

# LEGALEYE

## 'Box ticking exercise' makes dismissal unfair

Prospect member, Trevor Edwards, wins his claim of unfair dismissal against BT.

Trevor was a programme manager, who had enjoyed a long and successful career. He had worked for British Telecommunications for almost 40 years, before being dismissed on grounds of performance in 2014.

Following a spinal operation in 2012, Trevor returned to work to find that a re-organisation meant that he had been placed in a different unit. Soon he had been placed on a performance 'coaching plan' and subsequently marked down, this was despite being new to the role, which was contrary to BT's procedures.

Trevor was supported through the performance process by his Prospect representative, Sue Harding. They appealed against the warnings, but the appeals were rejected and he was given notice that his employment would be terminated.



Trevor Edwards

BT said it had considered alternative roles and yet no attempt was made to place Trevor into a comparable or even a lower graded role. He was told he could continue to look for employment up until his

termination date, during which time he applied for over 50 jobs, but he was unsuccessful because of the under-performance markings.

Prospect negotiator, Johanna Baxter, and legal officer, Jane Copley, advised Trevor and a claim was presented to the employment tribunal. The case was heard over three days in June in the Birmingham tribunal.

## Government to ban check off across the public sector



Prospect members and staff at rallies against the Trade Union bill in London and Edinburgh

The Government has introduced an amendment to the Trade Union bill which will prohibit check off in the whole of the public sector. It is extremely important that Prospect members in the public sector, who pay their subs through deduction from salary, switch to direct debit.

Check off is where workers authorise the employer to deduct union subscriptions from their salary and pay direct to the union.

The amendment to the bill states: "No relevant public sector employer may make trade union subscription deductions from wages payable to workers." The detail of how this is to be implemented will be set out in regulations, which are likely to come into force during 2016.

Check off has already been removed from much of the civil service, but the bill extends this to the whole of the civil service and all other parts of the public sector. It will also apply to private sector organisations with 'functions of a public nature',

which have at least partial public funding. Prospect's employment law update ([bit.ly/1Tfjuli](http://bit.ly/1Tfjuli)) gives more information.

Marion Scovell, head of Prospect Legal, said: "Banning check off is a wholly unjustified attack on unions. The Government has not produced any evidence that it is the costly burden they claim and we understand employer costs are minimal."

The forthcoming ban makes it more important than ever that all Prospect members in the public sector switch from check off to direct debit. See the Prospect video at: [bit.ly/1SraAds](http://bit.ly/1SraAds)

You can make the switch from check off to direct debit [online](#) or call our membership on 01932 577007



Trevor was represented by David Renton, a barrister specialising in employment law.

The tribunal found the dismissal was unfair. The Judge held that BT had been unreasonable in not being more proactive in finding alternative employment for Trevor and the judge found BT had 'seemingly carried out a box ticking exercise with no regard to

the practical realities of what they were doing'.

Jane Copley said: 'I am pleased that the Judge accepted our arguments in this case and that BT's capricious approach to Trevor's employment was rejected. It is appalling that such a large company would not do more to find a suitable job for a long standing manager with such a good record.'



## Prospect at the Court of Appeal



Left to right: Kiran Daurka (solicitor, Slater & Gordon), Amy Rogers (counsel), Sean Jones (Queen's counsel), Mohammad Naeem, Marion Scovell (Prospect)

Prospect was in the Court of Appeal in November with our member, Mohammad Naeem, who was challenging the potentially discriminatory effect of the pay system in the Prison Service.

Muslim chaplains are more likely to be paid at the lower end of the pay scale compared to longer serving chaplains, as they tend to have shorter service. Prospect contends that this is indirect discrimination on the grounds of religion and race.

Prospect presented a claim to the employment tribunal in 2012. The tribunal found the pay system did disproportionately disadvantage employees on the grounds of religion.

But they also held that the difference in pay was justified, largely on cost grounds. Prospect appealed against the finding on justification. The Prison Service cross-appealed on the grounds of disproportionate impact.

The employment appeal tribunal reversed the decision, finding against Mohammed on disparate impact, but they held that the Prison Service had not justified the difference in pay.

Prospect lodged a further appeal to the Court of Appeal, and the case was heard in November.

Very disappointingly the appeal was dismissed and full reasons for the judgment will be issued later on this year.

## Prospect presses for the abolition of tribunal fees

Prospect has presented a submission to the Justice Select Committee Inquiry pressing for the abolition of fees to bring cases to an employment tribunal.

The coalition government introduced a range of new and increased court and tribunal charges, including fees of up to £1,200 to bring a claim to an employment tribunal. The Justice Committee is currently holding an inquiry into the impact of these policies.

The number of employment tribunal claims has fallen by almost 70% since fees were introduced in July 2013. It is clear that the excessive fees to bring claims are pricing many workers out of justice. In the submission to the select committee, Prospect expressed fundamental opposition to fees.

Marion Scovell, head of Prospect Legal, states in the submission: "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 through its onslaught on workers' rights over the last five years, but have also removed the opportunity for many workers to pursue valid claims."

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

Prospect's submission can be found at: [bit.ly/1PDm1AF](http://bit.ly/1PDm1AF)

## Sex discrimination case settles before 12 day tribunal hearing

A Prospect member has successfully settled her long running case against sex discrimination at work.

Our member works for a Government agency. Following a change of roles she raised a grievance against her manager about sexual harassment and bullying. Much of the grievance was upheld. As a result the employer improved their harassment policy.

It was untenable for her to continue working with the manager. However the employer responded by moving her to a less desirable role, with a long term effect on her pay and career development.

Prospect presented a claim of sex discrimination and victimisation to the employment tribunal. After a preliminary hearing the case was listed for a full hearing. An attempt at judicial mediation failed, but eventually the case settled shortly before the final hearing. As a result she was re-graded, received compensation and an apology. Most importantly she is now able to get her career back on track.

Marion Scovell, said: 'It is sad that it took lengthy legal action to resolve the case. Our member bravely fought to improve the situation not only for herself, but also for colleagues'.

## 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)



## Know your legal 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 to keep you up to date on changes taking place, these can be found at [bit.ly/emp\\_law](http://bit.ly/emp_law)





## Prospect launches new legal services



The Prospect legal team meet with Pattinson & Brewer at their offices

From 1 October 2015 Prospect has a new legal advice service with solicitors Pattinson & Brewer (see [bit.ly/21vax64](http://bit.ly/21vax64) for full details).

The union is uniquely placed to assist with problems at work. In most areas we know the organisation you work for and the terms and conditions that apply to employees. Our workplace knowledge, combined with our legal expertise, provides you with an invaluable service.

Prospect pays the fees involved in bringing cases to tribunals and courts whenever we support a claim on your behalf.

Members are also eligible for advice from highly specialised lawyers on personal injury claims. Unlike other firms, you can rest assured that by bringing your claim through Prospect's solicitors you will always retain 100% of your damages payments.

For advice about rights at work contact your Prospect representative or negotiator

For most other legal services, Including:

- ✓ Making a claim for personal injury
- ✓ Free initial advice on non-work related issues
- ✓ Wills, defamation, clinical negligence, & criminal injuries
- ✓ Discounted legal services

**Call LegalLine on 0808 28 193 28**

See our new guide to Prospect legal advice at: [bit.ly/1VilB5P](http://bit.ly/1VilB5P)

## 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.
- ✓ Read our guide to legal advice for more details ([bit.ly/1VilB5P](http://bit.ly/1VilB5P))



### More from ProspectLegal:

- ✓ 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)

### Zero Hours Contracts (ZHCs)

In a special update Linda Sohawon details the present situation with ZHCs, analyses their effects and gives details on how Prospect is campaigning on ZHCs, this can be found at: [bit.ly/1PDjbf6](http://bit.ly/1PDjbf6)

### Legal Word Search

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

Words To Find:

Bonus	Leave
Calendar	Office
Christmas	Party
Jumpers	Overtime
Closure	Scrooge
Cold	Snowing
Holiday	Weather

### Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

**1) The ban on check-off is being introduced through:**

- a) Cabinet Office Rules
- b) The Trade Union Bill
- c) The Employment Rights Act

**2) The Royal Courts of Justice are in:**

- a) London
- b) Edinburgh
- c) Reading

**3) How much is the maximum fee to bring a claim to the employment tribunal?**

- a) £950
- b) £360
- c) £1200

**4) How many employment appeal tribunal hearings have Prospect represented members at during 2015?**

- a) 1
- b) 3
- c) 2

**5) Appeals from the employment appeal tribunal go to:**

- a) Court of Appeal
- b) Supreme Court
- c) European Court of Human Rights

**6) What notice does an employer have to give if they are insisting workers take 3 days leave?**

- a) 3 days
- b) 1 month
- c) 6 days

**Answers**

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



## WORKERS' RIGHTS ADVOCATES

Employment rights is one of Prospect's three major campaign priorities for the coming year. A key part of the campaign is celebrating our fantastic representatives who are determined and effective advocates for workers' rights.

The government has launched a wide ranging attack on statutory rights recently. The limits of the law reinforce the need to have strong and effective unions.

Prospect representatives offer advice and representation to members and make a real difference

in the workplace, ensuring fairness, equality, and employment protection.

We will be highlighting profiles of reps, who have assisted members individually or collectively to secure better rights at work, as Workers' Rights Advocates. Look out for this shortly on the Prospect website and in the December issue of Profile.

If you would like to nominate a rep in your branch to be profiled in this series please email [marion.scovell@prospect.org.uk](mailto:marion.scovell@prospect.org.uk)

### Ask LegalEye

**Q. Our office is closed between Christmas and New Year and we have been told that we have to take three days of our leave for this period. Is that right?**

A. Yes, as long as the employer has given you notice, they can determine when you take your leave. Many organisations close over the festive period and say employees must take the days as part of their leave, even if they would rather work. Under the working time regulations an employer must give at least two days' notice for each full day of leave they are asking you to take.

**Q. I work with a number of suppliers who give gifts at Christmas, these range from calendars to a party with overnight hotel included, can I accept these?**

A. Firstly you should check your contract and staff handbook or rules to see if it says anything about accepting gifts or hospitality. Many companies will have strict rules on this, and you should always be careful to comply. If in any doubt at all check with your manager, and follow up the conversation in writing, so you can be certain about what they have said. Usually small gifts will be fine, but be wary of accepting anything expensive. Sadly, we have seen Prospect members getting into trouble for innocently accepting gifts in the past. Also remember some gifts can be deemed to be income by HMRC and will be taxable.

**Note** the answers in this column are 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.

### ProspectLegal: on the road in 2015

Prospect has supported members in a number of cases at tribunals and courts in 2015.

The map below shows the venues with the number and type of hearings. Several of these cases have been reported in LegalEye over the year. Many cases are on-going, where earlier hearings were adjourned or we are waiting for final hearings next year.

