

# LEGALEYE

## 2017 - Challenges of the Year Ahead

Key issues in employment law on the horizon include; commencement of the Trade Union Act, a further review of employment status and the new gender pay gap regulations.

### Trade Union Act

New rules placing further restrictions on industrial action will come into force from 1 March 2017. The Trade Union Act sets new thresholds for strikes, with all action requiring a 50% turnout along with a majority voting in favour and a higher threshold of 40% voting yes in important public services.

Prospect members more than met these targets in two recent industrial action ballots:

- ✓ In the dispute at AWE plc over changes to the pension scheme, 87% of members who took part in the ballot voted in favour of strike action with a turnout of 68% ([bit.ly/2jz4ifM](http://bit.ly/2jz4ifM))
- ✓ BECTU sector members working for Picturehouse cinemas in Brixton, Hackney & central London, who are seeking pay increases to match the living wage, voted to back strike action by 97% of those voting, with a turnout of 77% ([bit.ly/2jGZER3](http://bit.ly/2jGZER3))



BECTU members at the Hackney Picturehouse on strike in October 2016.

The Act also introduces new hurdles in the ballot and notice to employers for unions to comply with. See our employment law briefing for news on the TU Act. ([bit.ly/2iYMJcq](http://bit.ly/2iYMJcq))

*This story continues overleaf*

## 2016 - Prospect Legal's Year in Numbers

**2.96 million** in damages for personal injury cases

**1160** calls for advice to LegalLine

**77\*** members in the current equal pay case against the Met Office

**54\*** Wreifie photos on our website from the Prospect at Work campaign

**32\*** members won compensation for the employers' failure to consult on redundancy arising from the Hatfield colliery closure

**24** tribunal claims presented (including 2 multiple claims)

**15\*** branch events attended by members of the legal team during Union week

**14\*** profiles of workers' rights advocates

**8\*** days to trigger absence proceedings was an unlawful change of contract said the Court of Appeal

**8\*** blogs in the new employment rights series

**6** submissions to government on workers' rights



Clockwise from top left: Linda Sohawon & Paula Mitchell at the Court of Appeal, Helen Hall & Rodney Wheeler during Union Week, Prospect member Paul Pigott celebrating his tribunal win with his rep David Evans, Mohammad Naeem at the Supreme Court, Five members from the Prison Service outside the tribunal with barrister Declan O'Dempsey, Centre: Prospect reps at conference supporting workers' rights.

**5\*** members won their tribunal case to be recognised as employees

**3** cases settled on the first day of their tribunal hearing

**2** applications to the central arbitration committee for union recognition

**1\*** case in the Supreme Court

*Numbers marked with an \* can be clicked on for further information*

## 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 in the law relevant to members.



**BECTU**

We would like to extend a particular welcome to BECTU members, who joined Prospect at the start of 2017 who will be receiving LegalEye for the first time.

Previous editions can be downloaded from: [bit.ly/AllLegalEyes](http://bit.ly/AllLegalEyes)

## 2017 Challenges:

*continued from page 1*

### Review of employment status

Several high profile examples of employers abusing zero hours contracts and bogus self employment have been in the news in the last year (such as the Uber cab drivers and Sports Direct). Under pressure, the Government has committed to reviewing the law on employment status.

Prospect responded to a Government consultation in December 2016. We argued all economically dependent workers should have full statutory employment protection rights. We also argued for fair tax rules for those working as genuinely self employed, which particularly impacts our freelance members in the BECTU sector.

We drew attention to the fact that abuse of employment contracts is not confined to the sharp end of the private sector, but that members within the civil service have also been denied basic rights. Last year, the employment tribunal ruled in favour of five members who had been refused employment status by the Prison Service. ([bit.ly/1SnexQQ](http://bit.ly/1SnexQQ))

### Brexit

A key issue will be the impact of Brexit on workers' rights. Much of our existing employment law is based on European law, such as; paid holidays, working time limits, protection on transfer of employer, maternity and parental rights.

With a number of mixed messages from the Government on the future of employment law, and concerted pressure from many to repeal and weaken laws deriving from the EU, campaigning to keep all existing rights is a top priority for the union movement.



### Don't cut a single workers' right

In the wake of Brexit the TUC is urging MPs to commit to maintaining every single workers' right at its current level. Visit [bit.ly/2a3cfW](http://bit.ly/2a3cfW) to sign the petition.

Melanie Onn MP, introduced the private members bill Workers' Rights (Maintenance of EU Standards) Bill, but this was talked out by Tory MPs. For more details see the forthcoming blog from Graham Stewart, Prospect Parliamentary Officer.

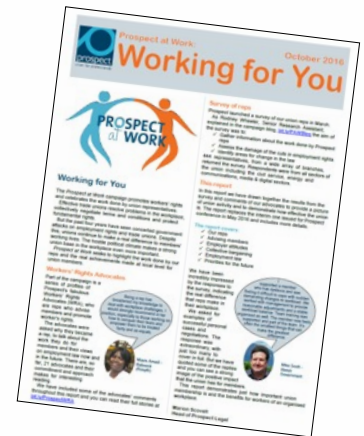
### Equal Pay

For the first time, private sector employers will have to produce information on the gender pay gap. (see article below).

### Future employment rights

Prospect reps identified their top changes to employment law in the 'Working for You' report as:

- ✓ Protection from bullying at work
- ✓ Scrapping the Trade Union Act
- ✓ Improved rights for union recognition
- ✓ An end to employment tribunal fees



You can download Working for you at: [bit.ly/Working\\_For\\_You](http://bit.ly/Working_For_You)

## Gender pay gap reporting: towards equality or just window dressing?



The long awaited regulations, requiring employers to report on the gender pay gap, are due to come into force on 6 April 2017.

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 will apply to all private sector employers in Great Britain with 250 or more employees. Employers will need to publish pay data for each year as to:

- ✓ The difference between average hourly rates of pay for women and men
- ✓ The difference between average bonuses for women and men
- ✓ The proportions of women and men who received bonus pay

- ✓ The proportions of women and men in each quartile of the overall pay range.

Marion Scovell, head of Prospect Legal, said: "Sadly the regulations will do little to resolve equal pay problems. The figures of an overall gender pay gap will be of little help in fighting equal pay claims, where you need data of pay differences between women and men doing equal work. While the legal obligation does not go far enough, Prospect reps will continue to press for full equal pay audits."

A full briefing is at: [bit.ly/2ivq0S5](http://bit.ly/2ivq0S5)

### Fighting for equal pay

Prospect currently has several cases in the employment tribunal on equal pay. There are two multiple claims (against the Met Office and the Ministry of Defence) challenging

inequality on the grounds of sex, largely relating to length of service.

Helen Stevens, Prospect negotiator, talks about her experience campaigning for equal pay in a Prospect video at [bit.ly/2jGLcsq](http://bit.ly/2jGLcsq), Helen talks

about the current issues in the Met Office and the earlier successful tribunal case for members at the Intellectual Property Office. She explains the

mix of litigation, industrial action and negotiations that secured equal pay at the IPO.

We also await the outcome of our case in the Supreme Court, which raises indirect discrimination in pay on the grounds of religion and race.



## Personal Injury Scheme 2016 - Over 100 Successful Cases!

Over the course of 2016, 106 Prospect members have either had their PI scheme case won or settled by Prospect's lawyers. This figure represents a two-thirds success rate.

The overall compensation won for our members was marginally short of £3 million, which is comparable with totals received over the past 5 years (see chart 1) but also quite remarkable when considered against a background of government attacks on "compensation culture", including future plans to limit small claims.

As in previous years, the majority of cases are general injuries (slip/trips, road traffic accidents etc). However, there has been a gradual year on year rise in cases of work-related stress, along with the continual presence of asbestos related diseases, often linked to exposure over 40 years ago.

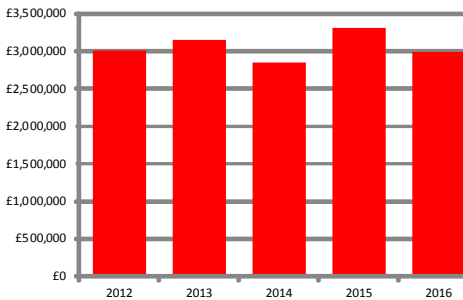


Chart 1: PI scheme compensation totals - 2012 - 2016

### Prospect member wins damages

John Cottingham, had an accident at work. He was injured whilst lifting a heavy generator from a van. He developed a hernia requiring surgery.

He telephoned the Prospect legal line and Prospect's solicitors Pattinson & Brewer (P&B) raised a personal injury claim. They argued there had been a breach of the Manual Handling Regulations and that the employer had failed to listen to the warnings from John, and his colleagues, that the work practices were unsafe. His employers conceded liability.



Frances McCarthy

Frances McCarthy, Managing Partner at P&B said: "Proving the causal link in hernia cases is often difficult, but in John's case the matter was

successfully concluded with a satisfactory settlement being negotiated to cover both the pain and suffering he had endured and his financial losses."

As John had taken the claim through Prospect's Legal Advice Scheme he received all of his damages intact. John said: "I am so pleased that Prospect was there to

support me when I needed them." He was particularly pleased with the service he received from the solicitors commenting "I received the personal touch which made all the difference"

### 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



See our legal advice guide for details ([bit.ly/ProspectLegalGuide](http://bit.ly/ProspectLegalGuide))

### ♥ UNIONS 8-14 Feb 2017

Heartunions week of action is back again to celebrate the great work done by union reps and members in our workplaces and in society. To sign up and for more details visit: [heartunions.org/](http://heartunions.org/) and keep an eye out for news from Prospect.

### Legal Word Search

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

#### Words To Find:

|            |             |
|------------|-------------|
| Appeal     | Multiple    |
| CAC        | Recognition |
| Claim      | Regulations |
| Damages    | Stats       |
| EqualPay   | Supreme     |
| Industrial | Tribunal    |
| Action     | Union       |

### Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

#### 1) The new Gender Pay Gap Reporting Regulations apply to employers with...

- a) 150 or more employees
- b) 250 or more employees
- c) 500 or more employees

#### 2) The new rules on industrial action ballots are expected from?

- a) 1 March 2017
- b) 5 April 2018
- c) 1 October 2017

#### 3) How much compensation for personal injury was recovered by Prospect members during 2016:

- a) £77,000
- b) £1.1 million
- c) £2.96 million

#### 4) Judicial Mediation is conducted by:

- a) An independent arbitrator
- b) ACAS
- c) An employment judge

#### 5) Applications for union recognition are dealt with by:

- a) The central arbitration committee
- b) The employment tribunal
- c) The certification officer for trade unions

#### 6) Under the Trade Union Act industrial action will only be lawful where:

- a) 75% vote in favour
- b) A majority vote in favour
- c) There is a 50% turnout and a majority vote in favour

#### Answers

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

## Ringside at the Supreme Court

Prospect's case challenging pay discrimination was heard in the Supreme Court on 14 and 15 November.

Prospect member Mohammad Naeem works as a chaplain for the Prison Service and his case is challenging inequality in pay on the grounds of religion and race.

Helen Hall, Senior Legal Assistant, blogs a personal account of her day at court: [bit.ly/2iEMq3i](http://bit.ly/2iEMq3i)



The Supreme Court

## Reforming employment tribunals

Prospect has responded to the government consultation on changes to the employment tribunal system.

While welcoming proposals to streamline the process, we are concerned that this is not at the expense of justice for workers. Prospect highlights the dire impact of tribunal fees and that despite the enormous drop in the number of cases there are still excessive delays in the tribunal system.



Frances Cusack, who is currently working part time with Prospect's Legal Team

Prospect's response, written by Frances Cusack, is available at [bit.ly/2iwKEVU](http://bit.ly/2iwKEVU)

## 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)

## Follow us on Twitter



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[@LegalProspect](https://twitter.com/LegalProspect)

## LegalFocus: Judicial Mediation

Judicial Mediation (JM) can be considered in employment tribunal cases. It is a way for the parties to explore a resolution in a much more informal setting than a full tribunal hearing.

JM is offered at the discretion of the Regional Employment Judge, and will usually only apply to multi day and more complex cases. Mediation aims to reach a consensus and is not bound by remedies available in the tribunal.

An Employment Judge, specially trained in mediation, will be responsible for facilitating the JM. The judge will not be legalistic and is not there to decide the strengths of the case.

JM is not binding. If the case is not resolved at mediation it continues to the full hearing. If JM is successful the claim settles and the tribunal application will be dismissed.

### Recent Prospect cases:

#### Two cases successful at JM

- ✓ A member with dyslexia, who was very successful in her job, failed on-line assessments for promotion. Prospect supported her claim to the tribunal and it went to JM. The employer agreed to appoint an expert to examine the assessment process and recommend adjustments for someone with dyslexia. They also paid compensation for loss of promotion and injury to feelings. Following this the member was promoted.

- ✓ A disabled member facing redundancy complained to the tribunal that reasonable adjustments had not been made to the selection process for another role. By the time the case got to JM he no longer thought it was practicable to stay in employment. Through mediation a settlement was achieved of a six figure compensation payment.

#### Two cases failed to settle, but went on to a successful outcome:

- ✓ A member alleging victimisation following raising allegations of sexual harassment had a full day in JM, but the case failed to settle. However, some months later, just before the 12 day hearing was due to start, a settlement was reached which resulted in the member's career being put back on track.
- ✓ Another case failed to settle at mediation and went on to the tribunal hearing. The member won his case and recovered more compensation than had been offered at JM.

## Know your rights at work

Prospect has updated the legal rights at work fact card. There's one for Great Britain and one for Northern Ireland. The new versions are available at: [bit.ly/2itiwCT](http://bit.ly/2itiwCT)



## New Briefings, Updates & Blogs

### Briefings:

- ✓ 052 - The Trade Union Act 2015 ([bit.ly/2if7Ym3](http://bit.ly/2if7Ym3))

### Updates:

- ✓ 0425 - Calculation of holiday pay ([bit.ly/2juqbx4](http://bit.ly/2juqbx4))
- ✓ 0426 - Equality rights in goods, services & cakes ([bit.ly/2icybq7](http://bit.ly/2icybq7))
- ✓ 0427 - Gender Pay Gap Regulations 2017 ([bit.ly/2j6QMUR](http://bit.ly/2j6QMUR))
- ✓ 0428 - Post-termination Restrictive Covenants ([bit.ly/2iiDitM](http://bit.ly/2iiDitM))

### Blogs:

- ✓ Ringside at the Supreme Court ([bit.ly/2iEMq3i](http://bit.ly/2iEMq3i))
- ✓ A victory in the battle against the gig economy ([bit.ly/2iEMAAU](http://bit.ly/2iEMAAU))

## 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)

