

# LEGALEYE

## Challenging the Trade Union Bill

'We can make a difference' was the positive message from speakers and union activists at Prospect's Trade Union bill meeting on 2 February.

The meeting was organised to launch the Prospect at Work campaign and discuss the implications of the bill.

General secretary Mike Clancy told the audience of activists, national executive members and guests from other unions that the government bill lacked evidence. It focused on the small proportion of time unions spend on disputes, rather than the positive role working with employers on behalf of our members.

Binder Bansel, head of employment at Prospect's solicitors, Pattinson & Brewer outlined some of the key issues in the bill and areas he believes could be challenged under European and international labour law.



Binder Bansel

Binder questioned whether the new restrictions on industrial action would be compatible with International Labour Organisation conventions. International law says workers must have an effective right to organise. If the bill becomes law as it stands, there may be legal challenges as to whether its most restrictive parts deny these rights.

Sarah Veale, who is working with the TUC to lobby for improvements to



Sarah Veale

the bill, talked about the campaigning and political work. In particular, lobbying the large number of cross bench and Lib Dem peers in the House of Lords.

Sarah said the Lords had proposed several amendments to the bill,

## Prospect member successfully defends his tribunal victory



Left to right: John Higgins, Svetlana Higgins, Lance Harris & Marion Scovell

The Employment Appeal Tribunal has dismissed British Airways' appeal against an earlier judgment that Prospect member, John Higgins, was unfairly dismissed.

John worked for BA as a licensed aircraft engineer for more than 27 years and had an exemplary career with them. But he was dismissed after an error on a maintenance task, on a day when they were very short staffed. BA had recorded the error as having little or no airworthiness risk.

With the support of Prospect, John appealed against the dismissal, and the sanction was changed to a three grade demotion. John would have lost his status as a licensed engineer and had a significant drop in pay. He resigned and Prospect presented a claim for unfair constructive dismissal.

The Glasgow Employment Tribunal in March found demotion was such an extreme and disproportionate sanction in the circumstances that it amounted to constructive dismissal. John was awarded compensation for unfair dismissal. But BA appealed

against the judgment on five separate grounds of appeal.

The appeal was heard by the EAT in Edinburgh on 11 December. Lance Harris of Old Square Chambers represented John, as he had at the first tribunal.

The Honourable Lady Stacey, hearing the appeal, dismissed all grounds put forward by BA. She held the appeal 'did not disclose any errors of law' by the tribunal.

Marion Scovell, head of Prospect Legal, said: "I am delighted that we successfully defended this appeal. The tribunal found the decision to demote in these circumstances amounted to unfair dismissal and this has now been confirmed by the EAT".

John Higgins said he was relieved that the appeal was over and he was grateful to Prospect for supporting him at each stage of his case. "I could not have done this without Prospect and I am extremely grateful to everyone involved, including the branch reps, full time officer and the legal team, for a successful outcome", said John.

including reviewing the parts of the bill relating to political funds.

The presentations from the two guest speakers were followed by a lively panel discussion, with Binder, Sarah & Mike joined by Alan Grey, Prospect President and Sue Ferns, Deputy General Secretary.

Sue talked about the positive message from the Prospect at Work campaign.

Contributions from the audience stressed the effective work being done by unions and the TUC in challenging the bill. Participants drew on the positive impact of unions and the very real difference they can make for their members.

**For more about the Prospect at Work campaign see the back page and visit [bit.ly/PAW2016](http://bit.ly/PAW2016)**

## Dismissal was a ‘monstrous over-reaction’

A Prospect member won his claim of unfair dismissal when an employment judge held that his dismissal was a ‘monstrous over-reaction’.

Our member, who does not wish to be named, had enjoyed a long and successful career with the company. But he was dismissed for gross misconduct for sharing information with colleagues, which he found on the staff intranet, about changes to the pension scheme.

Prospect presented a claim to the employment tribunal for unfair dismissal. The case was heard in the Reading tribunal over two days in March 2015. Prospect instructed barrister, Stephen Marsh, to represent our member.

The Judge found it was not reasonable to dismiss in these circumstances and recognised that our member, and those he had shared the information with, had a legitimate interest in the subject of the documents and he had not acted out of any malice.

When the case returned to the tribunal to determine the appropriate remedy, the Judge ordered that our member should be reinstated to his role with full arrears of pay. The company refused to allow him back to work. Shortly before a third hearing the case was finally settled for additional compensation.

Bob King, Prospect negotiator who had represented the member, said: “This case is a reminder that no matter how good an employee you are, you can lose your job for an innocent act. Without access to trained local reps and high quality legal representation, it can be exceptionally difficult and costly for anyone to bring a claim such as this, let alone win it so convincingly.”

Marion Scovell, head of Prospect Legal, said: “It is extremely rare for orders of reinstatement to be made. Unfortunately though even where the Judge makes such an order there is no means of forcing the employer to comply. Instead the tribunal will order extra compensation of up to a years’ pay, in addition to the usual sums for unfair dismissal.”

“We were delighted that this case was successful at the first hearing, and even more so when the Judge at the second hearing ordered he should be reinstated,” continued Marion. “It is though extremely disappointing that the company refused to comply with the order. This indicates the inadequacies of the law and is particularly sad in this case where the Judge was so firmly of the view that the employers should not have dismissed.”

## Prospect member causes feathers to fly

A Prospect member, who works for Western Power, recovered damages for personal injury following a road traffic accident.

The accident occurred when a well-known fried chicken



Helen Hall

establishment was robbed. When making their getaway in a stolen car, the thieves drove the wrong way round a traffic island and collided with our member’s car. The police arrived and made an arrest. Our member sustained

back injuries and sought legal advice from the union. Prospect referred the case to our solicitors Slater&Gordon, and a settlement was reached.

Our member said: “I was advised by my local rep to use Prospect’s legal scheme. I felt in very good hands and would recommend the service to anyone.”

Helen Hall Senior Legal Assistant said: “Our member was certainly no chicken when he halted these villains in their tracks. It just goes to show, you never know when your Prospect membership will come in handy.”

## A note of importance!

Prospect representative, David Evans, was praised by an Employment Judge, who said that our member was lucky to have such good union representation.

David was a witness in a recent tribunal case of unfair dismissal and disability discrimination against BT. The judgment is not yet out. David had represented the member at the internal dismissal and appeal meetings.

BT had not disclosed to the tribunal any notes or transcript from the dismissal or appeal hearings, so Prospect provided David’s contemporaneous handwritten notes as evidence. The Judge expressed some surprise that BT and their witnesses did not have any record. David’s notes were therefore the only ones before the tribunal.

The notes recorded key parts of the meeting and were very helpful in supporting the member’s case.

This shows the importance of good note taking at hearings, as you will never know when they are needed!

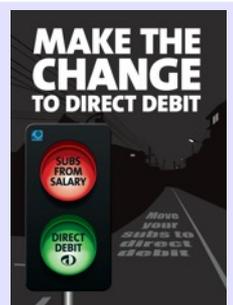


David Evans with ‘exhibit A’ outside the tribunal

## Your membership could be at risk!

As part of the Trade Union Bill the government is withdrawing the ability for members to pay subs via their salary in the public sector. To find out more see the Prospect video at: [bit.ly/1SraAds](http://bit.ly/1SraAds)

You can protect your membership by switching to direct debit [online](#) or call our membership team on 01932 577007



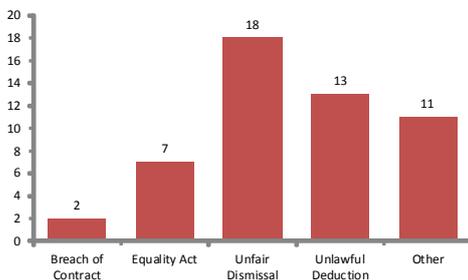
## ProspectLegal: A summary of 2015

LegalEye has taken a look back at our casebook for the facts and figures from 2015.

### Employment law

There were 35 applications to the employment tribunal made during 2015. Although several of these included multiple claims, ranging from a case with five members up to our biggest multiple last year of 79 members.

The chart shows the breakdown of cases by main type of claim.



The legal team represented members in 42 hearings across the UK (including preliminary and full hearings before the employment tribunal, 2 in the employment appeal tribunal, one in the high court and one in the Court of Appeal). Many cases will have more than one hearing involved. See December's LegalEye

([bit.ly/LegalEye7](http://bit.ly/LegalEye7)) for a map showing hearing venues.

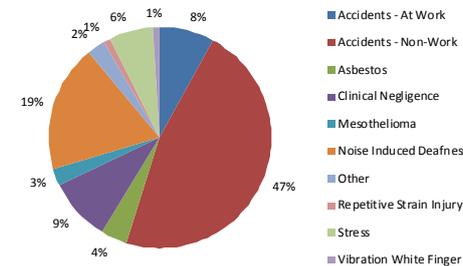
We recovered over £500,000 for members as compensation, payable either as a result of a settlement after a tribunal claim had been presented or a win at the tribunal.

Many more cases will have been resolved in negotiation prior to a claim being submitted.

### Personal Injury

Over 3.3 million pounds was recovered in compensation for 88 members with personal injury claims. The amounts in each individual case vary enormously depending on the nature of the injury and claim.

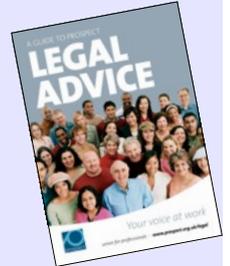
There were 281 new applications for legal advice. The types of cases include asbestos related illnesses, stress, repetitive strain injury, occupational diseases, and accidents at work. The chart shows the breakdown of personal injury claims.



## Terms and conditions for legal assistance

### The member must:

- ✓ Be in membership at the time the problem arises
- ✓ Continue to be in membership for the duration of their case
- ✓ Not take independent legal advice before approaching Prospect
- ✓ Not commence litigation before approaching Prospect



Read our guide to legal advice for more details ([bit.ly/1VilB5P](http://bit.ly/1VilB5P))

## Europe Matters



Prospect has a new website ([eumatters.prospect.org.uk](http://eumatters.prospect.org.uk)) to provide a platform for members to discuss issues relating to the UK's membership of the EU. The legal team have written two articles. Jane Copley explains the legal implications for employment law should the UK leave the EU. And Marion Scovell asks what has Europe ever done for the workers?

## TU Bill Word Search

N N V Q N N A T L E G A L A W  
 R P P O O D U X A W X X D R V  
 C V C I T R H J I V W L W M N  
 Z I T H N E Y R R P O O R B B  
 E C N O A T L M T H O S F A I  
 A K U O T L G V S E I H L N J  
 W T I S R M L E U M L D F D Y  
 H L L R A T R E D A I O J X Z  
 H V V D T H C B N T N T N I D  
 V O K N T S I E I G E E M S O  
 P O L I T I C A L L E K Q A R  
 J P J E H S M Q X E B C C F A  
 H Y L K D O D Y A S O I C R X  
 Z K K Y G N K F X G F P V G B  
 T O L L A B Q C U O X J C M U

### Words To Find:

Electronic	Picket
Ballot	Line
Vote	Political
Strike	Challenge
Armband	Legal
Threshold	Industrial
Turnout	Action

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

### 1) If a tribunal orders reinstatement following a finding of unfair dismissal:

- a) The employer must re-employ the worker
- b) The employer cannot be forced to comply, but if they refuse they would have to pay extra compensation
- c) The employer must offer an alternative role

### 2) In 2015 how many unfair dismissal cases did Prospect present for members?

- a) 18
- b) 7
- c) 13

### 3) Currently how many days' notice must unions give the employer before industrial action?

- a) 21
- b) 14
- c) 7

### 4) What percentage of Prospect's personal injury claims last year were for stress?

- a) 19%
- b) 4%
- c) 6%

### 5) Appeals from the employment tribunal go to the:

- a) Employment Appeal Tribunal
- b) Supreme Court
- c) Court of Session

### 6) A three grade demotion would most likely lead to a claim of:

- a) An unlawful deduction of wages
- b) Harassment
- c) Constructive unfair dismissal

1) b, 2) a, 3) c, 4) c, 5) a, 6) c



# CAMPAIGNING FOR WORKERS' RIGHTS!

The Prospect At Work campaign was launched at the meeting on the TU bill on 2 February (see front page).

The campaign is promoting workers' rights and celebrating work done by union representatives.

Since the end of January Prospect legal officers have been to several branches to talk about the campaign, the TU Bill, and employment rights. Marion Scovell, head of Prospect Legal, said: "The response from reps has been extremely heartening, recognising the positive impact unions have in the workplace. There is a real enthusiasm to ensure that, despite the hostile political climate, unions are strong, organised and effective in defending members at work".

The campaign pages include information about the campaign, resources and briefings, a campaign blog, and a photo gallery of the WRelfies! See [bit.ly/PAW2016](http://bit.ly/PAW2016)



## Workers Rights Advocates

Part of the campaign is profiling "Workers' Rights Advocates", celebrating the success of our fantastic reps and the work they do defending employment rights. Read their stories at [bit.ly/ProspectWRA](http://bit.ly/ProspectWRA) If you would like to nominate someone from your branch to be in this series contact [marion.scovell@prospect.org.uk](mailto:marion.scovell@prospect.org.uk).

## Spread the word

Prospect at Work is your campaign so get the message out. Let's make sure members know what Prospect does and the value and benefits of organising together to secure better rights at work.

But don't stop there, work to build Prospect and the union movement. Speak to non-members in your workplace. Share the message with

friends, family, and others on social media.

What you can do to spread the word:

- ✓ Download our WRelfie (workers' rights selfies) from [bit.ly/1SpNuXQ](http://bit.ly/1SpNuXQ) (or make your own)
- ✓ Take photos individually or in branch or workplace groups with the campaign signs
- ✓ Post to Twitter, Facebook, and other social media
- ✓ Use the #ProspectAtWork and #HeartUnions
- ✓ Alert members to the campaign in branch newsletters and notices
- ✓ Have a workplace meeting to discuss workers' rights (invite a legal officer, full time negotiator or organiser if you'd like to)
- ✓ Display Prospect materials proudly at work
- ✓ Set out to recruit a new member



## Want to know more about the TU Bill? Join our knowledge call

Prospect reps can join a mini training session by telephone with Marion Scovell, head of Prospect Legal, on **25 February 2016 – 12.30 to 13.30**.

We will discuss the details and progress of the Bill and consider what it means for Prospect.

If you would like to join the call, email [Paula.Mitchell@prospect.org.uk](mailto:Paula.Mitchell@prospect.org.uk) to register an interest. Paula will then send you the joining instructions.

## Stop press - 'leaked letter' on The TU Bill

As Legal Eye was being finalised, the TUC reported a leaked ministerial letter, which shows the Government expect the House of Lords to defeat "flagship" parts of the Bill.

The letter proposes a number of concessions to "ease handling of the Bill in the House of Lords". These include:

- ✓ A review to look at use of e-ballots for industrial action.
- ✓ Further consultation in Scotland and Wales on a number of potentially devolved issues.
- ✓ Not increasing the notice period for industrial action from seven days to 14 days.
- ✓ Increasing the time a ballot is valid for.
- ✓ Deleting the need for a picket supervisor to wear an armband and badge.

Whilst these changes are welcome, they do not go far enough and the lobbying work continues (see [bit.ly/1T6Sjdv](http://bit.ly/1T6Sjdv) for the full letter).