

19 May 2023

Check-off case judgment issued

During the tenure of the Conservative/Liberal Democrat coalition government, an attack was launched on PCS through the removal of the check-off facility via which members paid their subscriptions to the union.

We launched an immediate campaign to switch our members over to the direct debit method of payment. Members did so in huge numbers and we were able to secure survival of the union and beat off the government's attempt to bankrupt us.

In response to the attack, we launched legal action against departments that withdrew the checkoff facility. Our argument was that members had a contractual right to checkoff; that unilateral withdrawal of the facility amounted to a breach of that contractual right; and that PCS was entitled to claim damages as a third party to the contract.

Our first claim was taken against the Department for Work and Pensions (DWP). The High Court ruled in our favour. The DWP settled the case prior to a remedy hearing, paying PCS £3 million in damages plus our legal costs.

Subsequently, PCS took, and won, similar cases against the Home Office, Defra and HMRC. All 3 judgments confirmed that the departments acted in breach of members contracts. The departments have now accepted that there was a breach in all these cases but they appealed on the basis of whether PCS could claim damages.

Disappointingly, the Court of Appeal found a narrow point of interpretation with regard to the intentions of the parties when the contract was entered into; and as a result, that PCS could not claim the damages that we have so evidently suffered. The judgment of the Court of Appeal was not straightforward – two judges ruled against our argument, but one ruled in favour.

This is by no means the end of the matter. PCS has applied for permission to appeal the judgment to the Supreme Court. We will continue to try to hold the employer to account for the damages it has caused by this unlawful act. Our legal team advises that an appeal to the Supreme Court has good prospects of success.

We will keep members informed of developments.