

LEGALEYE

Welcome to LegalEye

This first issue comes at a time of concerted Government onslaught on workers' rights, summarised on page 4. The changes to employment law demonstrate how more than ever workers need unions to support them at work and to help them enforce their rights.

We also report on legal dimensions in two of Prospect's key campaigns, Professional Women and Good Work. We look at promoting pay equality for women on page 2 and challenging unjust performance management procedures, to progress the good work agenda, on page 3.



Prospect Legal Team, left to right: Jane Copley, Marion Scovell, Helen Hall, Paula Mitchell, Rodney Wheeler & Linda Sohawon. Our Legal Officer in Scotland, Chris Finnerty is on page 2

Workers priced out of justice

Fees to bring a tribunal claim were introduced from 29 July 2013. The cost of bringing an unfair dismissal or discrimination claim is £1,200. Prospect argued strongly against the introduction of fees as it would deny access to justice for many people.

The first full statistics on the number of claims since fees were introduced were published in March. A significant reduction in claims was expected, but the figures are worse than predicted. From January to June 2013 there was an average of 4,300 single claims each month. But from September to December it drops to 1,491.

The number of new claims fell by 79% compared to the same period in 2012.

The number of claims for Prospect members has remained consistent however, as the union pays the fees for members.

Marion Scovell, Head of Prospect Legal, said: "The plummet in the number of claims shows the impact of the government's attack on workers' rights. The extortionate level of fees is unsurprisingly deterring people with valid claims. Prospect pays the fee for cases we support, so our members are protected from this unfairness."

The dramatic reduction of ET claims is shown in the graph below.

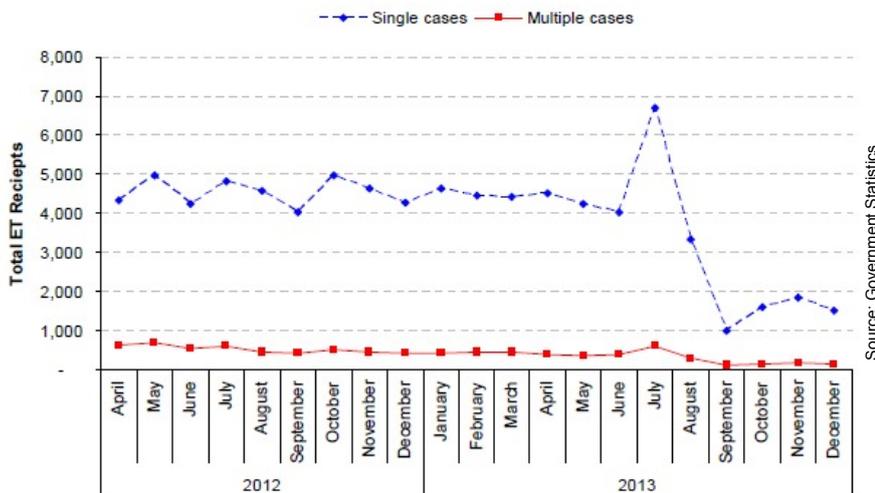
Prospect takes case to the Court of Appeal

Prospect has lodged an appeal for our member, Mohammad Naeem, who is challenging the potentially discriminatory effect of the pay system in the Prison Service.

Mohammad contends it is unlawful discrimination on the grounds of religion and race that Muslim Chaplains are disproportionately paid less than others because they have not been in the service for as long. The Employment Tribunal found the system did indirectly discriminate on the grounds of religion, but that the difference in pay was justified, largely on cost grounds. Prospect appealed against the finding on justification. The Prison Service cross-appealed on the grounds of disproportionate impact.

The Employment Appeal Tribunal reversed the ET decision, and found that the system was not indirectly discriminatory, but that if it had been it was not justified.

Prospect is now taking the case to the Court of Appeal.



Battle for Equal pay continues in 2014

In 2000 we started a legal challenge against pay systems based on length of service that disadvantaged women members. Our first two cases, for Bernadette Cadman and Christine Wilson against the HSE, took ten years to go through the courts. Those cases were ultimately very successful. Prospect's equality challenge to pay systems based on disproportionate use of length of service has continued in many other cases.



Bernadette Cadman & Christine Wilson at the Court of Appeal

Members at the IPO win equal pay

In 2013, over 180 staff at the Intellectual Property Office (IPO) had their pay increased by £8,000 or to the maximum of the grade after a long running equal pay case was settled the day before the Employment Tribunal hearing.

The claim was taken by six members who are Senior Patent Examiners. Their pay span was long and progression was slow. The public sector pay freeze in 2010 meant progression was completely halted. Equal pay audits showed there was a significant gender pay gap.

The women members who brought claims demonstrated just how effective this can be for all members, with the settlement rolling out to improve the pay of all in the same pay span. The women made a real difference to the fairness of pay for their colleagues. The two branch

officers, Ele Wade and Nick Mole, undertook an excellent and tireless job in the preparation of the case.

The fight goes on

Prospect has run many similar cases in recent years and these show how effective the combined approach of litigation and negotiation can be in resolving the gender pay gap and creating a fairer system for members.

With the recent public sector pay freeze and the slowness of progression, inequality in pay has been exacerbated. Prospect is currently working on two more sets of equal pay cases in the civil service. These are still in the early stages but we expect to present further claims to the Employment Tribunal in 2014.

Inequality in the Private Sector

Private Sector pay systems are often opaque and shrouded in secrecy, making it even more difficult to challenge.

Chris Finnerty, Prospect's Legal Officer in Scotland, recently brought a tribunal claim for a woman member in the energy sector, who was paid considerably less than her male colleagues. The case was settled successfully shortly before the final hearing.



Chris Finnerty, Legal Officer, Scotland



IPO claimants and their comparators, Ele Wade (left), Nick Mole (front right)

Prospect recovers over £3 million for personal injury

Over £3 million in compensation for personal injury was recovered through Prospect's legal services in 2013. Helen Hall, Legal Services Assistant, explains "The cases cover a range of issues from trips at work, stress, and occupational diseases, with compensation ranging from a few thousand to very significant 6 figure sums".

Hearing Loss at BT

A number of cases have been taken for engineers who had worked in British Telecom with noisy machinery and many years later developed hearing loss. Many of these cases have now settled including a recent case for a member, Danny Nairne. Danny wrote a letter of thanks to Prospect. His letter gives a strong reminder of the benefit of union membership.

"My father was a railway worker and a staunch union supporter and I worked in early days at the Telephone Exchange collecting union subscriptions. I have always tried to convince people to join a union for all the reasons that union members are aware of. Little did I realise that I would reap such a significant benefit long after my working days were done".

Tackling Unjust Performance Management

Many Prospect members are suffering from aggressive performance management. Prospect is challenging this injustice through collective bargaining and supporting individual members. We have created a range of new materials for members and have a dedicated page on the website. We are holding seminars for representatives to discuss problems and solutions.

Part of our strategy is to litigate on individual cases.

Two particularly notable Employment Tribunal cases were successful recently. Both cases, reported below, demonstrate the effective team working of the Prospect lay rep, full time officer, legal officer and counsel instructed for the hearing.

“Change” of medical opinion

Graham Vare worked for British Telecom for over twenty years. He had a successful career having been promoted several times. In 2010 the employer raised criticisms of his performance and commenced formal proceedings leading to dismissal.

Graham became seriously ill with depression and had a lengthy period off work. He was referred to Occupational Health, who advised he should be moved to an alternative role with less pressure and not be subjected to any performance proceedings for at least the first six months after a return to work. However shortly after receiving this OH report Graham was sent a second version which had changed significantly and no longer recommended a change of role or a delay in respect of starting performance management on his return. His union rep challenged the alteration of the report.

When Graham returned to work he was placed in the same role. Only a couple of weeks after his

return to full time hours, BT commenced a new performance monitoring period. Despite accepting his performance was improving, BT dismissed him a couple of months later.

The tribunal found the dismissal was unfair. They held although BT had gone through a lengthy performance management procedure, it was unfair to not comply with the original recommendations from the OH doctor. They found it was unreasonable for BT to attempt to influence the OH adviser and that Graham had therefore been denied the opportunity to seek an alternative role.



Graham Vare, successful at his ET against BT

“Fish out of water”

Vaithilingham Mohanarajan won his case of unfair dismissal against the Home Office. He had been dismissed for poor performance despite an occupational health report stating he had been moved to the wrong job a couple of years earlier and was “a fish out of water”.

The employer was taking dismissal procedures for poor performance when Vaithilingham’s doctors recommended a change of duties. His line manager agreed to this and he was moved to a more suitable job. But the employer refused to halt the dismissal process, or review of the earlier performance assessments, and he was called to a final dismissal meeting just a few weeks after starting in the new role.

The Tribunal found the dismissal was unfair, largely because the employer had not given him a chance to be properly assessed in the new role.

This is an important case demonstrating that employers must fully consider alternatives to dismissal and are under a duty to give employees every chance to succeed.

Want to know more about performance management and the law?

[Prospect's briefing](#) provides advice to members and representatives on using the law to challenge performance dismissals.

Recruit a member

The more members we have - the stronger our voice. Ask your colleagues to join us at www.prospect.org.uk/join or call 020 7902 6600 for more details.

Know your rights at work

Did you know Prospect produces a range of guides to help members better understand their rights at work, these include fact cards, member’s guides and other specialist publications. Prospect Legal issues briefings/updates to enable you to keep up-to-date on changes taking place, to access this visit:

<http://bit.ly/1qx5Y4M>

Prospect’s guide to Legal Services “[on your side](#)” sets out the range of services offered to members, as well as detailing the terms and conditions for legal support.



Attack on workers' rights

Rights at work have been decimated by a Government intent on reducing protection for workers. In a raft of changes it is now easier and cheaper for employees to be sacked. There is a significant reduction in equality rights, and the introduction of outrageous fees to bring a claim.

The table summarises the changes and where to find more information on the Prospect website. This includes legal briefings on the changes and copies of Prospect submissions arguing against the weakening of workers' rights.

Measure	Description	More Prospect Information
2012	From 6 April 2012	
Unfair dismissal	The qualifying period for bringing an unfair dismissal claim increased to 2 years for all employees starting a new job on or after 6 April 2012.	EL Update 304
Judges sit alone in unfair dismissal cases	Employment Judges will sit alone in unfair dismissal cases, without the lay members of the tribunal.	EL Update 304
2013	From 6 April 2013	
Collective Redundancy Consultation	Minimum consultation period for 100 or more redundancies cut to 45 days Duty to consult does not apply to termination at end of fixed term contract.	EL Update 336
	From 25 June 2013	
Whistleblowing	A protected disclosure is only where the worker reasonably believes the disclosure 'is made in the public interest'. Current requirement for disclosure to be made in good faith is abolished, but compensation can be reduced if held not to be in good faith.	EL Update 337
	From 29 July 2013	
Fees to bring ET cases	Introduction of fees for bringing ET cases. Fee to be paid to present a claim and a further fee payable before hearing (e.g. £250 and £950 for unfair dismissal or Equality Act claims).	EL Briefing – ET Fees
Fees for the Employment Appeal Tribunal	There is a fee payable to issue an appeal (£400) and a fee before hearing (£1,200).	EL Update 318
Changes to Employment Tribunal procedures	Simplification & clarification of rules, includes new powers on strike out and higher costs awards.	EL Update 354
Reduction in limit for the compensatory award in unfair dismissal cases	The amount of the compensatory award in unfair dismissal cases is limited to either 12 month's pay or the existing current maximum (£76,574).	EL Update 358 Prospect submission: bit.ly/U1IVAr
Confidentiality of negotiations before termination	Offers or suggestions by the employer for the employee to agree to leave employment for a sum of compensation are inadmissible in ETs hearing unfair dismissal claims.	EL Update 357
	From 1 September 2013	
Rights for Shares	New employment status of employee/shareholder, where workers are given shares (of at least £2,000) in exchange for some statutory rights, including unfair dismissal and redundancy.	EL Updates 341 & 347 Prospect submission: bit.ly/WzEKC3
	From 1 October 2013	
Acts of 3rd party harassment	Repeal of the provisions in Equality Act which provide employer liability for acts of harassment by 3rd parties, such as customers or clients.	EL Update 361 Prospect submission: bit.ly/TiiL0T
2014	From 31 January 2014	
Transfer of Undertakings	Changes to coverage of the regulations by limiting the service provision, ability to change terms derived from a collective agreement after a year.	EL Update 367 Prospect submission: bit.ly/Kye265
	From 6 April 2014	
Repeal of questionnaire procedure	Repeals long standing procedure of using questionnaires in discrimination cases.	EL Update 369 Prospect submission: bit.ly/TiiZFd
Early Conciliation before presenting an ET claim	Before presenting an ET claim the Claimant is required to submit a form to ACAS for early conciliations. New rules affect ET time limits. <i>Note – only mandatory from 6/5/14</i>	EL Updates 313 & 371 Prospect submission: bit.ly/Z6ryCB
Financial Penalties	Where a Tribunal determines the employer has breached the worker's rights & there is an 'aggravating' factor they can order the employer to make a payment to the Secretary of State of between £100 and £5,000.	EL Updates 313, 337 & 371

For news on employment rights sign up for automatic alerts on the Prospect website at: <http://bit.ly/1iRR3C3> and follow [@LegalProspect](#) on Twitter