance, pay protection and responsibility payments, but their furlough pay will not include any overtime, sleepover, non-contractual on-call payments, mileage or expenses.

Another employer paying 100% is **Cormac Solutions Ltd**, wholly owned by Cornwall Council. Unions insisted that the company prioritise staff with vulnerable conditions, or who live with people with such conditions. The company also has a lot of key workers and where staff have been reallocated to different roles, their salary has been uplifted to the rate a staff member routinely carrying out that role would receive.

At **British Airways**, where a second year 3.5% pay increase was recently implemented (underpinned by a minimum £650), there is another prominent furlough deal, negotiated by GMB, Unite and Balpa (see page 4 for details).

## Paid leave

In the current conditions, parental leave and sick leave are also high on the agenda. Staff at **Citizens Advice** had their parental leave rights enhanced to four weeks' paid leave, for the full calendar year. The Unite-negotiated pay deal also put 3% on salaries up to £34,500pa (almost half the workforce) while those on higher salaries got 1.5%.

**M&G plc (Prudential)** has also beefed up its maternity policy (26 weeks at full pay) while **Argos** (with a 30p per hour increase for staff aged 21 or over) is committed to aligning to the Sainsbury's maternity and paternity policy. In a move with added significance since the lockdown, it agreed to include domestic violence guidance and support within its policies.

Temporary government changes to statutory sick pay (SSP) mean that it now provides payment from day one, but that still left room in company sick pay agreements to eliminate waiting days and secure full payment during self-isolation. Absence due to coronavirus symptoms at Nottingham Community Housing Association is being treated as absence due to national emergency on full salary.

## Homeworking

Some think the move to mass home working and digitisation will be one of the biggest changes arising from this crisis. The vast majority of MOD staff are working from home; or are at home on special paid leave if unable to work from home. A small number are still working from sites, with the appropriate social distancing and risk-mitigation.

Civil service unions have signed Covid-19 protocols with the Scottish government, designed to ensure consistency of treatment (but with the possibility of agreed alternative arrangements in the Scottish Prison Service). These agreements follow on from the new government pay policy. Key points are:

- sickness absence (Covid-19 symptoms): remain at home, no fit note required for the first 14 days;
- homeworking: if fit but "impacted by the virus", work from home, or special leave if not possible;
- underlying health conditions: homeworking "wherever possible, including temporary amendments to duties"; if not possible, special leave;
- hours and work patterns: if required to attend (key worker), consider changing or moving opening hours, discuss and agree with all staff/unions;
- temporary/agency/contractors: to be treated in the same way as permanent members of staff; and
- annual and flexi leave: approval conditional on the business being able to support the absence at the time (with provisions for taking pre-booked leave).

## Essential workers

There has been an outpouring of support for essential workers, including those who are still going to work – not just in the emergency services but in busy sectors like communications, transport and distribution. Many have already had their pay rise for 2019-2020.

## Health and social care

Under **NHS Agenda for Change (England)** the pre-agreed 1 April deal increased the lowest rates by 2% to £18,005, while the most populated non-medical Band 5 was set at £24,907-£30,615. In the supply chain, wholesaler **Alliance Healthcare** agreed a 2.4% increase last November but a further increase this month took the grade C rate outside London to 15p above the new National Living Wage, £8.87 an hour.

## Education and childcare staff

From 1 September 2019, most **schoolteachers** in England had a 2.75% increase, taking the classroom teachers' main pay range outside

London to £24,373-35,971. Most support staff are covered by the **Local Government NJC** agreement, where the GMB, UNISON and Unite are pressing for a top-up on the employers' 2.75% 2020-21 pay offer.

## Government staff

Last August, most civil service pay deals were subject to a 2% paybill increase in line with government pay policy. That included **MOD** staff, where the majority received the equivalent of 2.4%. Salaries for industrial Skill Zones 1 to 4 now range from £16,712 to £25,726 while non-industrial salaries outside London range from £18,414 to £71,728.

## Public safety

**Police officers** had a 2.5% increase to all pay points for all ranks from 1 September 2019 taking pay for a constable (appointed on or after 1 April 2013) to £20,880-£40,128. **Police staff** in England and Wales also received a 2.5% increase to all pay points and their national pay spine runs from £17,799 to £49,023.

## Food and other necessary goods

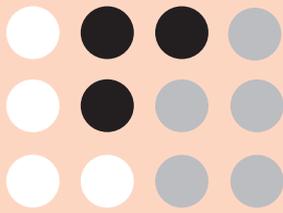
Usdaw has negotiated a 20p per hour increase for retail staff at **Morrisons**, taking the basic rate to £9.20ph (£8.80 for new starters), and welcomed confirmation that the Colleague Bonus will be paid in May (to all permanent staff employed before 3 February). In the supply chain, poultry processor **2 Sisters** in Scunthorpe matched this month's 51p cash increase in the National Living Wage (to £8.72 per hour) with a Grade 1 rate of £8.79 and a variety of other grades paying up to £19.75.

## Transport

At London Underground a new four-year RPI-plus pay award was agreed at the beginning of the month (the RMT was in the process of balloting on the offer pre-Covid). At **Carlisle Support Services (Northern Trains)** the GMB negotiated an uplift for all staff to the Living Wage Foundation living wage of £9.30 an hour, worth 13.3% for workers previously on the statutory National Living Wage.

## Utilities and financial services

The **HSBC** clerical settlement effective from 1 March provided a 2.45% increase (except for "inconsistent" performance ratings). It equates to a minimum pay increase of £400. Additionally, for staff in the lowest pay grade there were awards of up to £200 depending on their position in the pay scale (most pay scales increased by 2%). **EDF Energy** has just agreed a new recognition agreement with Prospect, Unite and the GMB and a new three-stage, three-year agreement from 1 April 2020 with most staff receiving between 8% and 11% over the course of the deal.



# Labour Research Department

## WORKPLACE report

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## LRD Payline

If you find *Workplace Report* useful, you may be interested in another of our services: LRD Payline, an internet database allowing users to compare pay and conditions across a range of industries.

Based on more than 2,300 collective agreements, with more being added all the time, LRD Payline can be accessed from our website ([www.lrd.org.uk](http://www.lrd.org.uk)) and from some union sites.

To produce LRD Payline, we analyse agreements supplied by union reps across the country, and input the key elements into a database. Pay increases, pay rates, hours, holidays, regional allowances and maternity/paternity arrangements are already covered, and other areas will be included in the future.

*Workplace Report* uses this material in some of its articles and surveys, but LRD Payline has the advantage of always being up to date.

Users can compare, for example, their own pay increase with others in their industry or region. They can widen or narrow the search as much as they want — and if they find an agreement of particular interest, a single click provides the full picture.

For many activists, access to LRD Payline is free. The service is paid for at national level, and a number of unions — including Unite, UNISON, the GMB, the RMT, TSSA, PCS and Community — make it available to all their activists. If you are a member of one of these unions, e-mail [pay@lrd.org.uk](mailto:pay@lrd.org.uk) for details and a password.

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