



FOIL UPDATE

February 2010

Changes to ASHE 6115

On 12 November the Office of National Statistics published the revised ASHE figures for the period to April 2009. This showed increases from 2.28% to 3.68%. Perhaps the more concerning news however is the prospect that the ASHE statistics may be reclassified in 2010 in a manner which could create more issues in this already complex area.

Of course, as mentioned in *Thompstone*, a reclassification of ASHE SOC 2000 6115 was always anticipated for 2010, to introduce 'SOC 2010' in 2012. In his judgment in *Thompstone*, Lord Justice Waller considered the issue of reclassification of ASHE 6115: in para 70 he noted that the classifications were reviewed every ten years "to take account of changes in the workforce" and in paras 87 and 88 he recognised that the composition of 6115 was "not set in stone, the next reclassification being expected in 2010". It appears that the ONS has been working on this issue for some time but without any overt public consultation.

The most detailed information on the ONS plans comes from a briefing paper by Dr Victoria Wass (the 'academic labour economist' who has previously given evidence on behalf of claimants on this issue) and Richard Cropper, published by Personal Financial Planning Limited. It appears that the original intention of the ONS was to divide 6115 into two categories: 'residential' and 'home-based' employees. In December 2008 there appears to have been a change of plan with a proposal to create a new category – 6116 – "care escorts" to include people who escort disabled people during travel. In July 2009 the plan appears to have changed again with a proposal to divide 6115 into two groups, with senior carers moving to 6116.

Dr Wass outlines the detail of that proposal in her paper – the intention is that 6116 will encompass individuals with additional qualifications (normally to NVQ 3) who perform a supervisory role and have responsibility for the care service. It is possible that team leaders and other 'senior care workers' within a claimant's home care package would come within 6116. Dr Wass indicates that "the allocation of individual employees to a particular occupational group is determined primarily through job title and not job tasks" which could mean that any experienced care workers could call themselves 'senior care workers' and come within 6116, without necessarily having the supervision responsibilities which are meant to distinguish 6116 workers from 6115.

The prospect of two categories of care worker within ASHE will cause concern to all defendant lawyers. Dr Wass herself indicates in her article that difficulties will arise from the definitions which distinguish care workers from senior care workers. As she says;

"Whether or not a claimant needs senior carers and the proportion of care undertaken by senior carers, is likely to become an area of dispute between the parties. Such disputes would be difficult to resolve in the absence of tight definitions which distinguish 6116 "senior care workers" from 6115 "care workers and home carers".

Dr Wass also raises the issue that the category of 6116 is likely to be small and "depending on the spread of earnings, the statistics across the distribution may be statistically unreliable".

Such a change, to two categories, would raise the spectre of an even more complex and cost-intensive process going forward on new cases and of settled cases being revisited for variations on existing orders.

Possible Solutions

Dr Wass, in her paper, puts forward two possible solutions to the problems caused by the reclassification:

- Use 611 instead which would include 6115 and 6116. She acknowledges that this would result in a "loss of precision", although 6115 makes up the bulk of 611.
- Persuade the ONS to publish a statistical series which combines 6115 and 6116 for use in personal injury litigation. She describes this as an "effective and simple solution".

Firm proposals

Although the ONS has recognised that some stakeholders are seeking the greater detail that will be available through the use of two categories, 6115 and 6116, the ONS also appreciates the interest that other stakeholders (claimant and defendant lawyers and insurers) have in SOC 2000 6115 data being available for use in personal injury cases. They have confirmed to FOIL that over recent months the Classifications and Harmonisation Unit (CHU) has been addressing the concerns raised.

Although the current classification will be split into two new categories, for carers and senior carers, the ONS is also responding in line with Dr Wass's second proposal above. The ASHE team has confirmed that it will be possible for them to produce, in addition to the new SOC 2010 reclassification, ASHE figures which are the same as the current SOC 2000 6115 classification. FOIL has now received confirmation that, to avoid any confusion, the figures in the SOC 2010 classification (referred to above as 6115 and 6116) will be renamed Soc 2010 6145 (carers) and 6146 (senior carers). The consolidated figures will continue to be called SOC 2000 6115.

Implications

Obviously the use of ASHE 6115 by those involved in personal injury claims is just one of the uses to which ASHE data is put and as the ONS has been pressed for more detailed information it naturally wishes to meet that need.

Whilst the continued existence of the 6115 data is to be welcomed, the reclassification is likely to create some issues. The situation cannot merely be preserved in aspic as more detailed data will now be available – for care workers and senior care workers. It will be open to claimant lawyers to argue that this more detailed data should be used in future, to achieve greater accuracy, which could lead to claims becoming even more complex in the future. It is to be hoped that the concerns already expressed about the likely reliability of the new SOC 2010 6145 and 6146 data in personal injury cases, and the increased costs created by the use of two classifications, will steer the courts away from endorsing such a move.

If you have any comments on the proposed changes or would like further information please contact Shirley Denyer on shirley.deny@foil.org.uk or Philip D'Netto on philip.d'netto@dwf.co.uk

This publication is intended to provide general guidance only. It does not give legal or professional advice and is not to be used in providing the same. Whilst all efforts have been made to ensure that the information is accurate all liability (including liability for negligence) is excluded to the fullest extent lawfully permitted for any loss or damage howsoever arising from the use of this guidance.