

# LEGALEYE

## Prospect wins legal recognition

After a two year campaign Prospect has won the right to be recognised for collective bargaining at Babcock Mission Critical Services (BMCS).

The agreement covers licensed aircraft engineers at BMCS. They provide support to the offshore industry from bases at Aberdeen, Sumburgh, Norwich and Blackpool.

BMCS workers approached Prospect in 2015. Since then, union membership has grown, but BMCS refused to recognise Prospect.

Unions can apply for statutory recognition to the Central Arbitration Committee (CAC). The first stage is for the union to demonstrate they have at least 10% membership in the bargaining unit and that a majority of workers are likely to support recognition.

When the claim was made, Prospect easily met the 10%

membership test, but showing that a majority would favour recognition was more difficult.



Richard Hardy

Prospect ran a survey of members and believed we met the test. However, BMCS challenged

this arguing that the number of workers in the bargaining unit was higher than we thought, making it more difficult to reach the threshold.

Prospect made detailed submissions to the CAC, and was delighted when the panel declared that we met the admissibility tests.

The CAC then ordered there should be a formal ballot of all workers. In order to be recognised, there needs to be a majority in favour and at least 40% of workers in the bargaining unit must vote for recognition.

Workers voted overwhelmingly for Prospect to be recognised. 73% of the workforce voted in the ballot and no one voted against.



Paula Mitchell, from Prospect Legal, meeting members at Diamond Light Source during their learning at work week. Prospect Legal attended to give legal advice and information to members and to lead a talk on Brexit and Employment rights.

"We're thrilled to achieve such a positive outcome," said Prospect national secretary Richard Hardy. "This was a real team effort, involving all the staff in the Prospect Scotland office, negotiators in other regions who visited sites, and the legal team who provided detailed legal advice".

The CAC decisions are at [bit.ly/2ud8IBJ](http://bit.ly/2ud8IBJ). Prospect's updated legal briefing on recognition is at: [bit.ly/2tLHH7O](http://bit.ly/2tLHH7O)

## Employment tribunal fees unlawful

The supreme court has ruled, this week, that employment tribunal fees charged since 2013 are unlawful.

The judgment, in a legal challenge brought by Unison, was released as Legal Eye was going to press.

The court held that the introduction of fees, of up to £1,200, in 2013 had denied workers the opportunity to properly enforce their legal rights. See Prospect's news story for details [bit.ly/2vdEHmQ](http://bit.ly/2vdEHmQ)

And see a video of Mike Clancy explaining why the victory shows how important it is to be in a union [youtu.be/qAh8FolQkaQ](http://youtu.be/qAh8FolQkaQ)

## BREXIT - supporting our EU members

"Don't use people as bargaining chips" is a key message to government from Prospect. This is repeated in the many strands of our work to support members who are EU nationals.



### Prospect members join together

Prospect members working in a number of STEM areas came together in May to discuss their legal rights and look at campaigning issues. The diversity of the group, including members from France, Sweden, Germany, Portugal and Ireland reflects the range of Prospect members affected.

Specialist immigration and equality law barrister, Nicola Braganza from Garden Court Chambers, gave a presentation on the rights of EU nationals living and working in the UK.

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## BREXIT - supporting our EU members



Nicola Braganza, barrister (left) with members at a meeting in May

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Nicola's key advice to members was to ensure they have evidence of residence. "Ultimately, and dreadfully," said Nicola, "we just don't know what will happen to our Treaty rights."

Jenny Andrew, Prospect organiser, reported: "We left the meeting with a call to action. There is a time for a legal approach, and a time for campaigning. Prospect does both but, our real strength is in the collective voice of our members. We have an opportunity to use that voice to shape the Brexit negotiations. Where nothing is sure, everything is possible."

### Worrying gaps

On 26 June the government released a position paper, which sadly raises as many new questions as it provides answers. The proposals remain conditional on securing reciprocal arrangements for UK nationals living in the EU.

Sue Ferns, deputy general secretary said: "The government acknowledges that many important issues are still to be decided, but it has made no attempt to address how or when it will do so. Prospect has consistently argued for a transparent approach, informed by evidence and expertise."

"The stakes for the UK economy, and individuals, are high - which is why this is a union issue" said Sue.

### Frequently asked questions

Prospect Legal has produced a list of frequently asked questions and answers on nationality issues. This is available at [bit.ly/2v3ZmZW](http://bit.ly/2v3ZmZW)

### Workers' rights

Since so many of our employment laws are derived from European Directives (including paid leave, maternity, discrimination and working time), Brexit poses a very real threat to workers' rights. There have been mixed messages from key members of the government on the future of these rights post Brexit.

"So, will we see our rights maintained and enhanced or will we face a bonfire of regulations?" asks Marion Scovell, head of Prospect Legal, in her blog at: [bit.ly/2uA2oFC](http://bit.ly/2uA2oFC)

Prospect Legal have visited branches to discuss with members the possible impact of Brexit on workers' rights and urging members to lobby their MPs.

### EU (Withdrawal) Bill

The bill, published in July, will repeal all existing EU based law on the day we leave the EU, while at the same time converting EU rights into UK law.

So we can expect there to be no immediate loss of rights. But the bill provides very wide ranging powers for the Government to repeal or amend rights after this. See our employment law briefing for more on the bill [bit.ly/2ti60eR](http://bit.ly/2ti60eR)

See Prospect's web pages on all things Brexit, including Nicola's presentation, a number of videos from members participating in the meeting, Mike Clancy on a Facebook live event, blogs and information [bit.ly/ProspectBREXIT](http://bit.ly/ProspectBREXIT)

## Football officials gain workers' rights

Prospect has secured agreement for additional rights for football referees and assistant referees.

Referees and assistant referees who officiate in the Premier League are employees, with full statutory rights, as are referees who officiate in the Championship. But other referees and assistants are not recognised as employees and are engaged in a more informal way.



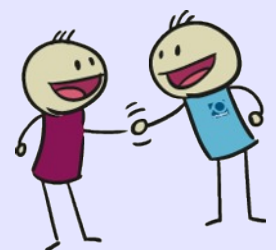
Louise Stanforth, organiser and Alan Leighton

Professional Game Match Officials Ltd (PGMOL) is the body that recruits and governs referees in England and Wales. Prospect has secured agreement with PGMOL that assistant referees officiating in the Championship and the referees and assistants working predominately in Leagues 1 and 2, together with observers and assessors, will now be formally recognised as having the legal status of workers. This means that they will benefit from paid holidays, sick leave, pensions, the right to be accompanied at grievance or disciplinary hearings and all equality rights.

Alan Leighton, national secretary, said: "We are delighted to have secured these new rights for this group of workers".

### 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)





## Flybe cabin crew members win holiday pay

Members of cabin crew at regional airline Flybe have secured enhanced holiday pay.

Prospect was in dispute about Flybe's failure to include flight duty allowance and commission payments in their holiday pay.

Legal Officer, Jane Copley, advised that these additional payments were 'intrinsicly linked' to the performance of the employment contract and so should be included in the calculation of holiday pay, in accordance with recent judgments of the European Court of Justice.

John Stevenson, Negotiations Officer, said: "After Flybe refused to agree payments, we advised members to submit grievances. This eventually led to agreement. Due to the action of Prospect, all cabin crew employees will now receive the correct holiday pay."

See our Employment law briefing for calculation of holiday pay - [bit.ly/2juqbx4](http://bit.ly/2juqbx4)

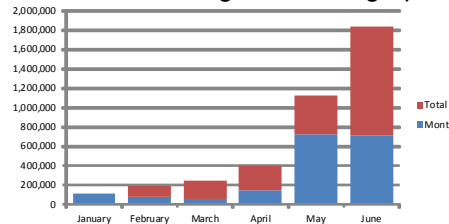


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## Members recover over £2 million in injury claims

Almost £2.5 million has been recovered for Prospect members in first half of 2017 for personal injury.

The graph shows the rising total of compensation recovered for members between January and June 2017. The figures exclude members in the Bectu sector, which has different recording methods, but this adds an extra £650,000 to the figures in the graph.



### Successful injury claim following exposure to chemical smoke

Prospect member, Richard Kemp developed reactive airways disease syndrome ("RADS"), as a result of his exposure to chemical smoke generated from smoke pellets at work. He was assisting in filming a series of smoke visualisation experiments.

Richard was positioned in a control cabin without proper ventilation and when the pellets were ignited he suffered acute respiratory symptoms. He sought advice through Prospect's solicitors, Pattinson & Brewer (P&B).

Richard's solicitor, Marcus Weatherby, said: "The employers

originally denied that anything had gone wrong and it was an unforeseeable reaction to the situation. It was only after legal proceedings were commenced that



Marcus Weatherby

the defendants negotiated and a settlement was agreed." Richard said: "I was pleased that I had the backing of Prospect and their legal team at Pattinson & Brewer. With their help I could take matters further and win damages for what happened."

### 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 the 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))

## Legal Word Search

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

#### Words To Find:

Recognition	Personal
Claim	Injury
Brexit	Employment
Workers	Status
Rights	Unconscious
Holiday	Bias
Pay	Tribunal

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) In order to make an admissible application for union recognition, the union must show:

- a) 50% of the workers are union members
- b) 10% are members and a majority are likely to support recognition
- c) 60% support recognition

2) The recently published Taylor review concerns:

- a) employment status
- b) Workers' rights post Brexit
- c) Pension payments

3) Which of the the following rights derive from EU Directives:

- a) unfair dismissal
- b) national minimum wage
- c) paid holidays

4) The EU (withdrawal) bill will:

- a) repeal all existing EU derived rights
- b) Remove the UK from the EU but continue to apply EU Directives
- c) Repeal EU rights, replacing these with the rights in day one, but allowing powers to repeal and amend after that.

5) Holiday pay should:

- a) Include all payments intrinsicly linked to the performance of the job
- b) Be paid at basic rate
- c) Exclude commission and allowances

6) Claims for union recognition are determined by:

- a) The employment tribunal
- b) High Court
- c) Central Arbitration Committee

#### Answers

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

## Worker, freelancer, dependent contractor – what’s in a name?

The long awaited Taylor review into employment status was published in July.

With the increasing number of high profile cases highlighting the abuse of workers in the ‘gig economy’, there is a growing call for the government to take action to protect the many different types of ‘atypical workers’.

The review’s recommendations are a very mixed bag. There are certainly some welcome points, for example a right to seek a declaration of employment status from an employment tribunal without incurring fees. However overall the report feels like a missed opportunity and will not provide the legal certainty which the law in this area is crying out for.

The proposal for zero hours workers to have a new ‘right to request’ regular hours after they have been working on a zero hours contract with the same employer for a year, will do little to provide the protection required for workers in such a vulnerable position.

The most talked about change is the proposal for the existing category of worker to be renamed ‘dependent contractor’. This seems to be a cosmetic change, very much reflecting the recent cases against Uber, Sports

Direct, etc, but failing to recognise the extent of insecure and atypical working across all sectors of the economy.

Prospect argued in our response to the review that all economically dependent workers should have full employment rights. We are concerned that the Taylor recommendations fall far short of this goal.

### Unconscious bias

Prospect’s Communications team were commended in the TUC media awards for their video presentation on

Unconscious Bias. This short video showcases the work led by Frances Cusack, the newest member of

Prospect’s legal team, on tackling discrimination in the work place. You can see the video at [bit.ly/2uro4AI](http://bit.ly/2uro4AI)



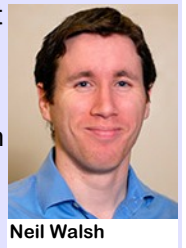
## VOA member secures ill health retirement payout

GB, a Prospect member, retired from the Valuation Office Agency on ill health grounds in February 2016.

He had been led to believe that his partnership pension scheme paid ill health retirement (IHR) benefits up to age 65. He was 64, had been assessed for IHR, met the criteria and had even received a quote on the pension that would be payable. GB accepted IHR on this basis. But he was then told in June 2016 that he was not eligible for any medical retirement benefits. GB was very distressed and sought Prospect’s help.

MyCSP’s grounds for refusing medical retirement benefits were said to be that GB was over the age in the scheme for IHR.

Neil Walsh, Prospect pensions officer, wrote to the Cabinet Office spelling out why MyCSP’s interpretation was incorrect. They had used the wrong statutory rules for the Stakeholder scheme.



Neil Walsh

Neil argued that MyCSP should have referred to the Public Service (Civil Servants and Others) Pensions Regulations 2014 and the Pensions Act 2013. On this basis GB’s ‘normal’ pension age was his statutory pension age of 65.

"To its credit, the Cabinet Office realised that MyCSP had got it wrong and instructed them to pay Stakeholder IHR benefit and GB received £30,246 in February 2017" said Neil.

GB said: "I have been a member of the union throughout my career. I am very grateful for Prospect’s help since my illness started. The union helped me at each stage of my illness to secure my rights and they helped me secure my ill health retirement award. I could not have overcome any of these hurdles without Prospect’s help."

## New Briefings, Updates & Blogs

### Briefings:

- ✓ 019 - Union recognition ([bit.ly/2tLHH7O](http://bit.ly/2tLHH7O))
- ✓ 035 - Compensation & remedies ([bit.ly/2uvRZYp](http://bit.ly/2uvRZYp))
- ✓ 052 - The Trade Union Act 2016 [bit.ly/2if7Ym3](http://bit.ly/2if7Ym3)
- ✓ 056 - Brexit and workers’ rights [bit.ly/2ti60eR](http://bit.ly/2ti60eR)
- ✓ 057 - Changes to data protection laws [bit.ly/2uUSc9R](http://bit.ly/2uUSc9R)

### Updates:

- ✓ 0430 - Apprenticeships: The Safeguarding Vulnerable Groups Act [bit.ly/2tGbwlM](http://bit.ly/2tGbwlM)
- ✓ 0431 - Supreme Court upholds principle of indirect discrimination [bit.ly/2uUT9Py](http://bit.ly/2uUT9Py)
- ✓ 0432 - Failure to apply ‘fair and open competition’ makes employment contract unlawful [bit.ly/2eKugHA](http://bit.ly/2eKugHA)
- ✓ 0433 - Multiple choice test was disability discrimination [bit.ly/2v35YrP](http://bit.ly/2v35YrP)
- ✓ 0434 - Training bonds & fees [bit.ly/2eKdtqo](http://bit.ly/2eKdtqo)
- ✓ 0435 - Multiple tribunal claims [bit.ly/2eK2HHA](http://bit.ly/2eK2HHA)

### Blogs:

- ✓ The Trade Union Act kicks in and unions fight back! [bit.ly/2tVTRb1](http://bit.ly/2tVTRb1)
- ✓ Brexit, employment rights and the general election [bit.ly/2uA2oFC](http://bit.ly/2uA2oFC)

## 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)

