

## Happy New Year and welcome to Simpkins and Co's January newsletter

Visit our website for news, views, blogs & useful information. Keeping you up-to-date with the changes in legislation, interesting cases and issues that arise in the areas of the law we specialise in: Personal Injury, Clinical Negligence, Employment Law and Business Advice.

CHECK  
OUT OUR NEW  
**WEBSITE**

We've updated and restyled our website - **check it out** and let us know what you think!

### PERSONAL INJURY NEWS

## Medical evidence not always required for personal injury award as shown in case of Hampshire County Council v Wyatt

**Compensation awarded for a successful discrimination claim can include an award for injury to feelings and an award for personal injury.**

In this case, Mrs Wyatt was employed by Hampshire County Council as a carer. She suffered from dyslexia and was disabled according to Section 6 of the Equality Act 2010. She was subject to a disciplinary process during which she was suspended for a short period of time. This suspension triggered her depression which was also found to be a disability under Section 6 of the Equality Act.

When she did not return to work from her suspension, she was dismissed by the Council following their absence management procedure. There were a number of serious discriminatory acts arising from the way the Council conducted its internal processes with her, including her dismissal.

Mrs Wyatt claimed successfully for disability discrimination and unfair dismissal. She was awarded £15,000 for injury to feelings and £10,000 for personal injury (the depression).

When the Council appealed the decision arguing that medical evidence should be obtained to establish causation, the Employment Appeal Tribunal (EAT) stated that there is no such principle that medical evidence has to be obtained in personal injury awards, although it is usual



to obtain medical evidence in such cases. The absence of medical evidence is not a barrier to making an award for personal injury. The EAT held that tribunals are expected to deal with compensation for unfair dismissal by applying common sense and their best judgement.

### Have you been affected by any of the issues above, whether as an employee or an employer?

We are experts in employment law and personal injury compensation claims. We can advise you on absence management procedures, disciplinary processes or any other HR matters. Call our Highcliffe office on 01425 275555 for a **FREE** initial consultation, or visit [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk).

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

# Government proposals to reform low-value personal injury claims

PERSONAL  
INJURY NEWS



**In November, the Chancellor announced the Government's intention to remove the right to general damages for minor soft tissue claims and to transfer personal injury claims with a value of up to £5,000 for pain, suffering and loss of amenity (general damages) to the small claims court.**

**As an accredited member of APIL (the Association of Personal Injury Lawyers) Steve Simpkins was urged to contact local MP's and challenge these proposed reforms: -**

'I am writing to you, to urge you to make representations to the Justice Secretary against the Government's plan to increase the small claims court limit for people injured through no fault of their own - and to abolish recompense altogether for almost all those who have suffered soft tissue injuries in road accidents.

Whilst a limited increase in the small claims threshold is appropriate (inflation would suggest the correct higher figure would be £2,000), the current proposals will result in injustice to ordinary honest people whilst creating excessive profits for insurance companies; and even more so, if the injured are banned altogether from receiving anything at all for their suffering and losses.

85% of injured people will be denied legal representation. They will be left alone to face an unfair battle against powerful insurance companies. Most will not even bother or will be exploited by claims management companies. Others will accept woefully inadequate offers to avoid the stress of the Small Claims Court.

The Government say this is to reduce 'fraud'. However, the evidence does not support this argument; and the Government has already introduced a long series of measures to deal with this anyway.

Savings can only come from denying people the recompense to which they are rightfully entitled. The insurers claim savings would be passed on to policyholders. However, they've said this many times before - and each time failed to meet their promise. The Government have made clear they will not

'police' this, either. Car insurance premiums have increased 9.2% in the 12 months to the end of September 2015, taking the average cost of a comprehensive policy to £568.

The insurance industry's own Association of British Insurers (ABI) figures show that their costs of recompensing those hurt by their policyholders have fallen 29% since 2010. The amount paid out annually by motor insurers fell from £8.3 billion to £5.89 billion last year - a decrease of £2.41 billion. Yet savings from this multi-billion-pound windfall have not been passed on.

In fact, this huge sum has gone to inflate the insurance industry's profits instead. For example, Direct Line and Admiral have between them paid out £1.65 billion in dividends in the last three years - equivalent to £221 for each of their policyholders.

Moreover, the serious consequences of the Government's plan are not limited to injured people. I cannot believe the Government could have assessed the implications for the taxpayer and the reduction in its own revenues, as there will be significant losses in VAT, income and corporation tax, court fees, recoupment of welfare and NHS costs, and an increase in expenditure on out of work benefits.

I say this, as the implications will be to make my business of supporting certain injured people unviable. Whilst the majority of cases handled by Simpkins & Co Solicitors are more serious, and therefore involve higher damages, we feel it to be highly unfair to preclude those clients with, what may be deemed to be smaller claims, from stating their cause.'

At **Simpkins & Co Solicitors**, we specialise in personal injury and accident compensation claims. If you have suffered any personal injury through no fault of your own, then contact our Highcliffe office on 01425 275555 for a **FREE** initial consultation and details of 'no win, no fee' options, or visit [www.simpkinsand.co.uk](http://www.simpkinsand.co.uk)

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EMPLOYMENT  
LAW NEWS

## Employment Law Case Study

Royal Bournemouth & Christchurch Hospitals NHS Foundation Trust found lacking in investigation of patient's mistreatment allegations.



T, a long-serving health care assistant, was dismissed by Royal Bournemouth & Christchurch Hospitals NHS Foundation Trust for gross misconduct after it was alleged that she had mistreated a patient during a night-shift.

The patient's statement alleged that T and another nurse on duty at the time had acted in a cruel and uncaring way towards her and that T had been abusive and effectively assaulted the patient.

T's internal appeal failed and the Employment Tribunal (ET) also rejected her claim of unfair dismissal. The ET deemed that, overall, the Hospital Trust had carried out a reasonable investigation. They concluded that the decision to dismiss T fell within the band of reasonable responses of a reasonable employer in the relevant circumstances. The ET also considered that various procedural failings in the disciplinary process had been made good at the appeal stage and, ultimately, the dismissal had been fair. T appealed.

The Employment Appeal Tribunal (EAT) allowed the appeal. The allegations made by the patient were very serious and the stakes were extremely high for T, given the potential career-ending consequences of a dismissal. Although the ET had considered various failings by the Trust - in particular, to obtain statements from the other nurses on duty at the time and to investigate new allegations made by the patient at the appeal stage - it had done so in a limited way. The Trust had not

considered whether those failings impacted upon the fairness of the investigation. The ET's conclusion on T's unfair dismissal complaint was rendered unsafe and its decision would be set aside and the matter sent back to the same ET for further consideration.

Points to note by employers

- This case is a useful reminder of some of the issues that employers should bear in mind when investigating misconduct and in particular where the allegations are serious: -
- The more serious the matter, the more thorough the investigation should be.
- Serious allegations require very careful investigations. A detailed and conscientious investigation of the facts is important.
- The investigation must be unbiased. The investigator must keep an open mind and look for evidence which supports the employee's case as well as evidence against.
- A fair investigation is even more important where the employee's reputation or ability to work in his or her chosen field is at risk. In cases like these, the standard of fairness and thoroughness will be very high and the employer should expect a tribunal to scrutinise the procedures followed particularly carefully.

**Do you need help with disciplinary or any other HR procedures, whether as an employer or employee?** We are specialists in Employment Law and are accredited members of the Employment Lawyers Association. Contact our Highcliffe office on **01425 275555** for a **FREE** initial consultation, or visit **[www.simpkinsand.co.uk](http://www.simpkinsand.co.uk)**.

EMPLOYMENT  
LAW NEWS

## Was company vicariously liable for assault on employee after work's Christmas party?

An employee, who was left brain damaged after being punched by a director of the company following a work's Christmas party, sought damages on the basis that the company was "vicariously liable for the actions of its director. ("Vicarious liability refers to a situation where someone is held responsible for the actions or omissions of another person. In the workplace, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment).

After a Christmas party organised by the Defendant company, one of its directors punched an employee in an unprovoked attack, causing irreparable brain damage. This assault took place at 3 am when several of the party goers had decided to move on somewhere else after the official work party had finished. The employee who had been assaulted, being unlikely to work again, made a claim for damages, saying that the Defendant company was vicariously liable for the actions of its director.

For a significant time during the early morning drinking session, the discussion between the two men, who had been friends since childhood, had been on social or sporting topics. The fact that it suddenly changed into a discussion about work, could not provide a sufficient connection to support a finding of vicarious liability

against the company that employed them. The court found, without any doubt, that the early hours drinking session was of a very different nature from the Christmas party and therefore unconnected with the Defendant's business. The assault arose in the context of entirely voluntary and personal choices by those present to engage in a heavy early hours drinking session.

**The claim was dismissed.**



At Simpkins & Co Solicitors we deal in certain areas of the law, the ones we specialise in, giving you the **best service** from the right people. If you need support regarding any aspect of **personal injury, employment law, clinical negligence, business advice** or **Polish start-up assistance**, contact us to **arrange a FREE initial consultation** where we can also advise in relation to funding options as we appreciate that clients are often concerned about potential legal costs. **We may be able to act on a no win no fee basis**, or fixed fee arrangement, plus we can advise on whether legal expenses insurance cover is already in place via other means. We are always happy to take enquiries from Bureau advisors or clients.

Contact us to arrange a FREE INITIAL CONSULTATION: **01425 275555**  
**FREEPHONE: 0800 0832755** OR **FREEMOBILE: 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.

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