# UK Supreme Court Ruling: A Look at the Changes to a Series of Unlawful Deductions

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The Supreme Court has released its decision in the case of *Chief Constable of the Police Service of Northern Ireland v Agnew*.  The Court decided that, with respect to a series of unlawful deductions, a gap of more than three months, or a correct payment, will not automatically break the chain in a series of deductions.

## Case background

The Police Service of Northern Ireland accepted that workers had been underpaid for holiday pay, having calculated their holiday pay by reference to "basic" pay rather than "normal" pay, which included overtime.  The individuals brought claims going back to November 1998.

One key question for the Court was how far back their claims for holiday pay could go and whether underpayments were broken by a "series of deductions".

## Key legal points

In Great Britain (comprising England, Scotland and Wales), under the Employment Rights Act 1996, a worker can pursue unpaid or underpaid holiday as an unlawful deduction from wages claim.  A worker can claim for a "series of deductions", provided the claim is made within three months of the last deduction or underpayment.  This is subject to the Deduction from

Wages (Limitation) Regulations 2014, which limit backpay to two years for unlawful deduction claims brought on or after 1 July 2015 (also called the "two-year backstop").

Prior to the Supreme Court's decision, a "series of deductions" would be broken by a gap of three months or by a correct and lawful payment.

In Northern Ireland, under the Employment Rights (Northern Ireland) Order 1996, there are equivalent deductions from wages provisions, but importantly there is no equivalent to the two-year backstop.

**Decision on unlawful deductions**

Noting the aim of the legislation was to protect workers against exploitation, the Court held that what constitutes a "series of deductions" is a question of fact. In this case, the "series of deductions" was linked by the "common fault or unifying or central vice" of the employer having calculated the worker's holiday pay by reference to "basic" pay rather than their "normal" pay.

**Key takeaways for employers**

- Back pay for holiday pay only arises where employers have been underpaying holiday pay (for example, by calculating holiday pay using "basic" pay when they should have been factoring in overtime, commission and other allowances) or not paying holiday pay at all.
- The Court's decision enables workers to demonstrate a "series of deductions" more easily. It is likely to represent a significant cost for many employers in respect of holiday pay as well as any wages claims which may be claimed as a "series". In this case, since Northern Ireland does not have an equivalent two-year backstop, the estimated liabilities are around £30 million.
- To minimise the likelihood of any possible claims, an employer will need to end its unlawful payment practices for holiday pay (rather than simply interrupting a series of deductions).
- The Court also held that holiday should be viewed as a whole, and there is not necessarily a clear legal requirement to distinguish

between EU Working Time Directive leave, UK statutory leave and contractual leave.  This adds a layer of complexity for UK employers to grapple with since different rules apply to each type of leave.  This judgment highlights the need for clarity and reform in this area.  Many will wonder if such reform will come from the Government following its recent holiday pay consultation paper.

With regard to immediate next steps, employers would do well to take a closer look at their holiday pay practices in order to mitigate against the risk of possible claims.

*You can find the judgment [here](.).*

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