

LEGALEYE

Tribunal success for working mother

A Prospect member has won her year-long legal battle for the right to reduce her hours after returning from maternity leave.

Lisa Ward is employed by the Prison Service as an interventions facilitator, working with prisoners to reduce re-offending. Her first child was born in December 2012 and she asked to return to work part time. Despite agreement from her manager and the senior colleagues she would be working with, the employer insisted she came back full time.

Prospect supported Lisa in the internal appeal and when that failed, presented a claim of indirect sex discrimination to the employment tribunal. The employers vigorously defended the claim. Prospect represented Lisa at a preliminary hearing and prepared the case for a three-day hearing in the Leicester tribunal in October.

ET Jargon Buster

Ever been confused about what a bundle is or what to expect from further and better particulars? If so see Prospect's new Employment Law Briefing for a guide to Employment Tribunal terminology (bit.ly/1HDbYpc).

Bringing a claim to the tribunal can be complex and the procedures are bound up in jargon. The briefing is our attempt to de-mystify the tribunal process for members. We explain some of the phrases commonly used in ET proceedings such as; grounds of resistance, preliminary hearing, disclosure, productions, directions, judicial mediation and more. The briefing also gives links to other Prospect information for more detail on various aspects.

Lisa Ward, pleased to have a better work life balance



Negotiator Andy Bye presented a witness statement with statistical evidence to emphasise the discriminatory impact of the employer's position. Prospect instructed a specialist discrimination law barrister, Nicola Braganza, to represent Lisa at the hearing.

On the morning of the first day of the hearing the Prison Service, at last, agreed Lisa could work the hours she wanted to and the case was settled.

"The refusal to allow a woman to reduce her hours for childcare reasons is a classic case of indirect sex discrimination" said Marion Scovell, Prospect legal officer.

"It is likely to be unlawful discrimination unless the employer can objectively justify its decision. We always believed Lisa had a strong case.

"Sadly this case is not unique and Prospect has had to argue similar points for other members, though

most cases have been resolved more quickly."

Lisa thanked Prospect and said: "I hope that more working mothers will have the courage to fight for a better work-life balance and employers will take the time to look into each case more thoroughly, rather than simply dismissing them without any consideration."

Andy Bye said: "This important result again highlights the importance of union membership. Over 60% of our members in the Prison Service are female and many wish to work part-time after maternity leave. Lisa's case demonstrates that managers must give proper consideration to such requests which should only be refused for sound business reasons."

Marion Scovell added: "I really admire Lisa for fighting against this injustice. I am delighted she can now return to work on the hours and working pattern that suit her and her family."

Know your rights at work

Prospect produces a range of guides to help members better understand their rights at work these include fact cards, members' guides and other specialist publications.

Prospect Legal issues briefings and updates to enable you to keep up to date on changes taking place, these can be found at bit.ly/emp LAW



High Court challenge on sickness procedures

Prospect, along with PCS and FDA, brought a claim to the High Court to challenge changes imposed on the sickness management procedures in the Department for Transport and its agencies.

The department changed their procedures for reviewing sickness absence. This included setting earlier triggers for taking formal action against the employee, which could lead to dismissal. The unions did not agree the changes and are seeking a declaration from the court that the changes are unlawful.

Jane Copley, Legal Officer, explains: 'Much discussion took place in respect of "trigger points" in DfT's health management procedure. The department argued that no inherent detriment arose from the amended trigger points but Counsel, on behalf of the unions, maintained that the changes *themselves* would be an objective detriment, which made for an interesting argument!'

The case was heard in the Royal Courts of Justice on 3 and 4 November. The Judge has reserved his decision, which will hopefully be delivered before Christmas.



The Prospect legal team - on a visit to the Royal Courts of Justice earlier this year

Holiday pay to include overtime – says EAT

The Employment Appeal Tribunal ruled that holiday pay should include overtime payments, which employees would have earned while working. This is good news for many Prospect members. Disappointingly the EAT ruled against back pay being paid.

The EAT judgment follows a number of earlier cases looking at the calculation of pay when a worker is on leave. Traditionally many employers have calculated holiday payments only on basic pay, excluding payments such as; overtime, commission, or stand by payments which would be paid the rest of the year. But recent cases have held that a failure to pay the usual full pay is incompatible with the European Working Time Directive. Workers must be no worse off when exercising their right to take leave.

In *Bear Scotland Ltd & others v Fulton & others* the EAT hold that holiday pay should include overtime, which the employees were required to

work even though it was not guaranteed.

However the EAT limited the opportunity to claim back pay. They ruled in favour of the employers who argued that a claim to the tribunal needed to be presented within three months of the payment being made.

Marion Scovell, Prospect Legal Officer, said: 'This is an important ruling and means a number of Prospect members should have their holiday pay entitlements increased. It is though very disappointing that the EAT have restricted back pay being claimed. The judgment still leaves a lot of questions on how to deal with holiday pay and there are likely to be further appeals. In the meantime any Prospect members who believe that they are not being paid in full during periods of leave should contact their Prospect Negotiator.'

For more information, including a roundup of the earlier cases and how to bring claims see bit.ly/1telkqb

Civil service sector checkoff

The Government has announced that 'check-off' is being withdrawn from many areas in the civil service,

Check-off is where the employer deducts members' union subs from their salary. If you are affected by this you need to change to direct debit please contact your negotiator of the membership department on 01932 577007 or email membership@prospect.org.uk

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.

'On Your Side' - Prospect's guide to Legal Services (bit.ly/on_your_side) sets out the range of services offered to members, as well as detailing the terms and conditions for legal support.

Personal injury – claim in time

Prospect's personal injury scheme provides high quality legal advice for members at work and in their private lives. Each year the scheme recovers millions of pounds worth of compensation for our members.

Legal claims for personal injury must usually be presented to the court within three years of the accident or of becoming aware of the illness. These claims are often complicated and our solicitors need to start investigating claims well before the three years are up, as they may need medical evidence or statements from possible witnesses in order to assess the merits of the claim. So it is important that members seek advice through Prospect as soon as possible and not to leave it to the last six months. This is necessary to ensure their claim can be fully assessed by our lawyers in plenty of time.

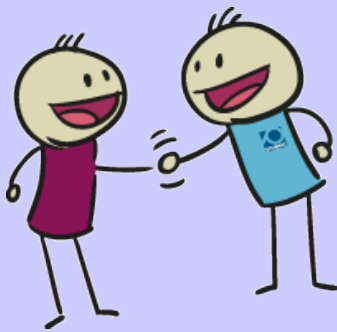
For more information on the personal injury scheme visit the Prospect website (bit.ly/1xTon5e) or call Prospect Legal on 020 7902 6624

Social media: good practice case studies

Prospect is currently looking at putting together a publication on how branches use social media. We are looking for examples of the effective use of platforms such as Facebook, Twitter and LinkedIn in recruitment, organising and campaigning context. If you have any ideas you would like to share, or just want to find out more email rodney.wheeler@prospect.org.uk

Member-Recruit- Member Stronger Together

Members who recruit a colleague can choose a £10 shopping voucher or make a donation to charity. To find out more visit: www.prospect.org.uk/mrm



Introducing Prospect Legal: Spotlight on Rodney Wheeler



Prospect legal team, left to right: Jane Copley, Marion Scovell, Helen Hall, Paula Mitchell, Rodney Wheeler and Linda Sohawon.

Rodney works in the legal team within the Department of Communications & Research (DCR). In addition to legal, his work involves other aspects of DCR's work, including social media, research and health and safety.

How did you first become involved with the trade union movement?

Upon leaving University in 2004 I was looking for a job and applied for the role of Membership Administrator with Prospect, I soon found that I genuinely enjoyed working for Prospect and the ethos of the union movement, and 10 years later, following a series of promotions and moves I am still here.

What has been your greatest success working in a union?

Over the past 18 months I have delivered social media training to both staff and representatives. This has aided in the use of platforms such as Facebook and

Twitter for promoting the union and the recruitment of members.

What do you like about working in Prospect?

I like that so many of my co-workers are genuinely committed to their work, it makes for a really productive, but also fun and engaging working atmosphere.

What are you currently working on?

I am writing up a research report on Women in STEM, running a survey for our members working in the Heritage area in Scotland and designing/laying out this issue of LegalEye.

What would you most like to change about employment law?

I would like to reduce the cumbersome nature of employment law and speed up the process, whilst not compromising workers rights and access to justice.

What is your favourite legal TV drama ?

I'd have to say either Judge Dredd or Judge Judy

Legal Word Search

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

Words To Find:

Advice	Injunction
Compensation	Law
Conciliation	Legal
Damages	Litigation
Directive	Pay
EAT	Rights
Holiday	Union
Indirect	Work

Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) The statutory right to time off to care for dependents is for:

- a) Paid time off
- b) Unpaid time off
- c) Paid time up to a maximum of two days

2) A refusal to allow women returning from maternity leave to work part time is likely to be:

- a) Indirect sex discrimination
- b) Victimisation under the Equality Act
- c) Direct discrimination against part time workers

3) What is the National Minimum Wage for workers 21 and over?

- a) £7.55
- b) £6.31
- c) £6.50

4) Holiday pay should be calculated on the basis of:

- a) basic pay
- b) basic pay and overtime rates
- c) the full normal remuneration of the worker

5) In a survey of Prospect members 23% of male respondents earn more than £55k, what proportion of women do?

- a) 11%
- b) 15%
- c) 27%

6) Is the time limit for Personal Injury claims:

- a) Three months
- b) Six years
- c) Three years

Answers

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

Ask LegalEye

Q. In the very cold weather last year we were told to wear our coats in the office if we were chilly. What is the legal minimum temperature?

A. Regulations require that 'the temperature in all workplaces inside buildings shall be reasonable', there is no fixed minimum temperature. But the Health and Safety Executive recommends that work rooms should normally be at least 16°C, or 13°C if much of the work is physical. If the temperature drops below this, ask your Prospect Safety Rep for advice.

Q. Due to very bad winter weather I was unable to get to work because my seven year old daughter's school shut for the day and I could not make any other arrangements to look after her at such short notice. My employer is refusing to pay me for the day, can they do this?

A. All employees are entitled to time off work to care for dependents in certain circumstances, which includes where there is an 'unexpected disruption' of the usual care arrangements. The employer must allow a reasonable amount of time off to deal with emergencies in looking after dependents, but unfortunately the law does not provide a right to be paid for the time off. Many employers would not deduct pay in your circumstances. You should check with your Prospect rep if there is a workplace agreement on this, or whether we could argue that by custom and practice the employer always pays. See the Prospect Members Guide to parental and family leave for more details.

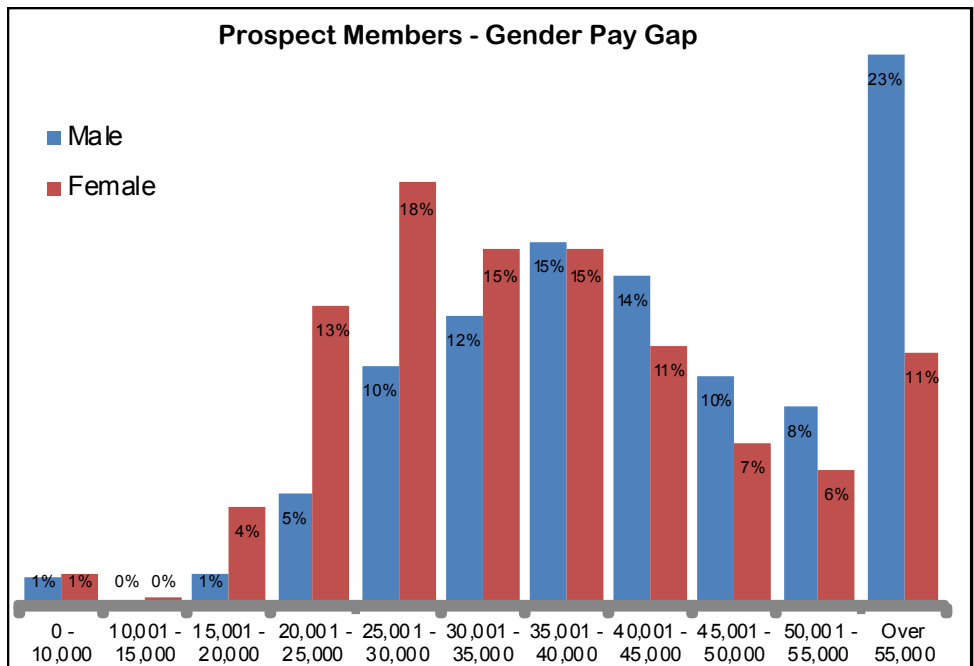
Note the answers in this column are only brief responses to the general issues raised, they should not be taken as a definitive outline of the law. In all cases you should seek advice from your Prospect Full Time Officer.

Equal pay day – still a long way to go

The TUC published new research (bit.ly/1fBPqty) to mark Equal Pay Day on 4 November. It shows women continue to be significantly underpaid compared to men.

Equal pay day marks the point in the year when women working full time are effectively working for free, due to the effect of the gender pay gap. The gap for full time employees stands at 15.7% and has increased in the last year. Although the difference in hourly pay has dropped slightly.

The graph below shows information from the 2014 Prospect survey and highlights the gender pay gap prevalent amongst our members. It shows 65% of male respondents earning in excess of £40,000 compared to just 35% of female respondents.



Prospect continues to challenge inequality in pay through collective bargaining and litigation. Currently we are investigating equal pay claims within the Ministry of Defence. Prospect has concerns that the MoD broader-banded pay structure and the lack of pay progression in recent years has resulted in significant pay disparities, and in particular pay gaps between men and women in some areas. Several members have already come forward and others have been asked to let us know if they believe they have a claim.

Employment law changes

There are four key changes to employment law effective from 1st October 2014, these are:

- **Equal Pay Audits** - Tribunals that have found an employer in breach of equal pay law will be able to order them to conduct an equal pay audit (see bit.ly/1xeFJJF).
- **Time off for partners to attend ante-natal appointments** - Rights to unpaid time off for partners to accompany an expected mother to up to 2 ante natal appointments (see bit.ly/1EopQis).
- **Whistleblowing** – The list of Prescribed Persons for the purposes of making a protected disclosure is revised (for the new schedule see bit.ly/1yMipjE).
- **National Minimum Wage** - increase in NMW from £6.31 to £6.50 for workers aged 21 and over (for all rates see bit.ly/1wOo4qy).

For a summary of the wide ranging changes in employment since 2012 (see bit.ly/1yMipjE). This demonstrates the severity of the Government's attacks on workers' rights and reinforces the need for effective union organisation.

Sign up for automatic alerts on employment rights at: bit.ly/1iRR3C3 and follow [@LegalProspect](https://twitter.com/LegalProspect) on Twitter