

# LEGALEYE

## A year with Pattinson & Brewer

Pattinson & Brewer (P&B) have been Prospect's main legal services provider since 1 October 2015.

The LegalLine telephone advice service has taken over 1,000 calls on a range of legal issues, including; property and tenancy issues, family law and consumer problems.

In the first year of working together P&B have taken on 226 personal injury claims for Prospect members.

We asked Frances McCarthy, Managing Partner at P&B to talk about a memorable recent case:

*"Advising someone who has been diagnosed with mesothelioma is one of the most difficult and yet most rewarding case for any union lawyer. This is a cancer caused by exposure to asbestos perhaps 30 or 40 years ago. The cases are difficult because often, there is no evidence, witnesses to the exposure cannot be traced, negligent companies have gone out of business and their insurers cannot be identified.*

*We were instructed to act for a Prospect retired member.*

*Mesothelioma is always fatal and very often the most pressing concern of the affected person is to try to get their affairs sorted out before they die.*

*We went to see him immediately and took a detailed statement. We discovered that during the course of his job as an engineer he had been negligently exposed to asbestos at various power stations. He found it a comfort that the union had got things moving so quickly.*

*We made claims against various companies; identified their insurers and instructed a specialist to prepare a medical report.*

*We started court proceedings by May and used an accelerated procedure to get an early hearing date. This resulted in the Defendant insurers deciding to negotiate with us rather than go to trial and we were*



Left to right: Jane Copley, Sue Ferns, Rodney Wheeler, Marion Scovell (Prospect) Jamie Hanley, Frances McCarthy (Pattinson & Brewer), Helen Hall, Paula Mitchell, Linda Sohawon (Prospect)

Photo: Joanne O'Brien

*able to finalise the claim with a substantial settlement in early July.*

*Sadly the member died, but his widow has told us that she is so grateful to Prospect for being there when her husband needed them.*

*We are so proud to be Prospect's lawyers and to do our bit to ensure that members get the help they need at difficult times."*

### Asbestos related conditions

For more information on asbestos and the law see [bit.ly/2ddnS1E](http://bit.ly/2ddnS1E).

Prospect's Asbestos Register records details of members' workplace exposure to asbestos. If you have worked with asbestos, please add your details to the register. The register will be used if you ever need to make a claim on your own behalf, or to help pursue claims on behalf of your colleagues or former colleagues. To find out more click: [bit.ly/2dt9EaG](http://bit.ly/2dt9EaG)

For advice on a personal injury claim or for initial legal advice on any non-work issue call LegalLine on 0808 28 193 28.

Members in the Isle of Man and the Channel Islands should call Prospect Legal on 020 7902 6624 to check their local services.

For work related advice contact your Prospect representative or negotiator

## Working for You

The Prospect at Work campaign promotes workers' rights and celebrates the work done by union representatives.

Our updated report Working for You draws together two parts of the campaign, the profiles of Workers' Rights Advocates and a survey of reps earlier this year.

The report looks at the work of Prospect reps, successful cases for members and what we would like to see in the future for employment law. It demonstrates just how important union membership is and the benefits for workers of an organised workplace. You can download working for you from: [bit.ly/Working\\_For\\_You](http://bit.ly/Working_For_You)



## Don't be short-changed on your holiday

Recent case law means holiday pay should include overtime and most other allowances.

A number of legal cases in the last couple of years have extended the scope for arguing that holiday pay, which is a right under the European Working Time Directive, must include the usual level of payment received whilst in work.

Prospect negotiators have been reaching new agreements with employers to ensure members do not lose out.

### Success at Devonport

Representatives at Devonport Royal Dockyard have recently secured agreement with Babcock International over holiday pay. The range of differing agreements, contractual arrangements and shift patterns within the dockyard gave rise to a complex set of negotiations and computations. Jane Copley, legal officer, provided the legal advice to assist the branch and a great deal of preparatory work was required before resolution could be reached.



Jane Copley

Steve Barber, Chair of the Devonport Branch who led on negotiations with the employer, said: "the agreement reached with Babcock is a major step forward and will be used as a basis for any other members who find themselves in the same position."

For a roundup of the case law and the key issues in bringing claims see [bit.ly/2coJMLn](http://bit.ly/2coJMLn)

## Legal news for members in Jersey

**VIBERTS** Viberts, our lawyers in Jersey, have produced a newsletter for Prospect members. This edition includes; settling family disputes out of court, property hunters top tips, trusts and the forthcoming law on age discrimination. To download the briefing click: [bit.ly/2clibpT](http://bit.ly/2clibpT)

## Prison Service appeals tribunal victory



The five members with Declan O'Dempsey, Counsel (2nd left) outside the tribunal

In April five Prospect members in the Prison Service won their tribunal case to be recognised as employees with full statutory rights. However the Prison Service has now appealed to the employment appeal tribunal (EAT) against part of the judgment on three of the cases.

Tracey Betts, Nathan Proctor, Kellyann O'Brien, Cheryl Penn and Matthew Jones were employed as teachers for the Prison Service. They were taken on as 'sessional' staff.

They were told they were not employees and had no rights to holiday, sick pay or pension and no protection against dismissal or redundancy. Prospect took their case to the employment tribunal in Cardiff. The Judge held that the five had full employment status and rights.

The Secretary of State for Justice has appealed against the judgment. They contend that even if the

members are held to be employees on the facts of the case, the contracts of employment are illegal and unenforceable as they had not been recruited under the civil service recruitment principles of fair and open competition.

The appeal only applies in respect of three of the cases. This is because two of the members had previously been employed by the prison in other roles and had been appointed under the usual rules.

The case was due for a further hearing in August to determine the amount of compensation. Shortly before the hearing agreement was reached, the two members received the full value of their claims. The other three members received backdated holiday pay, but the rest of their claims will await the outcome of the appeal.

For a fuller report - [bit.ly/2cx18uU](http://bit.ly/2cx18uU)

## Sexual harassment: is it ever 'just a bit of banter?'

TUC Congress in September unanimously passed an emergency motion condemning sexual harassment at work. Prospect deputy general secretary, Sue Ferns, moved the motion in response to the TUC's recent report 'Still just a bit of banter?'

The report (see: [bit.ly/2docE7N](http://bit.ly/2docE7N)), produced by the TUC and the Everyday Sexism Project, demonstrates just how prevalent sexual harassment is in our workplaces.

Marion Scovell, head of Prospect Legal, blogs on the report and our recent successful tribunal case for a woman member at: [bit.ly/2dyLBdt](http://bit.ly/2dyLBdt)



## Tribunal claim results in reasonable adjustments

Prospect member, Peter, worked in an operational role involving night shifts. He had depression and occupational health advised that he should not work nights. His employer refused to adjust his shifts and moved him to restricted duties, but said this could not continue indefinitely and his job was at risk.

Prospect presented a claim to the employment tribunal arguing that the employer was in breach of its duty to make reasonable adjustments for disabled workers under the Equality Act.

After a preliminary hearing, the employer offered Peter a new role with the adjustments he needed.

Jane Copley, legal officer, said "it was sad it took legal action to resolve this, but great that Peter finally got a new post that suits him."

## Union Week

Prospect has planned a special week of activities to encourage positive discussions in the workplace and recruit new members. There are a number of events planned, including advice surgeries, drop in sessions, legal briefings and cupcakes! Look out for events near you. Visit: [bit.ly/2awQ6ll](http://bit.ly/2awQ6ll) for more information



## Find out about the Trade Union Act

Prospect reps can join a mini training session by telephone with Marion Scovell, head of Prospect Legal, on 22 November 2016 – 12.30 to 13.30. We will discuss what the Trade Union Act means for Prospect. If you would like to join the call, email [Paula.Mitchell@prospect.org.uk](mailto:Paula.Mitchell@prospect.org.uk) to register an interest. Paula will then send you the joining instructions. nearer the time.

## Prospect welcomes BECTU merger



BECTU, the media and entertainment union, is to merge with Prospect next year after its membership voted decisively in favour of joining forces with the professionals' union. The two month long ballot saw 83% of BECTU members who took part vote "yes" to the merger plan.

The Prospect Legal team is delighted by this news and looks forward to working with BECTU members.

## Black History Month: October 2016

Black History Month takes place annually throughout October to raise awareness and celebrate the contribution of Black and minority ethnic communities within British society.

The official webpage for Black History Month: [www.blackhistorymonth.org.uk](http://www.blackhistorymonth.org.uk) has a wealth of news, views, features and resources.

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

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

## Personal Injury Word Search

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

### Words To Find:

Accident	Mesothelioma
Adjustments	Negligence
Asbestos	Regulations
Compensation	RSI
Damages	Solicitors
Deafness	Stress
Injury	Whiplash

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

### 1) What is the maximum compensatory award for unfair dismissal?

- a) 2 years' gross pay
- b) The lower of a year's gross pay or £78,962
- c) There is no maximum

### 2) Holiday pay should:

- a) include overtime and allowances
- b) be calculated on basic pay
- c) include a bonus

### 3) Which artist designed the carpet in the Supreme Court:

- a) Tracey Emin
- b) Damien Hirst
- c) Peter Blake

### 4) At the end of a fixed term contract:

- a) The employer must give you a reference
- b) There is no right to claim unfair dismissal
- c) There may be a right to redundancy pay if the job no longer exists

### 5) Appeals from the employment tribunal go to the...

- a) Employment Appeal Tribunal
- b) Supreme Court
- c) Court of Session

### 6) Under the Equality Act employers should make 'reasonable adjustments' for:

- a) all employees
- b) women being harassed at work
- c) disabled workers

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

## Ask LegalEye

**Q. I have been working on a fixed term contract for three years and it is due to end on 31 October. The job was to do a specific project which ends this month. I have asked about redundancy pay but been told I am not entitled. Is this right?**

**A.** You should be entitled to a redundancy payment when the job comes to an end. In law the non-renewal of a fixed term contract is a dismissal, which means you have the same rights as any other employee to claim unfair dismissal and redundancy. If the work will cease then this is likely to be a redundancy situation, but the employer still has a duty to consider if there is any alternative job they could offer you to avoid the dismissal. If there are no other suitable roles for you, then you will be entitled to redundancy pay, just the same as someone working on a permanent contract. See Prospect's members' guide to fixed term contracts for more details [bit.ly/2dlJhaT](http://bit.ly/2dlJhaT)

**Q. I have a claim going through the tribunal for unfair dismissal. I worked for the company for four years and I am 36 years old. Can you let me know what the maximum compensation is?**

**A.** Compensation for unfair dismissal is in two parts. Firstly, there is the basic award which is a set amount dependent on your age and length of service. In your case the basic award would be £1,916. The second part is the compensatory award and this is meant to reflect your loss of income through being dismissed. But it is limited to a year's gross pay or £78,962, whichever is lower. So if you earned £35,000 a year the maximum payment would be £35,000 plus £1,916. But there are a number of deductions that can be applied, for example if the tribunal thinks you contributed to the dismissal in any way. The calculations are complex so check with Prospect for more specific advice on your case.

*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.*

## Follow us on Twitter



Follow ProspectLegal on Twitter:  
[@LegalProspect](https://twitter.com/LegalProspect)

## LegalFocus: The Supreme Court

### What is the Supreme Court?

The Supreme Court is the final court of appeal in the UK for civil cases and for criminal cases from England, Wales and Northern Ireland. It hears cases of the greatest public or constitutional importance affecting the whole population.

### Team visit

Prospect's legal team went on a tour of the Supreme Court as part of the learning at work initiative. This opportunity also gave the team a chance to get a feel of the court ahead of an upcoming case for Prospect member Mohammad Naeem.

It was a fascinating tour of the court rooms, library and exhibition centre.

We heard about the range of cases being determined, from tax matters to access for disabled people on buses. The art and architecture of the building was also highlighted, including how the SC carpet was designed by the pop artist, Peter Blake.



Various views of the Supreme Court



Sean Jones (Queen's counsel) & Mohammad Naeem outside the Court of Appeal

Photo: Rodney Wheeler

### Prospect appeals to the Supreme Court

The case for our member Mohammad Naeem is due to be heard in the Supreme Court on 14 and 15 November.

Mohammad works as a chaplain for the Prison Service. He is challenging the potentially discriminatory effect of the pay system on the grounds of race and religion.

This case raises extremely significant legal points on the scope of indirect discrimination. It will be heard in the Supreme Court with the case of Essop and others v the Home Office.

For more on Mohammad's case see [bit.ly/LegalEye7](http://bit.ly/LegalEye7)

### Watch live!

Many cases are live streamed on the Supreme Court website, so you can watch the full proceedings as they happen. We will post the link on social media nearer the time or contact Prospect Legal for details.

## New Briefings, Updates & Blogs

### Briefings:

- ✓ 053 - Preliminary hearings and case management orders ([bit.ly/2dggbj1](http://bit.ly/2dggbj1))
- ✓ 054 - Giving evidence in a Tribunal ([bit.ly/2dvVIAu](http://bit.ly/2dvVIAu))
- ✓ 055 - Data Protection Compliance and Best Practice ([bit.ly/2cMZ4N2](http://bit.ly/2cMZ4N2))

### Updates:

- ✓ 0422 - Injunction for inducement to breach contract ([bit.ly/2cN2mzR](http://bit.ly/2cN2mzR))
- ✓ 0424 - ACAS Early Conciliation records April - June 2016 ([bit.ly/2dttane](http://bit.ly/2dttane))

### Blogs:

- ✓ Sexual harassment: is it ever 'just a bit of banter?' ([bit.ly/2d7Oyjh](http://bit.ly/2d7Oyjh))

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

