

# LEGAL EYE

## Health & Safety Inspector wins unfair dismissal claim

The employment tribunal finds Prospect member, Loraine Charles, was dismissed unfairly by the Health & Safety Executive.

Loraine had worked for HSE for over 16 years and was very well respected by colleagues. Following an incident in 2016 she was dismissed for failing to comply strictly with procedures on one inspection. At the time many of her colleagues were so outraged by the dismissal that they held workplace protests.

Prospect supported Loraine's case of unfair dismissal and the case was eventually heard over three days earlier this year.

Stephen Marsh, from Garden Court Chambers represented Loraine in the tribunal. Jez Stewart, negotiations officer, gave evidence to the tribunal along with four inspectors who were Prospect union reps or had worked with Loraine.

The Judge found the dismissal was unfair because the manager dealing with the original decision to dismiss and the appeal manager had not followed a fair procedure. Particularly on appeal, new matters were included in the reasons for rejecting the appeal that had not been put to Loraine.

Marion Scovell, head of Prospect legal, said: "We felt strongly that the dismissal was unfair, as did so many of Loraine's colleagues, and I am delighted that she won the case."



Loraine (left) with her witnesses after the last day of the hearing



Prospect & BECTU reps, at the union employment law course in Eastbourne, read their LegalEye during a break [#LegalEye WhereDoYouReadYours](#)

## Prospect seeks judicial review of civil service pay limits

The High Court has determined that an application for judicial review by Prospect, PCS and FDA, should be accelerated and heard in early October.

The action comes after the Cabinet Office issued guidance on pay which limited increases to 1.5% for 2018-19.

The unions wrote to the government on 17 July offering it the chance to withdraw the pay guidance or face legal action. The government failed to respond and revealed in early August that they never intended to consult unions on civil service pay.

Prospect general secretary, Mike Clancy said: "Hundreds of thousands of civil servants are relying on the outcome of this hearing. Prospect is committed to challenging this derisory pay offer which demonstrates the government's unwillingness to engage and reward staff delivering critical national policies, such as Brexit."

## Let's talk Prospect!

This year's union week is 4 - 10 November. During the week there will be an extra push to recruit new members and hold events in workplaces up and down the country.

Members of the legal team will be joining colleagues at these events, so watch out for something in your area.

For further information on union week visit: [bit.ly/2xpcqIF](http://bit.ly/2xpcqIF)



## Tribunal finds Ritzy union reps were unfairly dismissed

The employment tribunal has ruled that BECTU union representatives at Picturehouse's Ritzy cinema were unfairly dismissed in June 2017.

The dismissals occurred within the context of the long-running industrial dispute over Picturehouse's failure to pay the Living Wage.

*The story continues on page 2*



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## Tribunal finds Ritzy union reps were unfairly dismissed

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The dismissals were unfair for a number of reasons, including that there was a lack of neutrality at the investigation and disciplinary stages and there was an assumption of guilt on the part of the claimants.

Disappointingly the majority of the tribunal did not find that the members had been victimised for union duties.

Vicky Phillips, of Thompsons Solicitors, who act for the BECTU sector said: "We are delighted to have assisted BECTU to secure victory for two of their members dismissed by Picturehouse. The case stands as a warning for employers who close their minds to what employees say in their own defence."

For a full report visit:

[www.bectu.org.uk/news/2854](http://www.bectu.org.uk/news/2854)



Living Wage campaigners at the Ritzy Cinema celebrate the tribunal's finding that Picturehouse acted unlawfully when the company dismissed union reps in June 2017.

## Pregnancy related dismissal was unlawful

Prospect member, Niki Savvides, wins her case of unfair dismissal and pregnancy discrimination against the British Museum.

Niki was employed on a one year fixed term contract working on a scheme to train and develop archaeologists in Iraq. The project was due to run for five years and she had expected that her role would continue with the project.

Towards the end of her contract Niki informed her managers she was pregnant. Initially there were discussions about maternity cover. However, the museum decided to change the emphasis of the role. Niki contended the job was so similar that she should have been offered it, but the museum refused to do this and said she could apply when it was advertised externally. Niki did apply but was unable to attend the interview because she was off sick with pregnancy complications and was told her application had been withdrawn.

Prospect presented a claim for automatic unfair dismissal and discrimination on the grounds of pregnancy and maternity.

At the tribunal hearing Niki was represented by Catrin Lewis of Garden Court Chambers. Alan Leighton, Prospect national secretary, appeared as a witness.

The tribunal found the change to the role meant there was a genuine redundancy situation, but as Niki was well suited to the role she should have been offered the job, so the dismissal was unfair. The tribunal also held it was discrimination for the museum to withdraw her application for the job



Clockwise from centre front, Niki Savvides, Marion Scovell, head of legal, Alan Leighton, national secretary, Frances Cusack, assistant legal officer and Catrin Lewis, Counsel.

when she told them she couldn't attend the interview because of her pregnancy.

Marion Scovell, head of Prospect legal, said: "The law provides special protection for women on maternity leave facing a redundancy situation. In this case the tribunal recognised that Niki should have been offered any suitable available vacancy and the museum's failure to do this made the dismissal unfair."

Niki said: "Going through this whole experience was very upsetting and there were many times I wanted to withdraw my case but I'm happy that I persisted and finally won. I am very grateful to Prospect, I wouldn't have made it through without all their help and support."

## Successful appeal on industrial injuries benefit

A Prospect member, who works in the energy sector, has won his appeal tribunal.

Our member had worked for many years using vibratory tools. Over the years, he noticed a tingling sensation and numbness in his hands, with his fingers going white. He was diagnosed as suffering from Raynaud's syndrome.

His symptoms got increasingly worse. His fingers and hands would go numb and he would have difficulty

with routine tasks such as carrying shopping. He applied for industrial injuries benefit, but was not successful because the DWP decided his condition was not severe enough. He sought advice from Prospect.

Frances Cusack, in Prospect's legal team, took up the case. Frances explains: "In order to qualify for industrial injuries disablement benefit, you must show that you are diagnosed as suffering from a condition that has arisen as a result of your employment and that your level of disablement is more than 14%."

Frances worked with the member to gather medical evidence and present

his case. She represented him before the appeal tribunal. The Judge agreed that our member's condition had been under-assessed, and determined the disability at 20%, therefore making him eligible for the benefit.

Frances said: "We are delighted to win the appeal. If any other members are in a similar position, we would encourage them to contact Prospect for assistance."

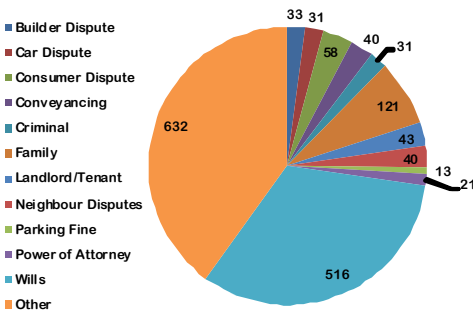


Frances Cusack

## Supporting members outside of work

Prospect and BECTU members can seek initial legal advice from our lawyers on non-work related legal queries.

The chart below shows the number of queries dealt with by Pattinson & Brewer's Legal Line over the last year. This excludes queries for members in the BECTU sector, Northern Ireland, Isle of Man or Channel Islands who are covered by other firms of solicitors.



Over the year there were more than 1,500 calls to the Legal Line for advice. This includes requests for advice on family law, criminal, property/tenancy matters, and consumer queries.

More than 500 members took advantage of the free will scheme.

## New arrangements for legal services in Northern Ireland

A new guide to legal advice for members in Northern Ireland has been published: [bit.ly/2O0BYWz](http://bit.ly/2O0BYWz)

From June legal services for all members in NI are provided by Thompsons Solicitors, who already provide advice for the BECTU sector.



Angela Moffatt

This coincides with the appointment of Angela Moffatt as a dedicated negotiator for NI and the forthcoming opening of our new office in Belfast.

For queries about work contact Angela on 0330 3136927 or email [NI@prospect.org.uk](mailto:NI@prospect.org.uk) and for legal advice on non-work related issues or personal injury contact Thompsons on 0800 587 1278.

## Do you need help or advice?

For employment law & issues at work contact your local Prospect rep or your full time negotiator.

For all general information, advice, or membership queries contact the Prospect Member Contact Centre on 0300 600 1878.

For personal injury or non-work related advice call our solicitors' helplines:

- ✓ Prospect members (except those below) call 0808 28 193 28
- ✓ Bectu sector members (excluding C&D or BT members) call 0800 587 1278
- ✓ All members in Northern Ireland call 0800 587 1278



See our legal advice guide for details of all the legal services for members: [bit.ly/ProspectLegalGuide](http://bit.ly/ProspectLegalGuide)

### To be eligible you must:

- ✓ Be in membership at the time the problem arises
- ✓ Continue to be in membership for the duration of the case
- ✓ Not take independent legal advice before approaching Prospect
- ✓ Not commence litigation before approaching Prospect

## Recruit a colleague today!

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/be-involved/mrm](http://www.prospect.org.uk/be-involved/mrm)

## Legal Word Search

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

### Words To Find:

Appeal	Investigation
Counsel	Probate
Decisions	Qualifying
Defence	Respondent
Hearings	Specialist
Injury	Undertakings
Instruct	Witness

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

### 1) To be eligible for industrial injuries benefit the level of disablement must:

- a) Mean you cannot work again
- b) Be assessed as at least 14%
- c) Be more than trivial

### 2) A woman made redundant while on maternity leave:

- a) Should be offered any suitable available vacancy
- b) Must not be dismissed
- c) Cannot be dismissed for 26 weeks following her return to work

### 3) Harassment is unlawful under the Equality Act...

- a) Only if it is deliberately done to upset someone
- b) Where the perpetrator has been warned before
- c) If it has the purpose or effect of creating a hostile working environment

### 4) Judicial review applications are brought before:

- a) The employment tribunal
- b) The employment appeal tribunal
- c) The high court

### 5) Adjusting workloads or duties for a disabled worker...

- a) Can be a reasonable adjustment under the Equality Act
- b) Must be done if the worker says they can't cope
- c) Is only necessary for junior staff

### 6) To bring a successful personal injury claim against your employer you need to be able to show that...

- a) You ended up in hospital
- b) You were employed for at least six months before the injury arose
- c) It was reasonably foreseeable that your health would suffer

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

## Ask LegalEye

**Q.** I complained to my manager about a colleague making sexist comments in the office. My manager says that as the colleague is not addressing these to me personally there is nothing he can do. What can I do about this?

**A.** This is totally unacceptable. Firstly you should talk to your local Prospect representative for support. Intervention from senior managers or HR may resolve it. The situation is very likely to amount to unlawful sexual harassment under the Equality Act. The Act states that harassment is where there is unwanted conduct related to sex which has the purpose or effect of violating the other's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. It is clear there does not need to be a deliberate attempt to harass. See Prospect's Guide to Sexual Harassment for advice: [bit.ly/2DsfFVJ](http://bit.ly/2DsfFVJ)

**Q.** I have been off work with depression for over nine months. I believe my depression arose because of the excessive levels of work I was expected to do. As it was my employer's fault, can I make a claim for damages?

**A.** You might be able to bring a claim for personal injury, but these cases are very difficult to establish. To succeed you would need to show the employer was negligent in their duty of care towards you, that this caused the injury and that it was reasonably foreseeable that the injury would occur. Cases often fail because of the need to show the employer could have foreseen your health would suffer. You should ring our solicitors' helpline number (see page 3) to be referred to a specialist personal injury lawyer. There might also be employment law issues, as under the Equality Act the employer must make reasonable adjustments for disabled workers; this could include adjusting work-loads or duties. So contact your Prospect negotiator for advice.

*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.*

## Legal news roundup

### GDPR 'Evolution not Revolution'

Prospect legal officer, Jane Copley, gave a presentation at the union's conference in June on the new data protection rules under GDPR.

Jane's message to reps was to ensure we always respect members' privacy and that we have secure and robust procedures to comply with the new rules. For more on this see our briefing at: [bit.ly/2uUSc9R](http://bit.ly/2uUSc9R)



Jane Copley at conference 2018

### LGBT+ rights at work

To coincide with this year's round of Pride events we have produced a new factcard for LGBT+ members on their rights at work.

Prospect members joined Pride marches across the UK.

Two Prospect members explain why marching for LGBT equality is important not just for them but for everyone in this short video: [bit.ly/2xoOSmX](http://bit.ly/2xoOSmX). To download the factcard: [bit.ly/2QBVFTa](http://bit.ly/2QBVFTa)



### Flexible working

We produced a newsletter on rights to work flexibly for an event earlier this year for members at EDF.

The newsletter looks at your legal rights to change hours or location of work and highlights some recent success stories from the Prospect casefiles. Download this newsletter: [bit.ly/2Ovyk4h](http://bit.ly/2Ovyk4h)



### Freelance workers and tax

Our BECTU sector researcher, Tony Lennon, has responded to a government consultation to HMRC on 'Off-payroll working in the private sector' which looks at changes to tax for atypical workers. Download the submission: [bit.ly/2MFaXn4](http://bit.ly/2MFaXn4)



Tony Lennon

### Blog: Contractors, freelancers and agency workers need better rights at work

Decades of change in the labour market, culminating with the rise of zero hour contracts and platform based work has meant that trade union membership has changed. In this blog we look at how Prospect seeks to empower and support contractors, freelancers and agency workers: [bit.ly/2xvQvjC](http://bit.ly/2xvQvjC)



## New Updates from Prospect legal

- ✓ 0450 - Pimlico Plumbers loses workers' rights case in landmark ruling [bit.ly/2PUB6Ah](http://bit.ly/2PUB6Ah)
- ✓ 0451 - Trade union representatives and handling confidential information [bit.ly/2QOfXJk](http://bit.ly/2QOfXJk)
- ✓ 0452 - The date of termination of employment is not extendable in cases of genuine gross misconduct [bit.ly/2xDq4rw](http://bit.ly/2xDq4rw)
- ✓ 0453 - Employer's knowledge of disability [bit.ly/2QUVyCr](http://bit.ly/2QUVyCr)

## Know your rights

Prospect produces a range of guides to help members understand their rights at work, these include fact cards, members' guides and other publications. To download updates, briefings and guides visit: [bit.ly/Emp\\_Legal](http://bit.ly/Emp_Legal)

