

LEGALEYE

Changes to sickness absence procedures are unlawful

The High Court rules the Department for Transport (DfT) broke employees' contracts by failing to reach agreement with Prospect and other recognised unions before changing its sickness management procedures.

Prospect, FDA and PCS brought breach of contract claims against the DfT on behalf of members in the central department and its agencies.

In 2012 DfT imposed harsh changes to the sickness absence procedures, including reducing the 'trigger points' for taking action when workers were off sick. For example a formal written warning would be given for absences of eight working days and this would start the dismissal procedure.

"The new trigger points were much stricter," said Prospect legal officer Linda Sohawon. "They stigmatise individuals who may have chronic complaints or unrelated



Linda Sohawon,
Prospect Legal Officer

illnesses and create anxiety because of the threat of disciplinary action."

The DfT handbook identified the sickness arrangements as being contractual and that the contract of employment could not be changed without agreement from either the employees or recognised unions.

The Judge ruled the change was unlawful. And the claimants should be granted declarations that the DfT and its agencies had breached their contracts of employment by not seeking consent from the recognised unions before unilaterally imposing the new sickness absence policy.

The new procedures were fundamentally different to the old ones, the Judge added, and would be seriously detrimental to employees. He ruled that the old procedures would continue to apply.

Linda Sohawon said: "This ruling is good news for employees suffering under these new procedures as the

old sickness absence policy must now apply." However it should be noted that the DfT terms were unusual in expressly stating that the sickness procedures were contractual.

The DfT has sought leave to appeal. For a fuller report on the case see Prospect's employment law update (bit.ly/1B3Mk5U)

General election 2015: Your vote, your voice

Prospect, through a dedicated new website, brings you news and updates related to the election (<http://ge2015.prospect.org.uk>). This includes question & answers from the major political parties, upcoming election-related events and resources to help you ask questions of your local politician.

The site has briefings on a range of topics of particular interest to Prospect members, including one on employment rights.

Policy for workers' rights

There has been an onslaught on employees' rights since the last election. It is now easier and cheaper for employers to sack their workers. Statutory protection has been reduced and the introduction of fees for employment tribunal cases has denied workers access to justice.

Prospect calls on the new government to treat workers fairly and equally in the workplace:

- ✓ Employment tribunal fees should be abolished.
- ✓ All employees should be able to bring claims for unfair dismissal, regardless of their length of service and tribunals should be able to award compensation that adequately reflects the financial loss sustained by an employee.
- ✓ There should be no further restrictions on workers' ability to take industrial action.
- ✓ Mandatory equal pay audits for all employers and an end to the gender pay gap.
- ✓ Greater protection for all workers, with an end to the abuse of zero hours and other atypical working patterns.



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



Cricket umpires challenge retirement



Left to Right: Marion Scovell, Prospect head of legal; Declan O'Dempsey, Counsel; Peter Willey; George Sharp; John Holder; and Alan Leighton, Prospect national secretary

Photo: Stefano Cagnoni

Two Prospect members, the former cricket umpires Peter Willey and George Sharp, have brought a case of age discrimination against the England & Wales Cricket Board (ECB) after their enforced retirement.

Willey and Sharp are highly respected umpires, who wanted to continue umpiring beyond the ECB's expected retirement age of 65.

When their request to stay on was refused they brought claims of unfair dismissal and age discrimination.

The ECB accepted that both umpires were performing well, but argued the retirement age was justified. The case was heard by the employment tribunal in February.

Alan Leighton, Prospect national secretary, and John Holder, one of

their former umpiring colleagues, also gave evidence to the tribunal.

The members were supported by Prospect's legal team and represented at the hearing by barrister Declan O'Dempsey.

George Sharp said: "I would like to thank Prospect for its professional help and support. It has been exceptional in its approach, dedication and understanding of my cause."

And Peter Willey added: "The union was great and it really shows how people need unions. We could not have taken the case without it."

The case has attracted much press attention, but the tribunal's judgment has been reserved so it will be some weeks before the outcome is known.

Were you blacklisted for your union membership?

It is unlawful to subject a worker to a detriment because of their union membership or activities. However in some industries there has been a systematic record keeping of activists, which led to many people being refused work.

The Information Commissioner conducted an investigation in 2008/9 into this appalling practice in the construction industry. They obtained files from the infamous Consulting Association (TCA), who held records of over 3,000 people and shared these with several large companies in the industry.

The Construction Workers Compensation Scheme (TCWCS) has been set up to compensate workers affected by TCA's activities. It is funded by some of the companies who used the TCA records. It provides a free and relatively easy way to seek compensation. To find out more visit: <https://www.tcwcs.co.uk>

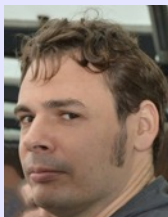
However in serious cases you should seek to pursue a legal claim through the High Court instead. So always seek advice from Prospect on whether to apply under the scheme. We have advised one Prospect member on making a claim and suspect there may be many more affected.

A view from the ET

Rodney Wheeler reports from the employment tribunal for the cricket umpires.

"Having done some research for this case, and being a fanatical cricket fan, the chance to attend the tribunal was just too good to miss.

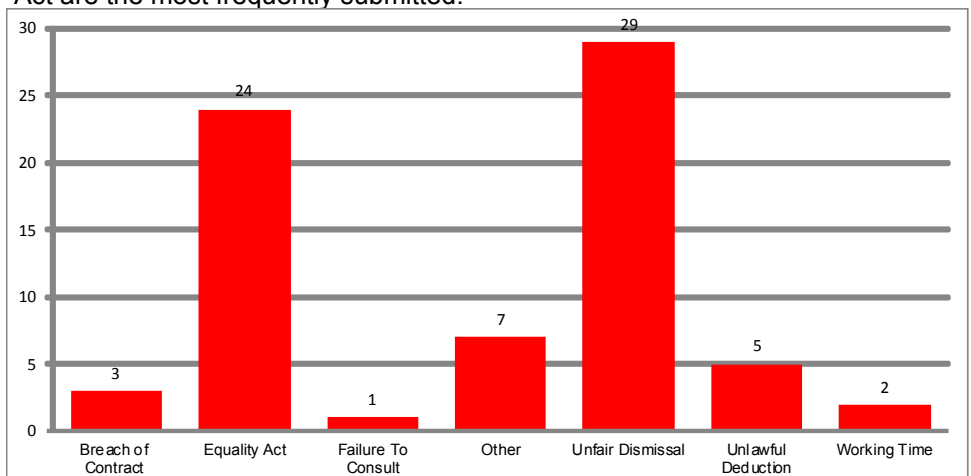
Attending gave me a real insight into the inner workings of the system. Moreover having a firm understanding of the case content really aided this experience immeasurably. Additionally it was nice to meet Peter and George and hear some cricket anecdotes from their years of experience in the game."



Rodney Wheeler

Prospect ET cases 2014

During 2014 Prospect presented claims to the employment tribunal for members on a wide range of issues. The graph below shows a breakdown of the tribunal claims by type, highlighting that unfair dismissals and claims under the Equality Act are the most frequently submitted.



Over £640,000 was recovered for members as compensation, payable either as a result of settlements or wins in tribunal cases.

Terms and conditions for legal assistance

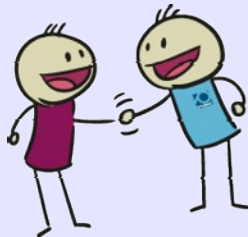
The member must:

- 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.

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 Linda Sohawon



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

LegalEye recently caught up with Prospect Legal Officer Linda Sohawon to ask the following:

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

In 1974 I started as an assistant for a local TU official of ASTMS/MSF in East London as a stop-gap job and ended up staying for over 30 years.

What has been your greatest success working in a union?

In 30 years at MSF, there were many important cases, including extending rights for equal pay and the right to return from maternity leave. More recently at Prospect, I have learned a lot from dealing with challenging discrimination cases involving neurodiversity. I am also particularly pleased with our great win in the High Court last year for members at Urenco on TUPE and pension rights.

What do you like about working in Prospect?

I worked a long time for a large union, so I enjoy the atmosphere of working in a more friendly, inclusive environment with a great professional team. I worked mostly with private sector employers, so it has been a revelation dealing with Government departments and agencies.

What is the latest case to cross your desk?

A disability discrimination case of unfair dismissal involving mental health issues.

What would you most like to change about employment law?

It is far too legalistic and complex instead of the informal industrial jury it was meant to be and we must abolish tribunal fees!

What is your favourite legal TV drama ?

I would say Kavanagh QC, but Eternal Law, as my daughter's partner, Ukweli Roache was in it (as an angel lawyer).

Legal Word Search

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

Words To Find:

Appeal	Judge
Barrister	Law
Claimant	Legal
Compensate	Libel
Court	Litigation
Employment	Merits
Grievance	Rights
Hearing	Solicitors

Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) The new rules on shared parental leave apply in respect of children born or adopted on or after:

- 1 January 2015
- 5 April 2015
- 1 January 2016

2) The limit on a weeks pay for calculating statutory redundancy pay from 6 April 2015 is:

- £475
- £464
- £450

3) What is the time limit for raising a complaint of unfair dismissal through Early Conciliation?

- 6 months from the date of dismissal
- Within 12 weeks of the dismissal
- Within 3 months of the last day of employment

4) To be eligible for shared parental leave the employee must have been continuously employed for at least:

- 52 weeks before the birth of the child
- Two years before the first week they want to take the leave
- 26 weeks at the 15th week before the child is due

5) The Construction Workers Compensation Scheme is for people:

- Who had been recorded as union members on an unlawful black list
- Claiming compensation after a workplace accident
- Who have a building dispute

6) A member challenging enforced retirement would most likely claim in the tribunal:

- Medical retirement
- Age discrimination
- Age discrimination and unfair dismissal

Answers

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

Ask LegalEye

Q. I have been dismissed and want to bring a claim to an employment tribunal. A friend told me I had to make the claim within three months. Is this right?

A. There are strict time limits for starting an employment tribunal case. For unfair dismissal the time limit is three months from the last day of employment. This can only be extended in very exceptional circumstances. Since May 2014, the first stage to bring a claim is to register with ACAS for Early Conciliation (EC). This must be done before the usual three month time limit expires. Once the EC application is submitted it has the effect of 'stopping the clock' for the tribunal claim. The rules on this are complicated so contact your Prospect negotiator for detailed advice as soon as possible. See our briefing on early conciliation: bit.ly/18I9sH1

Q. I am pregnant and the baby is due in June. I have heard there are new rules on sharing maternity leave with your partner, how will this work?

A. New rules on sharing parental leave come into force for children born or adopted on or after 5 April 2015. This will enable all eligible mothers, fathers, partners and adopters to choose how to share time off work after a child is born or placed for adoption. Mothers will still be entitled to 52 weeks maternity leave and can choose to end their maternity leave after a minimum of two weeks. The parents can decide how to share the remaining leave. To be eligible the employee must have worked for the same employer for at least 26 weeks at the 15th week before the week the child is due and still be employed in the first week that the shared parental leave is to be taken. See Prospect's employment law update for details: bit.ly/1v2w6qG

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.

Have you ever been exposed to asbestos at work?



Asbestos was used extensively in many industries throughout the 20th century until it was eventually banned in 1999. Once exposed to asbestos, the small fibres can lie dormant in the lungs for many years. Many people do not suffer any ill effects, but others may develop one of the conditions caused by asbestos.

Prospect asbestos register

The register may help you or your former colleagues should you be affected by asbestos. Because asbestos related diseases normally become apparent only many years after exposure, it can be difficult to prove precisely when and where exposure occurred. The names of former colleagues may long be forgotten and their whereabouts

unknown. The register holds a database of information about members who have been exposed to asbestos, including where they worked. This information can make the difference between a claim being successful or unsuccessful.

Claiming compensation

Holding this information on a database enables Prospect and their solicitors to search for witnesses who worked for the same employer or in the same workplace and so provide evidence in support of members' claims – now and in the future. It helps the solicitors succeed in claims for Prospect members or their bereaved families and can bring financial peace of mind and justice to those affected by asbestos diseases. If you have been exposed to asbestos at work visit <http://bit.ly/1FQZWG0> or call 020 7902 6624.

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

New briefings & updates from Prospect Legal

Since the last issue of LegalEye the following updates and briefings have been issued by Prospect's Legal Team: (visit: bit.ly/1Fecvgy to download)

Employment Law Updates:

- ✓ **0387 - Shared parental leave and pay:** A new statutory system of shared parental leave and pay comes into force on 1 December 2014.
- ✓ **0389 - Obesity may be a disability:** The European court has ruled obesity may constitute a disability, but it will depend on the individual facts and the impact of the condition.
- ✓ **0391 - Deductions from Wages – Limitation on claims:** New Regulations limit claims for backdated holiday pay to two years before the date an ET1 is lodged.
- ✓ **0392 - Annual Revision on Compensation Limits:** This includes an increase in the limit for a weeks pay to £475. New amounts will apply where the dismissal (or event giving rise to the claim) occurs on or after 6 April 2015.
- ✓ **0393 - Disability Discrimination at Work:** Three very recent cases have given guidance on the provisions under the Equality Act in respect of discrimination arising in consequence of disability, reasonable adjustments, and discrimination by association.

Employment Law Briefings:

- ✓ **045 - Update on References:** This Briefing explains the law on employment references and provides an update on recent case law.
- ✓ **046 - Overseas Working:** This briefing sets out the rules relating to territorial jurisdiction in respect of overseas workers bringing claims for unfair dismissal and discrimination.