

# LEGALEYE

## Pay boost for Flybe members

Prospect has secured a significant increase in pay for members who had not been paid the National Minimum Wage (NMW).

Members at Flybe employed as support workers won their claim for an increase in pay after it was discovered that shift payments were being made to “top up” their pay. This meant that members’ hourly rate fell – in some cases by up to 23 pence per hour – below the NMW, which is currently £6.50 per hour for workers aged 21 and over. Prospect Negotiator John



Jane Copley, Legal Officer

Stevenson was contacted about the situation in March, he then sought advice from Prospect Legal. Jane Copley confirmed that the members were being paid less than

the legal minimum. Prospect took up the matter with Flybe management, who conceded that the members were due an increase in pay. The complexity of the law on NMW means that workers are often underpaid.

Jane said: “Part of the resolution process involved dispelling the widespread (and worrying) misconception that using shift pay or allowances to top up workers’ pay is acceptable and legitimate practice. This has the effect of artificially raising workers’ pay and obscures the bleak fact that workers are being denied their right to be paid the NMW.”

In much the same way as tips and gratuities cannot be used to bring pay up to the NMW threshold, employers are required to pay a basic salary that complies with minimum wage requirements, even if workers receive enhanced pay for working shifts. Prospect Legal is therefore keen to remind employers of their obligations

under the legislation and that a financial penalty of up to £20,000 can be imposed for failure to comply with NMW requirements. Employers who fail to pay the NMW are also liable to prosecution and run the risk of being listed on the government’s “name and shame” register.

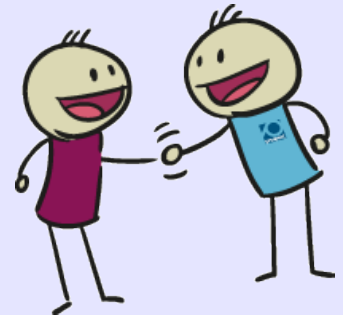
Whilst the minimum wage has helped a number of low paid workers, Prospect does not believe that this goes far enough and will always fight for the higher, living wage to be paid. The living wage is currently £7.85 across the UK and £9.15 in London. For more information on minimum wage compliance see Prospect’s briefing: [bit.ly/1AK96H1](http://bit.ly/1AK96H1)

## 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](http://www.prospect.org.uk/mrm)



## Employment rights in Northern Ireland

Workers in Northern Ireland have fortunately not been subjected to the drastic cuts in employment rights that have occurred in Great Britain. As employment law is a devolved matter in NI not all the changes to the law in GB have been imposed. This means our members in NI still have a one year qualifying period for unfair dismissal, higher compensation, and no ‘protected conversations’. Very importantly there is no fee to bring a claim to the industrial tribunal.

At the end of April Prospect ran our popular introduction to employment law course in Belfast, for reps based in NI.

Nine committed and knowledgeable reps attended from a number of branches, and we were joined for part of the course by Philip O’Rawe, from the Prospect NEC, and Terry Dunlop from the Labour Relations Agency.

“A few years ago the difference in employment law between NI and GB was minimal, but over the last few years the differences have become marked” said Marion Scovell, head of Prospect Legal. “It seemed a challenge to remember all the differences, but largely it was just rewinding a couple of years before the recent onslaught in workers’ rights in GB”.



Marion Scovell, Head of Prospect Legal (far left) and Philip O’Rawe, NEC Member (far right) with the course participants

## More cuts in workers' rights on the way

The Queen's speech on 26 May included further attacks on workers' rights. The speech dubbed by the Prime Minister as a 'programme for working people' is far from that. It includes measures entirely hostile to workers and unions, and will lead to increased poverty and division.

The planned changes include:

- ✓ Creating higher hurdles for industrial action (including a requirement of a 40% yes vote of those entitled to vote in certain essential public services)
- ✓ Requiring members to opt in to payment of the political fund (as opposed to opting out as currently applies in England, Wales & Scotland)
- ✓ Unspecified changes to the role of the certification officer
- ✓ Consultation on the repeal of the Human Rights Act, to be replaced with a bill of rights.

## Compensation for accident on way to work

Helen Hall, Prospect Legal Services Assistant, reports a recent successful personal injury case.

Prospect member Richard Fitzgerald, who works for BIS, was at Bromley station on his way to work, when he fell breaking his wrist. The fall was caused by a thin plastic binding getting wrapped around his ankles. He was of the view the strapping came from the bundle of City AM newspapers, which were being handed out.

Richard applied for legal assistance from Prospect and was referred to our lawyers Slater & Gordon. City AM and Bromley Station both initially denied liability. After investigation it emerged, Bromley Station had written to City AM complaining about litter. Following lengthy negotiations the case was settled out of court.

Richard said: "After the accident I contacted Prospect for advice, it was a wise decision. What I had initially thought would be an "open-and-shut" case turned into a protracted dispute. Without Prospect, I doubt I would have reached a good settlement".

## BA appeal Prospect win in employment tribunal



Left to right: Lance Harris, Svetlana Higgins, John Higgins, Malcolm Currie

Prospect member John Higgins won his claim for constructive dismissal against British Airways, but the company has appealed to the Employment Appeal Tribunal.

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 case was heard in the Glasgow employment tribunal for five days in March. John was represented by barrister, Lance Harris of Old Square

Chambers. Malcolm Currie, Prospect Negotiator and Keith Rogers, union representative gave evidence in support of his case.

The tribunal found demotion was such an extreme and disproportionate sanction in the circumstances that it amounted to constructive dismissal.

John was grateful for the support from his branch "I could not have done this without the support of the union's Association of Licensed Aircraft Engineers branch which has seen me through this very difficult time."

Marion Scovell, head of Prospect Legal, added: "Constructive unfair dismissal cases are difficult to win. In this case the tribunal found that the decision to demote Mr Higgins was wholly disproportionate."

It is very disappointing that BA has lodged an appeal against the judgement, which will not be heard until much later this year.

### Personal injury cases in 2014

- ✓ **260:** New applications approved during the year
- ✓ **380:** Open claims at the end of the year
- ✓ **127:** claims successful
- ✓ **£2,850,292:** in compensation recovered for members

### More information from Prospect Legal:

- ✓ Sign up for automatic email alerts on employment rights at: [bit.ly/1IRR3C3](http://bit.ly/1IRR3C3)
- ✓ For the latest news follow us on Twitter: [@LegalProspect](https://twitter.com/LegalProspect)

## 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](http://bit.ly/emp_law)





## 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](http://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.

## Review of ET Fees

The Government have announced a formal review of employment tribunal fees. The aim of the review is to see if the fees regime has met the Government aims. In Prospect's view it is sadly clear that the Government's objectives of reducing costs and tribunal claims have been met, but that this has clearly been at the expense of removing access to justice. See <http://bit.ly/1MvtHiN>

## Introducing Prospect Legal: Spotlight on Paula Mitchell



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

LegalEye recently caught up with Paula Mitchell, who is the legal teams executive assistant.

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

Some years ago, by chance, a vacancy came up for a filing clerk in Prospect and I worked my way up from there to executive assistant in the legal section.

### What has been your greatest success working in a union?

Working in the legal team involves many great results, but one that really stands out for me was the equal pay case we brought for women in the Prison Service. It was a real challenge managing over 300 individual cases, but when they were settled it was a great success. Lots of members benefited with increases in pay.

### What do you like about working in Prospect?

Meeting our diverse range of members. Attending employment tribunals to see the end result of cases I have worked on is also very rewarding.

### What is the latest case to cross your desk?

The work is really varied, so I'd say a bit of everything.

### What would you most like to change about employment law?

I would like to abolish the fees to bring a case to the Employment Tribunal, which has been really unfair for workers.

### What is your favourite legal TV drama?

Rumpole of the Bailey

## Legal Word Search

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

### Words To Find:

|              |           |
|--------------|-----------|
| Advocate     | Judgement |
| Appeal       | Legislate |
| Claim        | Litigate  |
| Compensation | Represent |
| Dismiss      | Tribunal  |
| Equality     | TUPE      |
| Government   | Wage      |

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

### 1) Working as an intern means:

- a) You have no legal rights
- b) You will usually be entitled to at least the minimum wage
- c) You must be paid the same as permanent colleagues

### 2) The minimum qualifying service to be able to bring a claim of unfair dismissal in Northern Ireland is:

- a) One Year
- b) Two Years
- c) Six Years

### 3) Employers found to not be paying the National Minimum Wage can be fined up to:

- a) £5,000
- b) £10,000
- c) £20,000

### 4) Workers can be accompanied at a disciplinary hearing by:

- a) A solicitor
- b) A rep appointed by management
- c) A union representative

### 5) How much personal injury compensation was recovered for Prospect members in 2014?

- a) £2,850,292
- b) £1,067,506
- c) £2,307,240

### 6) Appeals against employment tribunal rulings in Scotland are brought to:

- a) The sheriff's court
- b) The court of appeal
- c) The employment appeal tribunal

### Answers

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

## Ask LegalEye

**Q. I have recently left college and am looking for a career as an art curator. Competition is really tight and I have been offered an internship. Can you let me know what rights I have as an intern?**

**A.** Sadly in many areas there is little option but to accept internships as a way into work in your chosen field. In many areas where Prospect is recognised these can offer high quality training and experience with employers paying at least the living wage. But regrettably in some areas interns are used as cheap (or even unpaid) labour so you do need to be wary about this. Check to see if Prospect or another union is recognised by the organisation and then seek detailed advice from the Full Time Officer responsible for that work place. Your legal rights will depend on all the circumstances at work, but often interns do have full employment status and will be entitled to at least the minimum wage. See Prospect's Members' Guide to Atypical Workers for more detail: [bit.ly/1IcBukw](http://bit.ly/1IcBukw)

**Q. I am a Prospect member in a small private sector company that does not recognise a union. I have raised a grievance about my pay and have been asked to attend a meeting with my manager. They have said that I can bring a colleague with me, but not a union officer, can I challenge this?**

**A.** Under the Employment Relations Act 1999 all employers must allow a worker to be accompanied by a union official at a grievance or disciplinary hearing. So even though your company does not recognise a union, they must still allow you to bring a Prospect rep with you to the hearing. The representative is allowed to address the hearing on your behalf to put or sum up your case. Contact Prospect to be put in touch with a representative who will be able to help you.

**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.

## Equality challenge to performance management in civil service

Evidence of discrimination in the civil service performance management system is an enormous cause for concern. Data shows that in some departments and agencies disabled and black employees are more likely than others to get lower markings ([bit.ly/1JvEt9m](http://bit.ly/1JvEt9m)).

Prospect is challenging this in many different ways, including; asking parliamentary questions, analysing data, supporting members to challenge unfair markings, and negotiating improvements to the system. As part of the strategy we are committed to litigating on individual cases, when appropriate. It should be noted that the Scottish Government has not adopted this performance management scheme.

A new Employment Law Briefing looks at challenging discrimination in performance management [bit.ly/1AKin1N](http://bit.ly/1AKin1N)



### Successful ET Case

Prospect has recently settled a case for a member who challenged his 2014 performance marking. We presented a claim of disability discrimination to the tribunal. The claim settled shortly before the final hearing. It was agreed to reverse the performance mark, make adjustments to working practices and pay compensation for injury to feelings. This was a great result for the Individual member, but multiple claims would be likely to have a greater impact.

### Knowledge Call

Prospect Reps can join a 'knowledge call' (mini training sessions by phone) run by Prospect Legal to look at rights under the Equality Act and how to identify discrimination in performance management and possible cases for presenting to the employment tribunal. The calls will be during July. For more details contact [Paula.mitchell@prospect.org.uk](mailto:Paula.mitchell@prospect.org.uk)

## 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](http://bit.ly/1Fecvgy) to download)

### Employment Law Updates:

- ✓ **0395 - National minimum wage - Updated rates:** This reports the new rates for the national minimum wage, which take effect from 1 October 2015
- ✓ **0396 - Redundancy cases update:** An update on recent redundancy judgements.
- ✓ **0397 - Equality rights in goods, services & cakes:** A bakery company unlawfully discriminated when they refused an order for a cake iced with the phrase 'support gay marriage'
- ✓ **0398 - Whistleblowing claims - The meaning of "Public Interest":** Two important cases on the revised rules for whistle blowers
- ✓ **0399 - Zero hours contracts - Government bans use of exclusivity clauses:** The new Government has brought into force Regulations banning exclusivity terms in zero hours contracts.
- ✓ **400 - Early conciliation: time limits** - recent cases highlight the strict time limits in bringing a claim.

### Employment Law Briefings:

- ✓ **049 - Confidential information in personal cases:** This briefing looks at the situations that can arise for Prospect members and reps dealing with employer's confidential information in the course of a personal case
- ✓ **050 - National minimum Wage:** National Minimum Wage regulations must relate to basic rates of pay - even if employees normally only work on a shift basis and receive enhanced pay