

## **Supreme Court judgment upholding union's right to bring claim as a third party following the removal of check-off arrangements**

The Supreme Court handed down judgment on 20 November 2024 in favour of the Public and Commercial Services Union (PCS) in relation to a dispute over the removal of check-off facilities.

This ruling has significant implications for third parties and their ability to enforce contractual rights under the Contracts (Rights of Third Parties) Act 1999 (the 1999 Act). Below, we outline the background, key findings, and a detailed analysis of the Court's reasoning.

### **Background to the Case**

The dispute at the centre of this case arose from the unilateral withdrawal of check-off payroll deduction arrangements by several government departments between 2014 and 2015, following instruction from the Cabinet Office.

Check-off arrangements had for decades allowed union members to have their dues deducted directly from their salaries, providing unions with a reliable income stream, and offering members a convenient payment method.

The departments involved—including the Home Office, DEFRA, and HMRC—discontinued check-off without prior agreement, forcing employees to transition to direct debit payments in order to continue to pay their union subscriptions. This decision led to severe financial and administrative difficulties for PCS, which brought claims for damages on the basis that the removal of check-off breached contractual terms in its members' employment contracts which benefited the union.

The High Court recognised PCS's rights to rely on the 1999 Act and thereby enforce the check-off term in individual contracts of employment as a third party and did not accept the argument by the Government Departments that they had impliedly agreed to the removal of check-off or otherwise waived the breach. However, the Court of Appeal overturned this decision in relation to PCS's right to claim as a third party deciding that the common intention of the parties was that the check-off term was not enforceable by the union as a third party.

### **The Supreme Court Judgment**

The Supreme Court has now reversed the Court of Appeal's decision providing much-needed clarity on the enforceability of third-party rights under employment contracts. It unanimously ruled that PCS, as a third party, could enforce the check-off provisions in individual employment contracts. The key aspects of the Court's reasoning are as follows:

#### **Presumption of Enforceability Under the 1999 Act**

The Court emphasised the presumption under sections 1(1)(b) and (3) of the 1999 Act. These provisions establish that if a contractual term confers a benefit on a third party, and that third party is identifiable from the contract, it is presumed the term is enforceable by that third party unless the contract expressly provides otherwise.

In this case, the Court found no evidence of any intention to exclude the identified third party thereby reaffirming the principle that employers must explicitly exclude enforceability if they intend to limit a third-party right.

## **Incorporation of Check-Off Provisions into Individual Contracts**

The Court examined whether the check-off arrangements, originating in collective agreements, were effectively incorporated into individual employment contracts. The majority agreed that they were, finding that:

- The contractual language and surrounding context supported the interpretation that check-off provisions were incorporated and formed part of individual contracts of employment.
- The distant collective origin of the term did not negate its enforceability by PCS once incorporated into individual contracts of employment.

## **Implications of Breach**

The Supreme Court confirmed that the unilateral withdrawal of check-off by government departments constituted a breach of contract on which PCS could rely. PCS was therefore entitled to pursue damages for the financial losses it suffered as a result of this breach. The issue of what damages are payable will now go back to the High Court.

## **Significance of the Decision**

This case marks the first time the Supreme Court has interpreted the 1999 Act in the context of union rights derived from collective agreements which are in turn incorporated into individual contracts of employment.

### Clarity on Third-Party Rights

The Court's ruling now provides unions with a clear pathway to enforce contractual terms that advantage them as a third party when they are identified to receive that particular benefit, even if those terms originated in unenforceable collective agreements. This is particularly relevant for check-off arrangements but it could also extend to other benefits unions derive from collective agreements that subsequently become incorporated into individual contracts of employment.