

LEGALEYE

The “Anti” Trade Union Bill

The Government’s Trade Union Bill is an attack on workers’ rights to take industrial action, places excessive administrative burdens on unions, and allows for further restrictions on facility time in the public sector.

The Bill was introduced just a few days before this year’s festival commemorating the bravery of the Tolpuddle Martyrs, whose stand for workers has created the union movement we enjoy today.

The measures in the Bill derive from several unspecified manifesto commitments and the announcements in the Queens Speech earlier this year. However the details in the Bill are much worse than expected.

The media attention has been on new thresholds for industrial action



Prospect members in force at this year’s Tolpuddle Festival

Photo:Lloyd Collier

balloting which will inhibit strike action, but there are a number of other changes in the Bill that will have significant detrimental effects on unions and their members.

Mike Clancy, Prospect general secretary, said in response to the Bill: “We intend to hold the government to

account for its views, question the evidence it says justifies its proposals, and fearlessly put the opposing case.” (See Mike’s statement at: bit.ly/1KVt5pS)

For details on the changes the bill will introduce see page 2

Member wins case following climbing accident

Prospect member, Mark Gough, won his case for damages following a serious accident at a climbing centre. In 2011, Mark was at an indoor climbing activity centre where he was climbing with a partner. When he reached the top of the wall his partner failed to “lock off” the rope causing Mark to fall 36 feet to the ground.

Mark was taken to hospital for treatment; his back was broken in two places and his leg broken in five. The injuries were extensive and required three surgical operations.

Mark contacted Prospect for legal assistance to bring a personal injury claim against the centre and the individual responsible for the accident.

His case was referred to Prospect’s solicitors, Slater & Gordon.



Helen Hall
senior legal assistant

After lengthy investigations and preliminary work, the case was heard in the county court in May 2014. The Judge found in favour of Mark.

Our solicitors then sought medical evidence to help determine the amount of compensation. The case was eventually settled in July 2015 for a significant amount of damages.

Mark said: “Prospect supported me throughout the experience even though the outcome could have gone either way. The peace of mind this gave me, along with the medical assessments and advice provided, allowed me to concentrate on my recovery.”

Helen Hall, Prospect senior legal assistant, said: “I have been following this case from the start with great interest. It was a complex claim and I was delighted with the excellent outcome. By using the Prospect legal scheme Mark retained 100% of his damages, and it just goes to show how important it is to be a union member.”



#AskProspectLegal

The legal team will be running a live question and answer session on twitter, on 23 September between 12.00 and 14.00

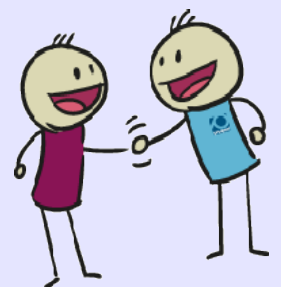
You can tweet questions about your employment rights, which we will try to reply to in 140 characters! Follow us [@LegalProspect](https://twitter.com/LegalProspect) for more information closer to the time.

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



Late success in unfair dismissal claim

A high percentage of cases presented to the employment tribunal settle 'out of court', and it is not unusual for cases to settle just before the case comes to hearing. It is very rare though for a case to settle after three days of evidence and shortly before closing submissions, but this is just what happened in a recent case for a Prospect member.

Our member had worked for the Ministry of Defence for over 20 years. At the stores site where he worked it was regular practice for employees to be able to remove scrap wood and pallets and he had done this on several occasions. On the day of the incident, he was leaving the site with scrap wood but was stopped at the gate, as had forgotten to obtain the necessary gate pass. He was suspended the next day and then dismissed.

Prospect brought a claim to the employment tribunal for unfair dismissal and disability discrimination. The four day hearing of the case started at the Bristol tribunal on 21 July. Our member was represented by Stephen Marsh, a specialist employment and discrimination law barrister from Garden Court Chambers. Anna Biggs, negotiations officer and Nick Forgham, Prospect representative, gave evidence in support of the case.



Linda Sohawon,
legal officer

After three days of evidence from witnesses on both sides, the MOD made an offer to settle the case before judgment was given. Following negotiations a settlement was reached on the last day of the hearing.

Linda Sohawon, legal officer, said: "This member was dismissed for a relatively trivial offence after over 20 years' loyal service. It was important to signal to the MOD that Prospect is prepared to challenge such blatant unfairness."

The "Anti" Trade Union Bill

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The bill covers a range of union issues from balloting on industrial action to the information required for annual reporting. In particular the further attacks on facility time and the use of check-off in the public sector will have a significant impact on members.

The changes introduced by the Bill include:

- ✗ A new test requiring a 50% turnout in industrial action ballots along with a majority of those voting in favour (currently lawful industrial action requires a simple majority).
- ✗ Additionally in 'important public services' 40% of those entitled to vote must vote in favour of the action.
- ✗ A repeal of the existing ban on using agency workers to cover during strikes.
- ✗ There will need to be more detailed information on industrial action ballot papers.
- ✗ 14 days' notice of strike action must be given by the union to the employer (instead of the existing 7 days).
- ✗ New legal requirements for pickets, including that there must be a picket supervisor who must wear an armband or badge to identify them at all times.
- ✗ Requiring employers to report on facility time and new powers to limit facility time in the public sector.
- ✗ Requiring members to opt in, rather than opting out, of the

political fund (this is already the position in Northern Ireland).

- ✗ More detailed reporting to the Certification Officer on union activity, including industrial action, social media activity, and 'political' expenditure.
- ✗ Greater powers for the Certification Officer to impose fines on unions, and a levy requiring unions to pay for the CO.
- ✗ There is also likely to be further restrictions on check off (where employers deduct the union fees direct from salary) in the public sector.

There are three consultations on the detail of the proposals on; ballot thresholds, restricting pickets and protests, and hiring agency workers during strike action. Prospect will be responding to the consultations.

Marion Scovell, head of Prospect Legal, said: "The Bill is an assault on the fundamental right of workers to strike. Unions are already under exceptionally onerous rules in conducting a legal strike ballot, providing enormous scope for employers to legally challenge the validity of ballots, putting workers and unions at risk."

The new rules include excessive administrative burdens. "Many of these are ludicrous" says Marion, "for example unions could be fined if the picket supervisor loses their armband, or a branch rep tweets something about industrial action which had not been previously notified to the certification officer."

For more information on the Bill see Prospect's Employment Law Update at bit.ly/1UyqKCY

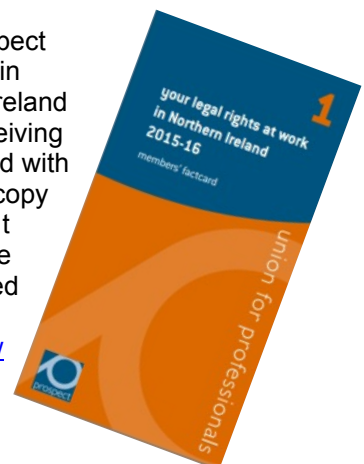
New rights at work factcard for Northern Ireland

Prospect has produced a Northern Ireland special edition of our popular 'Your legal rights at work' factcard. This gives a summary of key statutory employment rights in a new pocket sized card.

Whilst many legal rights are the same across the UK, there are significant differences in Northern Ireland largely because many of the stringent cuts in workers' rights have not been applied by the Northern Ireland Assembly.

All Prospect members in Northern Ireland will be receiving the factcard with their next copy of Profile. It can also be downloaded from:

bit.ly/1UyqNYq



Know your rights at work

Prospect has 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

You can sign up for automatic email alerts on employment rights at: bit.ly/1iRR3C3

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.

Introducing Prospect Legal: Spotlight on Marion Scovell



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

LegalEye recently caught up with Marion Scovell, head of Prospect's Legal team

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

My first job was with the Brixton DHSS, where we had a strong and effective union. I had a number of roles as a lay rep and learnt how powerful union organisation can be, and how much fun!

What has been your greatest success working in a union?

It must be the HSE equal pay cases, which ended up in the European Court of Justice and successfully challenged unfair pay based on length of service. Those cases started in 2000 and we are still running follow-on cases today. That litigation is a great example of the combination of law and union negotiation resulting in significant pay improvements for members.

What do you like about working in Prospect?

I'm proud to work for the union movement and I enjoy working with such committed Prospect reps and members.

What is the latest case to cross your desk?

A multiple case for over 50 members challenging contractual right to pay progression.

What would you most like to change about employment law?

At the moment, it would be to defeat the TU Bill. Also I believe all statutory rights should apply from day one of employment and ET fees should be abolished.

What is your favourite legal TV drama?

Silk, not least because Maxine Peake is a great campaigner in support of legal aid.

Legal Word Search

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

Words To Find:

Advice	Law
Application	Legal
Conciliation	Mediation
Contracts	Pleadings
Dismiss	Regulations
Judge	Schedule
Justice	Witness

Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) Parental leave applies in respect of children up to the age of:

- a) 5
- b) 18
- c) 8

2) Following a successful ballot, how much notice do unions currently have to give the employer of industrial action?

- a) 7 Days
- b) 14 Days
- c) 28 Days

3) The forthcoming new rules on reporting the gender pay gap will apply to:

- a) All employers in the private sector
- b) Companies with more than 500 employees
- c) Employers with at least 250 employees

4) A statement of particulars of employment is commonly known as a:

- a) Letter of appointment
- b) Contract of employment
- c) Section 1 statement

5) Overall the UK gender pay gap is:

- a) 19.1%
- b) 26.3%
- c) 16.7%

6) An annual festival celebrating trade unionism is held in:

- a) Bridlington
- b) Jarrow
- c) Tolpuddle

Answers

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

Ask LegalEye

Q. I have been working in a new job for three months. When I started the boss said he would ask his lawyer to draw up a contract of employment, but this has not materialised. Everything seems to be going ok, but I'm worried that I have no formal record. Doesn't he need to provide me with a contract?

A. All employees are entitled to a written statement of particulars of employment within two months of starting a job. This is often referred to as a section 1 statement because it comes from s1 of the Employment Rights Act. It must include a range of details, including the amount of pay, hours of work, notice period, holidays, sick pay, etc. You should ask your boss for this. You still have a contract of employment even though the terms have not been written down. A verbal agreement, that you do the work and the company pays you, amounts to a legal contract. However it is always best to have it stated clearly in writing. See our guide to Individual Contracts of Employment for more information (bit.ly/1FUskb)

Q. I have two children aged 4 and 7 and heard that I may be able to take 'parental leave'. What is this?

A. Parental leave is available for parents of children up to the age of 18. Each parent can take up to 18 weeks leave for each child. To be eligible you must have worked for the organisation for more than a year. You can only take a maximum of four weeks in any year and must take it in blocks of whole weeks. The statutory entitlement is only to unpaid leave. The leave can be transferred from one job to another if you have not taken the full entitlement. Some employers have more generous entitlements in respect of paid leave or will agree to more flexible arrangements than the strict entitlements under the law, so check with your Prospect rep for how it works in your workplace.

Note the answers in this column are only brief responses to general issues, 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.

Closing the gender pay gap

Pay inequality is still an enormous problem. The overall UK gender pay gap is 19.1%, which shows a woman, on average, earns around 80p for every £1 earned by a man.

The Equality Act 2010 provided that regulations could be introduced to require employers to publish information on the differences in pay between women and men. These provisions are now to be implemented and the Government has commenced consultation on how this should be applied.

The new provisions will apply to employers in England, Scotland and Wales with at least 250 employees.

The consultation covers three main areas:

- ✓ Published pay data: what will be published, how frequently, and how to use the data;
- ✓ Risk and compliance: how should employers that fail to publish pay data be sanctioned;
- ✓ Tackling wider issues: how can girls be encouraged to consider a broader range of careers. What can be done to improve support to women returning to work or seeking to change career direction.

Jane Copley, Prospect legal officer said: "Prospect supports more comprehensive analysis of gender pay information. The benefits of transparency are myriad and publishing pay related data is a welcome development. It is hoped

that this will broaden the scope for dialogue with employers on pay". "However reporting on the pay gap is only the start of the work to be done" continued Jane "Prospect believes that full equal pay audits should be mandatory for all employers. We need to ensure that employers not only publish the data but that they take action to remedy the problem."

Prospect will be responding to the consultation, which closes on 6 September. If members would like to submit any comments, please send these to jane.copley@prospect.org.uk by Thursday 26 August.

The consultation document can be found at: bit.ly/1MeNlxA



Women are paid less than **men** doing the same job

Business in the Community is currently running an on line survey asking 'how do you really feel about the gender pay gap?' To take the survey visit: t.co/r1dXQyP12z

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:

0401 - The Trade Union Bill: this update details the wide reaching scope of the Trade Union Bill

0402 - Repayment of Tribunal fees: The Employment Appeal Tribunal has held that tribunal fees should be refunded by a losing respondent. They confirm this applies equally where fees are paid by the union on behalf of the claimant.

0403 - Holiday pay may include voluntary overtime: A recent Northern Ireland Court of Appeal decision has held that voluntary overtime can, in principle, be included for the purposes of calculating holiday pay.

0404 - Dismissal and protected disclosures: The Employment Appeal Tribunal has ruled that an employee who contacted the Information Commissioner's Office without employer approval was fairly dismissed.

Employment Law Briefings:

051 - Tackling inequality in performance management: Many Prospect members are facing unfair and often discriminatory performance management systems. This briefing looks at challenging these under the Equality Act.