

Small Claims, Big Deal.

A report into trade union legal services
March 2005

UNISON survey of trade union legal services

Trade union legal services are a fundamental underpinning of trade union membership and offer working people high quality advice and real access to justice.

Working people are offered free, trustworthy and timely guidance, that they can depend on during what are often very difficult periods in their lives.

Now a proposed change to the level of damages that can be awarded in the Small Claims Court – from £1,000 to £5,000 – threatens to adversely affect both trade union legal services and those who benefit from them.

The problem for those bringing personal injury cases is that the Small Claims Court does not award costs in cases brought before it. There is a real possibility that this could result in fewer cases having legal representation from a trade union lawyer (who is paid out of costs received from the employers' insurance companies). This is likely to lead to more claimants having to rely on 'no win no fee' claims farmers to pursue their claims. Some of the problems associated with these claims farmers are highlighted later in this report.

Over the last ten years negligent employers have paid out over £3 billion in compensation to staff who have sustained physical and psychological injuries at work. Much of this compensation has to be fought for through the legal system.

A fortunate twenty per cent of claimants are able to call on their trade union's legal service to help them fight for just settlement of their personal injury claims involving employer's liability. However this leaves eighty per cent who have to fund their claims through other means.

With the effective withdrawal of legal aid for personal injury cases in 2000, and the introduction of a new system of 'conditional fee agreements', many have turned to the superficially attractive offer from 'no win no fee' claims farmers, who take a cut of damages awarded. Some of them have turned out to have questionable client care and to be either negligent or unscrupulous and at the very least guilty of not explaining to their clients the many real risks involved.

As part of a campaign to draw attention to the benefits of trade union legal services and to highlight the threat to those services that this proposed change may prompt, UNISON commissioned a telephone survey of 1,000 members who have been represented by trade union legal services in a claim completed over the last year. Keith Sonnet, deputy general secretary of UNISON, reveals:

'Our survey shows that two thirds of all respondents believe that without union legal service representation, their case would not have been handled fairly.'

'Working people can too often fall victim to the poor service being offered by claims companies and some high street lawyers. Our survey confirms that trade union legal services are important to every trade union member and without them many thousands of cases would not be pursued.'

Full details of the survey are shown on pages three and four of this report.

Background to trade union services

Members of trade unions who suffer personal injury through accident or disease, at or away from work, are eligible for support in their compensation claim from their trade union. The personal injury service for non work accidents also covers family members.

Unions which have built up great expertise in the field of work-related claims, retain a firm of solicitors expert in representing their members and their families in these cases.

If a case is taken on by a trade union, the individual receives 100 per cent of any compensation awarded. The costs of the case as it progresses are footed by the trade union itself, which in turn (through its lawyers) claims costs from the employer's insurance company. Over 100,000 claims were being investigated or progressed during the last year by trade unions.

Trade union legal services offer their members a range of personal injury legal services that protect them both in and outside of work, including:

- accidents at work
- work related diseases
- accidents on the road
- other street accidents
- major public disasters.

Non trade union members have little choice but to use a 'conditional fee arrangement' or 'no win no fee' agreement, as it is usually known. In such an agreement, the solicitor is only paid if the claim is successful. They usually receive a success fee on top of their costs if they win the case. Both the basic fee and success fee are paid either in full or in part by the losing party. The successful party is liable for any costs the losing party is not ordered to pay.

If the claim fails, the claimant has to pay the successful party's costs plus any other costs (court fees, fees for medical reports etc). These should be covered by insurance taken out at the start of the case, for which a premium is paid, often through a loan provided by the claimant's advisor.

Telephone survey results

A thousand trade union members who had been represented by trade union legal services in a claim completed over the last year were surveyed in order to find out what value claimants put on being able to call upon advice from their union's lawyers.

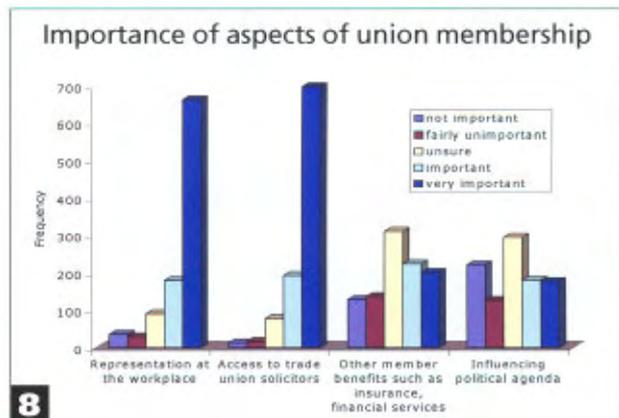
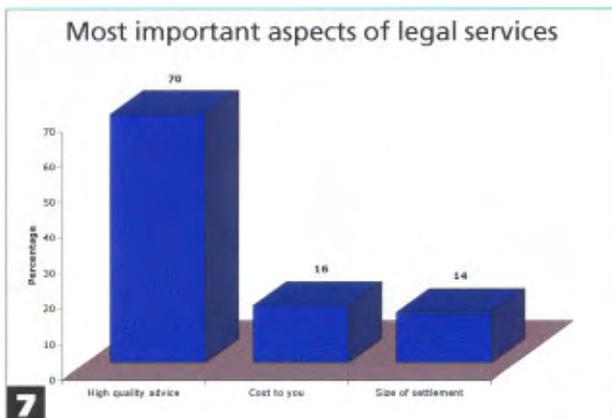
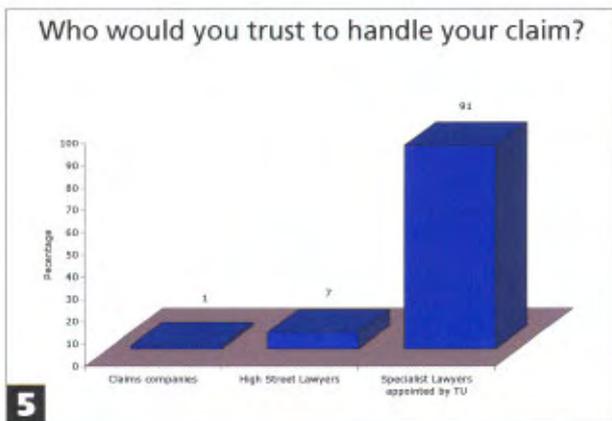
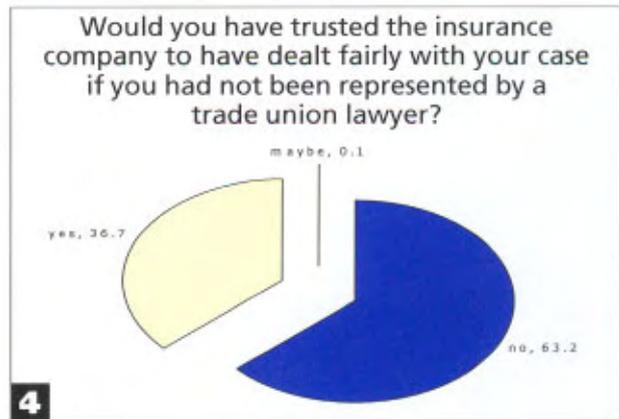
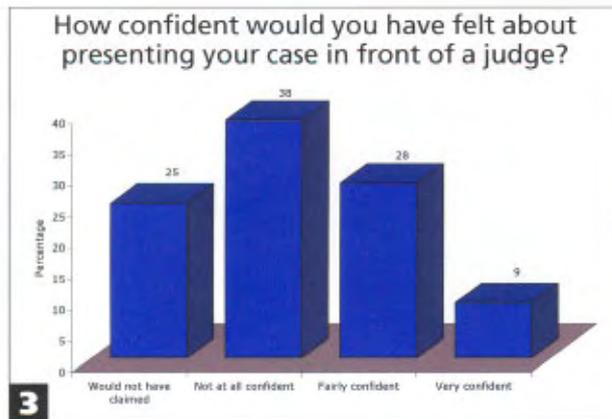
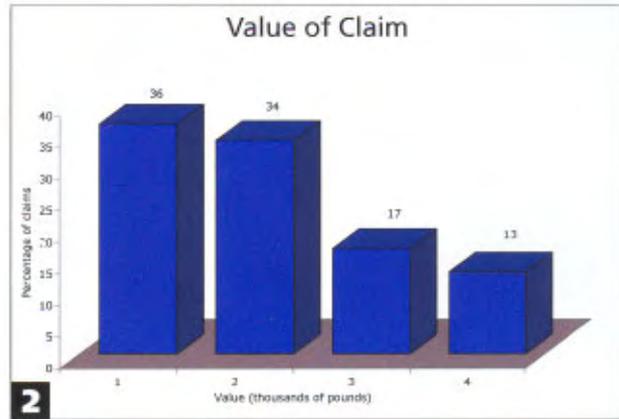
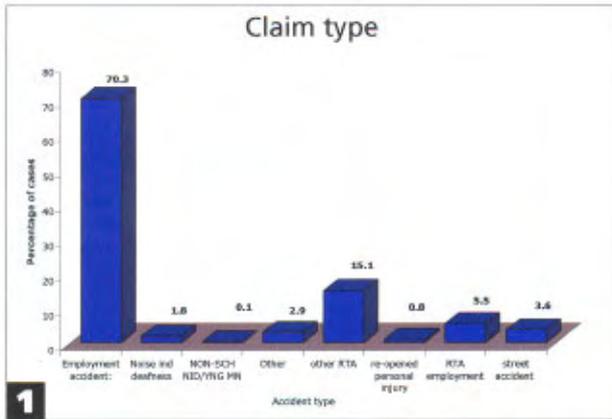
Of those surveyed, over 70 per cent of the cases were employment accidents, with the next most important case type being road traffic accidents, both at work and elsewhere (chart 1).

- Sixty four per cent of respondents in the survey received awards of between £2000 and £5000 (chart 2).
- Sixty three per cent of respondents would either not have proceeded with their case, or would not have felt confident about going before a judge without legal representation (chart 3).
- Only a third of respondents believed their case would have been fairly dealt with if they hadn't had a trade union lawyer (chart 4).
- Ninety per cent of respondents said they would trust specialist solicitors appointed by a trade union, while less than 10 per cent said they would trust claims companies or high street solicitors (chart 5).
- Nearly 85 per cent of respondents rated the service that they received from trade union solicitors to be either good or very good (chart 6).

The legal system is unbalanced. It is a David and Goliath fight for someone without professional representation to pursue a claim for compensation.

If, as UNISON and its fellow unions fear, its members are effectively excluded from access to legal help from their unions by the rise in compensation awards in the Small Claims Court, more and more will have to turn to other providers.

Charts from the telephone survey



The consumer experience of 'no win no fee'

According to a recent report by Citizens Advice (No win, no fee, no chance: CAB evidence on the challenges facing access to injury compensation, December 2004), the system of conditional fee agreements that since 2000 has taken the place of legal aid is very far from perfect.

The report points to the following problems:

- High pressure sales tactics by unqualified intermediaries, using inappropriate marketing and sales practices
- Few consumers are properly informed of the risks and liabilities they are exposing themselves to
- Loan financed insurance premiums often eat into the final compensation fee, and in some cases even mean claimants owe more than they finally receive in compensation
- The system leads law firms to cherry pick the most lucrative cases

Real life experiences....

Although some of the more infamous firms are now out of business, the transcripts included in this section are taken from people who are dealing with, or have dealt with, claim farmers (and Legal Expense Insurers) currently trading.

These case studies highlight many of the problems referred to above – from people being misled about the amount of compensation they would receive, to incompetence and mis-selling - that lead to individuals either being short-changed in the amount of compensation they should receive, or failing to pursue a just claim at all, simply because they cannot find their way around the system.

Ann Damaging her leg by tripping over a paving stone at Newcastle metro station ended up *costing* Ann over a thousand pounds thanks to the ineptitude of the no win no fee solicitor representing her case.

The accident caused Ann to tear ligaments in her leg which took a long time to heal. She contacted a claims company after being handed one of their leaflets in the street and was introduced to a solicitor who assured her she had a very winnable case. The only problem was the evidence he presented in court to back up her claim – a photograph of the offending paving stone was so badly taken that it didn't even show the stone.

The judge dismissed the case because the evidence was so inadequate, and due to her solicitor's negligence the local council's costs were awarded against her. What Ann didn't realise was that, because her solicitor had not taken out an insurance policy to insure her against losing – which is the usual practice in so-called 'conditional fee

arrangement' cases – she was liable to pay half the costs, set at £2500. To add insult to injury, the council told her this solicitor was notorious for not taking out insurance in such cases, and was under investigation by the Law Society (though for other reasons).

The horror isn't over for Ann – she's now suing the solicitor for negligence – and not surprisingly wouldn't advise anyone to believe that no win no fee means anything like it says.

John The inefficiency of the claims companies is a theme that runs through many of the case studies. John had an accident eight years ago, and despite being in contact with four firms, has still not had a resolution to his case.

While working as a security officer in December 1998, a forklift truck drove into the table where he was sitting and crushed him against the wall. The accident crushed his kneecap and left him unable to walk. He hasn't worked since.

Through a television advert he found a claims company to take on his case but it went into high-profile liquidation very soon after. After an interval he approached another, but three years later they had stopped communicating with him. Then two years ago he was approached in the street by another company who he agreed to sign up with, filled in an accident report and waited – again in vain.

Then a few months later two men came to his front door and signed him up again, and again he heard nothing. So eight years later, and four firms contacted, John is no further forward, despite having a fairly clear-cut case.

'If I knew how to take a claim to court, I'd do it myself,' he says, 'but it's very difficult. I'll never bother with a no win no fee agent again. I only wish I'd used my trade union's legal service as I have done in the past.'

Mr D The pain, both physical and financial, lingers on for Mr D, five years after he was hit by a car and left unconscious, with stitches, broken bones and damage to his neck.

He could still walk, and at first appeared to recover well, but medical problems arose later that left him unable to get work. He had been actively looking for work at the time of the accident, having just sold his business, and had been offered two jobs, but was unable to take either of them up due to his ill health.

Solicitors working on a no-win no-fee basis took up his case, and initially all seemed to go well, he even received an interim payment of £7,500. When the case was finally concluded he was awarded £10,000 overall, but the remaining £2,500 was seized by the solicitors as costs. This despite the fact that the other side were ordered to pay the costs of £30,000, and offered Mr D's solicitors £14,000 to cover that part of the costs.

They have made no effort to explain why Mr D is due to pay a further £2,500 in costs, and merely told him that he can go back to court to contest them holding back the money – but it would prove costly.

'I feel like I was being used as an easy earner by the solicitors,' he says.

Mr P 73 year old Mr P has had a number of separate claims through his Legal Expense Insurer and none of these have been handled satisfactorily. In one case he was told that his insurance wouldn't cover him for taking a claim to court after he suffered a head injury at work. Mr P was incredibly traumatised by the accident itself and the lack of support afforded to him by his insurers did not help.

In the end, he had no alternative but to take this claim through the courts himself. The good news was that he ended up being awarded £750 plus costs.

In another equally shocking case he was refused access to legal protection by his insurance firm after he was verbally abused and had a number of items stolen by a thief who was known to him and in employment.

Mr P feels let down by the legal expenses insurance package he thought he could rely upon. He won't turn to them again.

Conclusions

Trade union legal services are of immense value to working people. Those suffering with the effects of work-related injuries are often traumatised, frightened and may well be physically and psychologically incapable of negotiating the complex road to just compensation.

As the data from the telephone survey reveals, without the support of their unions many people would simply not have the confidence to go to court in pursuit of their claims. That in itself is a clear confirmation of the benefits of belonging to a union.

If the proposal to raise the level of damages that the Small Claims Court can award to anything more than the current £1,000 becomes reality, many trade union members will find themselves in the same boat as everyone else. They will have to resort to the confusing world of the no win no fee claims farmers, Legal Expense Insurers and high street law firms, where the interests of the solicitors involved are too often concerned above all with recovering their own costs. That is not something that can be said about trade union legal services.

Anything that threatens the ability of unions to support their members through the legal process is an attack on working people's access to justice.