

## Worried service users flood advice line

**Local authorities could face growing demands for funds to battle legal actions as care service users get increasingly embroiled in employment disputes.**

The potential scale of the issue has been underlined by new figures released by disability specialist, Fish Insurance. These, for the first time, reveal the huge appetite for expert legal support among service users, a 24-hour employment law advice line provided to holders of the company's full cover Independent Living Insurance Policy which has notched up over 4,000 calls in the past 18 months since its launch. The service is now handling over 400 calls a month with disciplinary procedures, contract terms and conditions, employee sickness, grievance procedures and discrimination among issues most concerning service users.

The sheer volume of calls highlights the massive scale of the problem given that it only deals with enquiries from Fish's client base rather than the wider population of direct payment users which stood at 70,000 people in March 2008. Sue Bott, director of the National Centre for Independent Living (NCIL) says it's a big problem: "Local authorities really don't understand employment law, it's one of the biggest problems," she reports.



More worrying for local authorities is the potential cost to them should a service user seek financial support to meet legal bills. One authority recently agreed to fund a £1,000 bill to cover just the opening stages of a legal complaint after the service user argued that the dispute had escalated to tribunal due to the poor advice given by its direct payments team.

Fish has also revealed that whilst over 70% of service users on its books are taking advantage of the company's full cover policy, some authorities are withholding funds to pay for an upgrade from the basic protection. This is despite the fact that the additional cost is just over a £1 a week and provides not just protection and reassurance to service users assuming an employer's responsibilities, but mitigates against the risk of a local authority facing legal bills and potentially damaging PR should cases proceed to court.

### Matters arising...

- Is your direct payments support service set up to offer employment law advice?
- Is your support service equipped to handle a high volume of insurance & employment related queries?
- If your support service gives out incorrect/inadequate advice what are the financial implications for you and/or the service user?
- Have you conducted a risk assessment on provision of advisory services? Does this cover impact on financial, departmental and local authority reputation?
- Do you offer all direct payment users the opportunity to purchase insurance which includes specialist employment law advice?

# Who pays the price of independence?

**Personalisation has been widely welcomed for encouraging and enabling people using care services to take greater control over their lives. But the system is not without its issues. Service users often struggle with the responsibilities they suddenly assume as new employers and social services and support staff may feel exposed as they are not versed in employment law. The Jefferies family learned of these issues the hard way.**

“We just didn’t have a clear enough idea, nobody offered us a health warning and said these are the key issues to watch out for. There was a kind of presumption that by some kind of osmosis we would suddenly have that information at our disposal,” says Paul Jefferies, reflecting on a traumatic 18 months following the dismissal of Effie, a Zambian woman recruited to care for his daughter Emma who has severe cerebral palsy.

## unhappy

The Jefferies were unhappy with Effie’s timekeeping, frequent requests for sizeable loans and unauthorised use of the house ‘phone. The final straw came in July 2007, nine months after Effie was recruited, when she asked Paul’s wife Jane to sign a photograph of her son as a guarantor. As Jane did not know the young man she declined. “That evening Effie continued pestering Jane about the photograph. This ended in Effie cornering Jane and pushing her up against the wall. The next day we were advised by the direct payments information and support service to contact her by letter to say she was being dismissed because of her threatening behaviour. I guess our

final judgement was can we trust her to look after our vulnerable daughter who is registered blind and cannot talk? Any kind of thing could be going on and we just wouldn’t know. The bottom line for us was this wasn’t a suitable person.”

“The solicitors said that what we might want to do at that stage was to pay £20,000”

In a letter to the Jefferies Effie admitted the photograph incident and, as she had worked less than the year required to claim unfair dismissal, it would seem to have been an open and shut case. But 11 months later – eight months outside the statutory time limit for unfair dismissal claims – a solicitor’s letter arrived.

“She engaged a firm of no-win no-fee solicitors and they obviously thought there was enough mileage in it. We assume it was them that suggested she go down the racial discrimination route.” A key reason for this may have been that the Race Relations Act allows for the limit to be extended in special circumstances. Another was that Effie’s leave to remain in the country was dependent upon her employment.

“The solicitors said that what we might want to do at that stage was to pay £20,000 because there was a strong case and that would save the whole matter having to go to court and us having to incur any expenses,” recalls Paul. The couple immediately contacted the direct payments team. “Our first question was ‘does this sound at all reasonable?’ because from the day we decided to dismiss Effie

we had followed the advice they had given. It turns out it was not the right kind of advice. We realise now that they should have advised us to have a meeting with Effie after her dismissal so we could make clear to her why we were dismissing her and she had an opportunity to put her side of things.”

## legal expenses

The Jefferies recognised they needed expert advice but unfortunately, on the direct payments team’s advice, had purchased only basic insurance cover which, unlike the full cover, did not include 24-hour access to specialist legal advice. They faced a potentially sizeable bill. “We managed to get funding to cover an initial bill of around £1,000 by

saying to the direct payments team ‘look you caused this problem so we want you make sure that you cover any initial legal expenses.’ They agreed and authorised the Jefferies to use funds they had put by for Emma’s care to settle the bill.

“We had accumulated money because we had gone eight months without a carer,” explains Paul. Thankfully Emma’s care budget was unaffected as, due to the case’s serious nature and as a goodwill gesture, Fish agreed to cover costs by upgrading them to the full cover.

## court

The case finally reached court in December 2008 with the employment judge decisively rejecting Effie’s claim, noting: “There is no reference in that letter [Effie sent after dismissal] of racial grounds being a motive, hidden agenda, influence or even possibility.” The judge also rejected the claim that the “failure to follow a statutory dismissal procedure was of itself an indication that there was some racial element” and that Effie’s own admission of pushing Jane against a wall added to the argument that dismissal was due to misconduct. The judge threw out the “very weak case”

## cold-blooded

Weak or not asked if the family would have won the case without the advice provided through Fish, Paul is emphatic: “No. The legal advice initially helped us to understand the seriousness of all this because it was explained that in



“...you caused this problem so we want you make sure that you cover any initial legal expenses”

the worst case scenario we could find ourselves with a very significant bill. “There is no cap on awards made in race discrimination cases. He adds: “Then they were able to point out what were the important issues, what we needed to focus on to win the case and also to tell us that as far as Effie was concerned it was a business transaction, she was trying to screw us for money, that it wasn’t personal. We took it very personally, but had to try and treat it in very much a cold-blooded way, that it’s her against us and we’re going to fight this to win. That’s quite difficult for somebody who doesn’t have a legal background. Without the advice and support I think we would have gone down the wrong path.”

*\*Names have been changed.*

## Matters arising...

- With full cover insurance the Jefferies would have received the correct legal advice regarding dismissal from day one.
- Early intervention by specialist employment law advisors would have minimised the risk of dispute escalation.
- Lack of access to legal advice both created and prolonged the dispute
- Had the case been lost, the financial penalty faced would be uncapped; who pays?

# Policy warning as legal bills mount

**Many care users and those that support them could face hefty legal bills because some insurers do not cover them if legal advice isn't taken.**

Service users, local authorities and advocacy groups are being warned that if they are not insured with Fish, they should check the small print of insurance policies before they buy them, otherwise they may discover their legal expenses and defence fees may not be covered should they be taken to an employment tribunal.

"It's a serious and growing issue," says Elissa Foster, chief executive officer at Fish whose full cover Independent Living policy provides an unconditional guarantee to cover the costs of legal defence fees, whether advice is taken or not. "Over seven out of ten of our full cover policyholders who are taken to tribunal by their personal assistant have failed to take the legal advice available to them. Those cases, which typically involve a heat of the moment dismissal of a carer, account for 80 per cent of our claims costs," reports Mrs Foster. "At the end of the day if we removed that 80% cost we could reduce

premiums but then we would be selling a policy that does not suit service users needs and in our view is not fit for purpose. We are selling the cover that people actually need, which covers the real risks they face." Without that cover service users, and in some cases the local authority that funds them, face meeting legal bills which could cost many thousands of pounds (see centre page story).

The warning highlights the importance of comparing the level of cover offered by different insurance providers.

**Fish is the only firm offering service users a policy which includes cover for:**

- ✔ Personal accident benefits - paid irrespective of liability
- ✔ Error or omission by employees
- ✔ Employee infidelity – theft
- ✔ Expenses due to employees failure to turn up for work eg for a replacement personal assistant



## Carers 'three times more likely to sue'

Personal assistants are three times more likely to take their employer to tribunal than other employees despite the often close nature of their relationship.

The shocking figure was revealed following analysis of calls received and tribunals handled via the specialist employment law advice service provided through Fish Insurance's full cover Independent Living Insurance Policy.

"We were quite shocked at the disparity between those employed via direct payments and businesses generally, not least because the relationship between personal assistants and their employers is traditionally closer," commented Fish's chief executive, Elissa Foster. "It's clear that these relationships cannot be relied upon to ensure effective resolution of disputes and that independent and expert legal and insurance support is essential."

## Here to support you

**Fish provides a range of resources and services to support local authorities, advocacy groups and advisers. These include:**

- ✔ Free downloads – including a health and safety guide, policy summaries & wordings, application forms, and buy on-line all available from our website [www.fishinsurance.co.uk](http://www.fishinsurance.co.uk)
- ✔ Free expert advice – on general liability issues and specific guidance on insurance matters
- ✔ One-to-one and group meetings – if your organisation wants to learn more about our policies or discuss how we might better support or work with you, simply email [info@fishinsurance.co.uk](mailto:info@fishinsurance.co.uk)
- ✔ News and policy updates – for the latest updates by email [news@fishinsurance.co.uk](mailto:news@fishinsurance.co.uk)

**For general enquiries you can contact us at:**

- ✔ Email – [info@fishinsurance.co.uk](mailto:info@fishinsurance.co.uk)
- ✔ Phone – 0500 432 141