

## Welcome to Simpkins and Co's monthly e-newsletter

Keeping you up-to-date with the changes in legislation, interesting cases and issues that arise in the following areas of the law; Personal Injury, Clinical Negligence and Employment. We hope you will find it interesting and useful.

We've listened to your feedback and have produced an A4 version of our newsletter which we hope you will find more user friendly if you wish to print it.

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A4 version of our  
newsletter

## Government shelves personal injury claims reforms unexpectedly



The government has unexpectedly shelved its reforms of personal injury claims. The reform proposals would see the small claims limit for personal injury rise from £1,000 to £5,000, and the right to claim damages for low-value soft-tissue injuries removed.

Despite the reforms already introduced to date, the government feels that the number and cost of whiplash claims still remain too high, increasing premiums for ordinary motorists.

The decision not to proceed has been taken by Ministry of Justice in isolation and that the urge to proceed with the reforms remains very strong within HM Treasury.

The president of the Association of Personal Injury Lawyers (APIL), said: "When news emerged in the summer that insurers had failed to pass on savings from previous personal injury reforms to motorists, it was clear that the proposed reforms were aiming at the wrong target. Car insurance premiums continue to rise while costs to insurers from personal injury

claims are falling. It's now time for the government to investigate the real reasons for rising premiums and hold the insurance industry to account."

The Chair of the Motor Accident Solicitors Society (MASS), said: "These reforms would have a significant detrimental effect on the rights of the genuinely injured victims of motor accidents. Solicitors and insurers need to work together with the government to address fraud, improve claims management regulation and work constructively together."

There's no evidence that the reforms would work, and it was not clear whether customers would benefit in the form of lower insurance premiums. Also, if passed into law, the reforms would have eroded the rights of millions of people's access to gain redress for their injuries.

If you have suffered personal injury through no fault of your own, then contact us for a **FREE** initial consultation on 01425 275555 or **FREephone** 0800 0832755, email [info@simpkinsand.co.uk](mailto:info@simpkinsand.co.uk) or visit the website [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk)

We are members of the Law Society Personal Injury Panel and the Association of Personal Injury Lawyers (APIL).

# UBER loses landmark tribunal decision over drivers' working rights



Uber has lost a London tribunal over the treatment of its drivers and may have to grant its drivers basic employment rights such as the National Minimum Wage and holiday pay. Following claims that Uber had disregarded its drivers' basic employment rights, the case was brought by the GMB trade union.

The ride-hailing app has said that it will appeal the decision as it threatens to destabilise the company's business model. Britain is not the first country where Uber has faced challenges to its model. Around the world it has been met with protests, bans and restrictions in several cities.

The legal action started over a year ago and alleged that Uber failed to ensure its drivers were paid the minimum wage or the minimum amount of paid holiday.

The company maintains that its drivers are self-employed contractors rather than permanent employees, meaning that they are entitled to different benefits. These include the freedom and flexibility of being able to drive when and where they want.

The tribunal disagreed, saying that it's unreal to deny that Uber is in business as a supplier of transportation services. Uber, which works with more than 40,000 drivers in the UK, insists that as opposed to being a traditional taxi company, it is a technology company that facilitates independent drivers connecting with passengers.

However, an employment tribunal ruled that the two drivers at the centre of the case are in fact employees, rather than contractors. The judgment acknowledges

the central contribution that Uber's drivers have made to Uber's success by confirming that its drivers are not self-employed and that they work for Uber as part of the company's business.

The GMB trade union, which backed the drivers, described it as a "monumental victory". It went on to say that this will have a hugely positive impact on over 30,000 drivers in London and across England and Wales and also for thousands more in other industries where bogus self-employment is rife.

One Uber driver, who has been with them since 2014, wrote in a witness statement that he calculated his net earnings for August 2015 were £5.03 an hour. The minimum wage at the time was £6.70 an hour.

Research by the Citizens Advice has previously shown up to 460,000 people could be falsely self-employed. This is where bosses tell staff that they are self-employed when, in law, their true status would be that of an employee or worker.

The research also found false self-employment costs the government as much as £314m a year in lost tax and employer national insurance contributions. Each false self-employed person also loses an average of over £1,200 per year.

If you have been affected by the above issues, then contact us for a **FREE** initial consultation on **01425 275555** or **FREephone 0800 0832755**, email [info@simpkinsand.co.uk](mailto:info@simpkinsand.co.uk) or visit the website [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk)

We are specialists in Employment Law and are accredited members of the Employment Lawyers Association.

Steve Simpkins and Jacque Aitken of Simpkins & Co are Trustees of the New Forest Citizens Advice, a charity providing advice for the problems people face and improving the policies and practices that affect people's lives.



## Steve Simpkins addresses the Congress of Polish Entrepreneurs

As reported in our October newsletter, Steve Simpkins of Simpkins & Co was invited to address the 2016 Congress of Polish Entrepreneurs in London on 20th October. He talked to more than 200 delegates about recognising and avoiding potential areas of dispute or future conflict whilst running or establishing a business here in the UK. Now in its third year, the Congress of Polish Entrepreneurs this year focused on creating growth in challenging times, specifically in the context of a post-Brexit environment.

Bartłomiej Kowalczyk of Polish Business Link, organisers of the Congress said, "Whilst there are still unknowns and future challenges ahead, we believe that new opportunities will open up and that the many successful Polish business entrepreneurs in the UK will look for new ways to benefit from these changes and find new ways of growing their businesses, continuing their contribution to the UK economy."

We at Simpkins & Co have been closely involved with Polish Business Link as corporate partners, and the British Polish Chamber of Commerce for several years. We provide Polish speaking legal advisers for those establishing or running a business here in the UK, or those investigating setting up a UK based business.

As well as attending various networking events for Poles here in the UK, Steve and colleagues from our Polish Department have been invited to various business forums in Poland to address the business community there.

Steve commented, "It was a great pleasure to attend the Congress and have the opportunity to speak about how proper legal advice and having procedures in place will help businesses flourish and succeed. It was fantastic to meet so many enthused and committed entrepreneurs who are positive about running a business here in the UK. None of us knows what the post-Brexit



landscape will look like, but we do know that there are some extremely professional business people still very keen to grow their companies. We will continue to do all that we can to support them."

**Can we can help you with business advice, whether as a British or Polish entrepreneur?**

We have a Polish-speaking Solicitor and Litigation Executive available to speak to you.

Contact us for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email [info@simpkinsand.co.uk](mailto:info@simpkinsand.co.uk) or visit the website [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk).

Read Julie-Anne Houldey's (of Lime Tree Communications) report in the Dorset Eye: - [www.dorseteye.com/north/articles/solicitor-to-address-polish-congress](http://www.dorseteye.com/north/articles/solicitor-to-address-polish-congress)



## ASDA store workers can compare to depot staff for equal pay claim

The Manchester Employment Tribunal has ruled that for the purpose of an equal pay claim, a group of Asda store workers can compare themselves to distribution depot workers. This ruling clears the way for over 7,000 claims to proceed, totalling an estimated value of over £100m.

A group of mainly female employees of AS Ltd, working in hourly-paid jobs in its retail stores, sought to bring equal pay claims. They argued that they were entitled to equal pay with AS Ltd.'s distribution depot employees, who are mainly men. Their argument was that their work had historically been seen as 'women's work' and so thought to be worth less than the work done by the men in the depot. An employment tribunal at a preliminary hearing had to consider whether the claimants could rely on this comparison. Under the Equality Act 2010, an equal pay comparison is only valid between the claimant and a chosen comparator if they both have the same employer and work at the same establishment or, if different establishments, 'common terms apply at the establishments'.

The tribunal ruled that it is not enough that the claimant and proposed comparator are employed by a single employer; there must also be a situation where the difference in pay is down to a 'single source', i.e. a body responsible for the

inequality which could restore equal treatment. It went on to find that the 'single source' test was in fact satisfied on the facts. It rejected AS Ltd.'s argument that the division of its retail and distribution operations meant that pay-setting powers had been delegated to separate bodies. On the facts of this case, AS Ltd.'s Executive Board had exercised budgetary control over both retail and distribution, and so had the power to introduce pay equality.

AS Ltd had also argued that there were essentially different employment regimes at its stores and depot, stating that there were no 'common terms' applicable to employees at different locations. This was rejected by the tribunal as it accepted the claimants' argument that their terms were broadly similar to those of the depot employees, both being hourly paid and having a similar structure to their contracts. Although there were differences in specific terms, the tribunal did not consider that they were so extensive as to undermine the broad comparison.

If you need advice on Employment Law, including HR issues and staff contracts, whether as an employee or an employer, then contact us for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email [info@simpkinsand.co.uk](mailto:info@simpkinsand.co.uk) or visit the website [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk)

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## Court awards damages for IVF following Claimants miscarriage in RTA

A recent decision by Mrs Justice Whipple illustrates how the Court tackles complex quantum issues (the amount of money a successful claimant will receive in a court action) in a case in which the Claimant was involved in multiple accidents.

The Claimant (referred to as XP) was a Polish national who had been residing in the UK since 2000. She fell pregnant in January 2011. In April 2011, she was involved in a road traffic accident whilst visiting family members in Poland. As the result of that accident she suffered a traumatic miscarriage, resulting in physical and psychiatric injury.

After returning to the UK, XP resumed a relationship with the father of the lost child. However, this relationship became abusive and lasted only a few months. XP claimed that this also affected her psychiatric state.

Whilst still suffering from the consequences of the accident in January 2011, she was involved in a second road traffic accident in March 2013. This caused an exacerbation of post-traumatic stress disorder, orthopaedic injuries, headaches and generalised pain. These symptoms lasted for approximately two years.

The Defendants in respect of both accidents admitted liability, but the parties disputed quantum and the relevant contribution to XP's injuries and losses resulting from each of the respective accidents.

Complicating matters further, damages in respect of the first accident fell to be assessed according to Polish law but XP exercised her right under EU law to bring the claim in the country where she lived. This resulted in the High Court applying Polish law to the assessment of damages due.

The Defendants disputed how the Claimant's past loss of earnings should be divided between them. In the two-year period during which the Claimant was suffering from the effects of the second accident, she suffered loss of earnings of almost £43,000.

It was argued that, in the absence of the second accident, the Claimant would have been prevented from working in any event, as the result of the continuing effects of the earlier injuries.

The Court ruled that it could only say that the combined effects of the two accidents resulted in the Claimant being out of work for a period of two years. The judge ruled that it was appropriate to allot 75% of the loss to the first accident and 25% to the second accident.

*Continued overleaf*

*Continued from previous page Court awards damages for IVF following Claimants miscarriage in RTA*

The Court then had to deal with XP's claim against the First Defendant for three cycles of IVF treatment. The Claimant believed that, in the absence of the first accident, she would have had a child.

The Court agreed that the miscarriage was the consequence of the physical injury she sustained in the accident. Further, it was accepted that the Claimant's fertility was decreasing over time. When the assessment of damages was made in 2016, she was aged 40 years, and therefore her fertility had declined since 2011, and would continue to do so. The Judge agreed that due to the amount of time that had passed, the Claimant could no longer afford to wait for a new partner or better circumstances

before looking to conceive naturally. Therefore, IVF treatment was considered necessary to restore the Claimant to her pre-accident position.

Although this decision was based on the judge's application of Polish law, it is likely to be cited by future claimants in similar circumstances in cases in England and Wales.

Finally, the Judge opted to make an award of £150,000, calculated on the basis of 3-4 years' net loss of earnings, together with an additional amount to reflect an ongoing additional shortfall in earnings capacity during the remainder of the Claimant's working life.

If you have been injured in any EU state, you can choose under EU law to bring a claim in the country where you reside. This may not be the case after Brexit and we urge you not to delay in contacting us. For a FREE initial consultation on 01425 275555 or FREEPHONE 0800 0832755, email [info@simpkinsand.co.uk](mailto:info@simpkinsand.co.uk) or visit the website [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk)

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Simpkins and Co Solicitors only deal in certain areas of the law, the ones we specialise in, which means you get the best advice from the right people. We are specialists in [personal injury](#), [employment law](#), [clinical negligence](#) and [business advice](#) claims.

We are always happy to take enquiries from Bureau advisors or clients. We operate a FREE initial consultation where we can also advise in relation to funding options as we appreciate that clients are often concerned in relation to potential legal costs.

**Contact us to arrange an initial FREE consultation: 01425 275555  
FREEPHONE: 0800 0832755 or from mobiles: 0333 7777 420**

The above information and the content of this e-newsletter should never be taken as specific legal advice. If you have a legal problem then please contact Simpkins and Co, Highcliffe, Dorset, on 01425 275555 to discuss your issue in detail.

**Personal Injury | Clinical Negligence | Employment Law | Business Advice**

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