

LEGALEYE

Court of Appeal finds change to sickness absence procedure unlawful

Unions celebrated as the Court of Appeal confirmed that the Department for Transport (DfT) cannot change its sickness absence rules without union agreement.

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.

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

"The new trigger points were much stricter," said Prospect legal officer Linda Sohawon. "They would stigmatise individuals who may have chronic complaints or unrelated illnesses and create anxiety because of the threat of disciplinary action."

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

The High Court in 2015 ruled the proposed change was unlawful and the old provisions must continue to apply. DfT appealed to the Court of Appeal, which heard the case on 16 February. The Court dismissed the appeal and upheld the earlier ruling. The Court agreed that the original sickness management terms were contractual and could not be changed without agreement.

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.



Linda Sohawon and legal assistant Paula Mitchell at the Royal Courts of Justice

Photo: Rodney Wheeler

Unfairly dismissed for sickness absence

Prospect member Paul Pigott has won his employment tribunal case for unfair dismissal and disability discrimination.

Paul worked for BT for over 30 years before he was dismissed in October 2014. He had a successful career with the company until the final couple of years, when he was marked down in his performance appraisals.

Paul's health suffered and he had a substantial period of sickness

absence, which ultimately led to him being dismissed.

Prospect presented a claim to the tribunal. The case was heard in the tribunal over three days. Paul was represented by Stephen Marsh, of Garden Court Chambers. David Evans, the Prospect rep who supported Paul throughout the internal proceedings, was a witness at the hearing.

The tribunal found the dismissal was unfair as BT failed to obtain up to date medical evidence and they had not applied their own procedure for dealing with long term sickness absence and disability.

The tribunal found BT's policy required 'significantly more extensive efforts'. The tribunal accepted that a long term absence can be fair grounds for dismissal, but found in this case 'a reasonable employer would have afforded more time and support to the

claimant before reaching a decision to dismiss'.

Paul said: "The support I received from my amazing union team certainly kept me from 'going under' throughout this traumatic time. I couldn't have taken the case without them."

Marion Scovell, head of Prospect Legal, added "This case demonstrates that employers must take all reasonable steps to avoid a dismissal." For more on this story visit: bit.ly/2aFhnR9

LEGALEYE

This is the latest edition of the legal team's regular e-newsletter LegalEye, which features success stories from around the union and highlights updates and changes relevant to members. Previous editions can be downloaded from: bit.ly/AllLegalEyes



Nick Radiven, Paul Pigott and David Evans

Tribunal fees deny access to justice

Excessive fees to bring employment tribunal claims have unfairly denied workers access to



justice says the House of Commons justice select committee.

July 2016 marks the three year anniversary since ET fees of up to £1200 were introduced. The sharp decline in claims of around 70% has remained consistent throughout this period.

The cross-party committee's report¹ said the fee regime: "has had a significant adverse impact on access to justice for meritorious claims".

The report was debated in the House of Commons on 4 July.

The committee also heavily criticised the government for not publishing its review of tribunal fees, which was due by the end of 2015.

The select committee recommended fees should be substantially reduced and the financial limits for remission of fees should be increased.

Prospect's submission² to the inquiry last year said: "Prospect believes the fall-off in claims has been scandalous. Through the introduction of fees, coupled with seriously detrimental changes to other aspects of employment law, the government has not only made it easier and cheaper to sack workers but has also removed the opportunity for many workers to pursue valid claims."

Marion Scovell, head of Prospect Legal said: "The number of claims presented by Prospect for our members has not dropped, as we pay the fees where we support the case. This demonstrates just how important union membership is for individual workers".

Referenced reports:

1. Cross-party committee report (bit.ly/28lnO6Q)
2. Prospect's submission (bit.ly/2a3aGMt)

Member wins damages for burn at work

Prospect member, Carla Maloco, has won compensation for injury at work.

Carla, a cook supervisor at The National Trust, suffered a second degree burn to her hand. While at work Carla was ladling soup into a bowl when the ladle hit the shelf above the station where she was working, causing boiling hot soup to splash over her hand. The bad design of the kitchen had been raised at meetings and workplace inspections prior to her accident, but the soup kettles had not been moved.

Carla sought advice through Prospect, who referred her case to solicitors. The Trust initially denied liability. The solicitor pressed on with the case, obtaining medical evidence and instructing Counsel. Shortly before the trial date the case was settled.

Carla said: "I found Prospect's legal team to be very responsive and

sensitive to any questions or worries I had. They kept me informed and nothing was too much trouble."

Helen Hall, Prospect senior legal assistant, said: "This case shows the dangers that can exist in any workplace and the need for employers to take action as soon as they are aware of a risk of injury."



Carla Maloco and her friend Tansy

The future of collective voice

'What role is there for trade unions in the 21st century economy?' was the question posed at an event in the House of Commons in early July.

Jane Copley, from Prospect Legal, joined a packed meeting to hear from a panel of MPs, academics, and union officials.

The New Economics Foundation and University of Greenwich presented their research into the effects of market deregulation and anti-union policies on the economy. A lively debate looked at the adverse effects of weakened collective bargaining, restrictive labour laws and the changing nature of work. A discussion on the positive role of unions in business and the wider economy prompted Ozlem Onaran, Professor of Economics at the University of Greenwich, to say "the economy needs a pay rise, and a pay rise needs unions". The report can be found at bit.ly/1MgdUWc



Jane Copley

TUPE – Falling through the cracks

The Transfer of Undertakings (Protection of Employment) Regulations are designed to safeguard workers' jobs when there is a change of employer. But what about when the two employers disagree about who is responsible for the workers? Sadly, this became the harsh reality for a Prospect member.

Our member worked for company A, which was sold to company B. A said the member should transfer to B, but B argued TUPE did not apply.

When the member turned up for work on the day of the transfer, she was turned away and left without a job or even any redundancy pay.

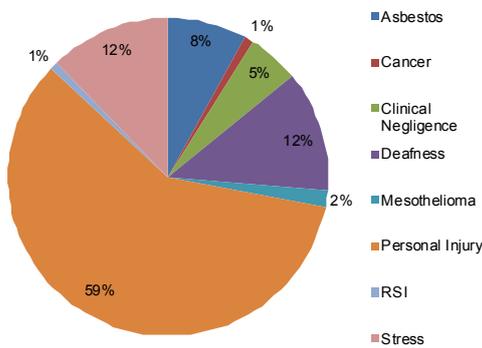
Prospect presented a tribunal claim of unfair dismissal against both companies. After several months preparing for the tribunal, our member was eventually offered her job back or compensation.

This case demonstrates the very real practical difficulties for employees when there are arguments about TUPE applying. It was outrageous that she was left without a job in these circumstances. She was fortunate that as a union member Prospect was able to provide advice and funds to bring the legal case to a satisfactory resolution.

Personal Injury Scheme - January to June 2016

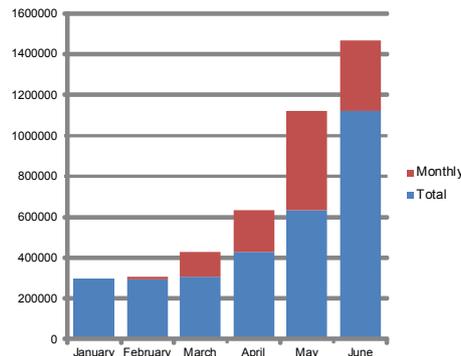
In the first 6 months of 2016 we have approved 114 applications under our personal injury (PI) scheme.

The majority of these (59%) cover general PI issues, including accidents at work, slips/trips and road traffic accidents. Additionally deafness and stress cases account for 12% of the claims each. A combined figure of 10% for asbestos and mesothelioma highlights the ongoing health issues asbestos exposure is causing years after its usage was outlawed.



PI scheme cases by type

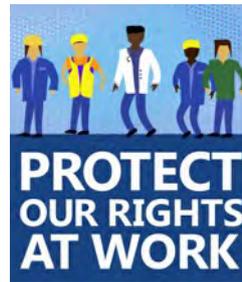
Since January 2016, 59 cases have been won or settled. From these cases we have recovered close to one and half million pounds for members in compensation.



PI scheme settlements, monthly & cumulative

If you wish to make a claim, or seek advice on PI, contact our solicitors Pattinson & Brewer on 0808 28 193 28 (members in the Isle of Man and the Channel Islands should call 020 7902 6624 to check their local services)

Don't cut a single workers' right!

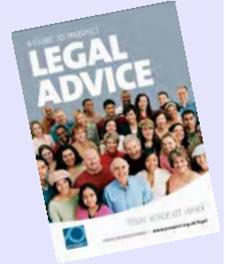


In the wake of Brexit the TUC is urging the MP's to commit to maintaining every single workers right at its current level. Visit bit.ly/2a3cfW to sign the petition.

Terms and conditions for legal assistance

You 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/ProspectLegalGuide)



Visit: bit.ly/2awQ6ll for more information

Legal Word Search

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

Words To Find:

Employment	Personal
Tribunal	Injury
Unfairly	Scheme
Dismissed	Trade
Royal	Union
Courts	Act
Justice	TUPE

Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) What is the maximum employment tribunal fee for a single claim?

- a) £50
- b) £1200
- c) £1500

2) How much was recovered in damages for personal injury for Prospect members in the first 6 months of 2016?

- a) almost £1.5 million
- b) £250,000
- c) approximately £1 million

3) An employer's failure to follow their own disability procedures can mean a dismissal is:

- a) a breach of contract
- b) void
- c) unfair and discriminatory

4) The legal maximum workplace temperature:

- a) 25 degrees celsius
- b) 30 degrees celsius
- c) There is none

5) We say pay rises need.....

- a) Unions
- b) Kind employers
- c) High inflation

6) Homophobic harassment at work is outlawed under:

- a) Employment Rights Act
- b) Sexual Orientation Regulations
- c) The Equality Act

Answers

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

Ask LegalEye

Q. In the recent hot weather our office was stifling. Is there a maximum temperature to work in?

A. Although there are legal minimum temperatures for cold weather, there is no maximum temperature for the workplace. Health & Safety Executive guidance says that the temperature in all workplace buildings should be “reasonable”, but this will depend on the circumstances. Employers should do what they can to keep temperatures down during the very hot weather and ensure that there is plenty of drinking water available. If you are worried about excessive heat at work talk to your Prospect rep.

Q. I recently came out as gay at work. Most of my colleagues have been fine. But two people in the next office are making homophobic comments, not directly to me but so that I can hear. What can I do about this?

A. Firstly discuss it with your local union rep, they will be able to talk you through the practical options of how to deal with it. Prospect can give you support to challenge the colleagues or raise it with management. It may be appropriate for the rep to raise it as a collective issue, rather than a personal one, for example by seeking to raise awareness of the workplace equality policy and the law. Workers are protected against harassment on the grounds of sexual orientation under the Equality Act, so if it cannot be resolved quickly and effectively you could consider bringing a claim to the employment tribunal. Claims must be started within three months of the act of harassment so keep an eye on time limits. For more on equality at work see Prospect members’ guide at bit.ly/2aQjfeJ

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.

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CAMPAIGNING FOR WORKERS’ RIGHTS!

Responding To The Trade Union Act: Report of Prospect Conference 2016 Fringe Meeting

Prospect Deputy Vice President Ele Wade, in introducing the fringe to a full room of delegates, said the Trade Union Act was a fundamental attack on unions. She was delighted to welcome Binder Bansel, head of employment law at our solicitors, Pattinson & Brewer, to give us the latest news on the Act.

Ele explained that part of our response to the onslaught on workers’ rights is the Prospect at Work campaign and we would be hearing about the recent survey of reps.

Binder took delegates through the main provisions of the Act. He particularly highlighted the UK’s obligations under International Labour Law and said further restrictions on workers’ ability to strike could well be in breach. Binder feared the new Act would worsen industrial relations and prolong strikes.

Marion Scovell, head of Prospect’s legal team, introduced our report Working for You, which has drawn together two strands of the



Ele Wade (bottom left) with delegates

Photo: Stefano Caproni

Prospect at Work campaign; our profiles of reps as Workers’ Rights Advocates and the recent survey of reps. The report, which can be downloaded from:

bit.ly/Working_For_You demonstrates the very real difference that Prospect makes in the workplace.

Marion pointed to the numerous success stories reported by reps, which ranged from overturning decisions to dismiss to securing equal pay. The report also looks at changes to the law in the future. She highlighted that scrapping the TU Act was high on the agenda of demands, only topped by introducing a law to protect against workplace bullying.

Ele concluded the meeting by stressing how appalling the TU Act is, but recognising the great work done by Prospect reps and that we really can all make a difference.

Rights at Work Blog

See our new regular blog for all things employment law at <https://www.prospect.org.uk/at-work/help-support-advice/blog>

- ✓ Football, fairness and flexibility
- ✓ Employment law – what do we want?
- ✓ A sad day for workers as Trade Union Bill becomes law
- ✓ Musing on May Day



Information from Prospect Legal

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. To download updates, briefings and guides visit: bit.ly/Emp_Legal

