

# LEGALEYE

## Prospect member wins damages in discrimination claim

Sarah Morris worked for the prison service, as a facilitator delivering psychology services, for over 9 years. When she returned to work after maternity leave in February 2017, she asked to work part time but her request was refused.

Sarah needed to work part time for childcare reasons, but also because she had health conditions that led to fatigue. She felt she simply could not manage to work full time. With the support of her local Prospect rep, Sarah challenged the refusal to allow her to work part time. Firstly she asked to work three days a week and when this was refused she offered to do four days. When this application was also unsuccessful, she felt she had no option but to resign.

Prospect presented a claim to the employment tribunal, arguing that Sarah had been unfairly constructively dismissed and subjected to sex and disability discrimination. There was a preliminary hearing and the case was prepared for final hearing. Stephen Marsh of Garden Court Chambers was briefed to represent Sarah at the three day hearing.

The case was eventually settled for compensation on the evening before the tribunal was due to start.

Sarah said: "Whilst I am pleased that the case has been settled, I'm very disappointed with how I have been treated by the Prison Service.

It's saddening that I've had no option but to leave my chosen career."

Caroline Hemmington, Prospect negotiator, who was due to be a witness at the hearing, said: "I was pleased that the case eventually settled so successfully, but it's a shame this was not resolved while Sarah was still employed. It's also very frustrating that it was so last minute and at the point that the union had already committed substantial resources and costs."

Marion Scovell, head of Prospect Legal, said: "In Sarah's case we argued the requirement for her to work full time was indirect sex discrimination, as it would disproportionately adversely affect women workers and could not be objectively justified. Also in this case, there was a strong argument that the reduction in hours should have been granted as a reasonable adjustment, so we believed the Prison Service was in breach of its duty under the disability discrimination provisions."



Sarah Morris & son

## Prospect reps star at the STUC

Two Prospect representatives were honoured at the Scottish TUC in April.

Satnam Ner, Prospect rep and NEC member, ended his year as President of the STUC.

As part of her role, Linda produced a guide on disability discrimination for her own branch, which she also sent to Prospect Legal. When we saw it we decided it should get a much wider audience! We have produced the guide based on Linda's work, which can be downloaded from:

[bit.ly/2xwfPsk](http://bit.ly/2xwfPsk)



Pictured above is a quote from his presidents' address, the full text of which can be found at: [bit.ly/2IGYC3J](http://bit.ly/2IGYC3J)

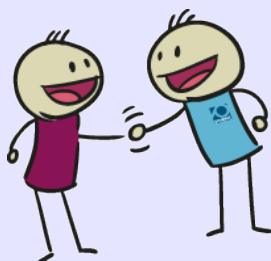
Linda Ford, Prospect rep at the James Hutton Institute, received the equality award. For more on Linda's



Linda Ford (centre) with Grahame Smith, STUC General Secretary and Nicola Sturgeon, First Minister of Scotland

## 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)

or [http://success.bit.ly/2jW9MUk](http://http://success.bit.ly/2jW9MUk)

## Change the law to prevent sexual harassment at work

A change to the law is needed to prevent sexual harassment at work, Prospect's head of legal, Marion Scovell told an influential committee of MPs.

Marion was one of the expert witnesses called to give evidence to the House of Commons Women & Equalities Committee as part of their inquiry into sexual harassment in the workplace.



Marion Scovell at the Women & Equalities Committee

The Committee was examining the use of non-disclosure agreements (NDAs) and the legal advice given to those signing them.

Marion spoke alongside Diana Holland, assistant general secretary, at Unite the Union and Susan Clews, chief operations officer at ACAS.

There has been criticism of the use of NDAs in sexual harassment cases, with concerns that they may be used to conceal improper, discriminatory or even illegal behaviour or to obstruct reporting of such behaviour to the proper authorities.

Marion said that there were two different types of agreements being considered. Firstly, there are NDAs that apply in advance of an event (as we saw reported in the Presidents' Club scandal). She said this type of clause relating to harassment or discrimination was completely indefensible and should be unlawful.

Secondly, there are confidentiality provisions in settlement agreements, when a settlement of a potential tribunal claim is reached. Marion placed caution against a blanket ban on these, as they could be a useful tool for claimants seeking confidentiality too. However, they

should be limited and there should be guidance on their use, in the form of a statutory code of practice.

She observed the number of cases Prospect deals with involving confidentiality clauses in sexual harassment cases were small. This was particularly because union representatives in the workplace very often resolve cases successfully before they escalated to legal claims.

From the allegations against Harvey Weinstein to the Presidents' Club scandal earlier this year, it is clear the law needs to change to protect women in the workplace. Our blog with suggestions for change is at:

[bit.ly/2LKUkHa](http://bit.ly/2LKUkHa)

You can watch the session at the select committee at: [bit.ly/2rBgRx9](http://bit.ly/2rBgRx9)

## Taylor review on employment status

Many Prospect members work in atypical employment, such as in agency work, on zero-hours contracts, or as consultants, freelance or sessional workers. The law does not adequately protect all these workers.

There are four government consultations running as a result of the review of employment status by Matthew Taylor. The legal team, along with Tony Lennon BECTU sector, Researcher, have prepared responses to government. These cover issues of who is an employee, agency workers, enforcement and transparency of rights.

We argue for improved rights for all atypical workers, and for rights to apply from day one of employment.

Prospect's submissions can be found at: [bit.ly/2JiNEBS](http://bit.ly/2JiNEBS)

## Tribunal awards £52,000 in discrimination case

Ann Downie won her case of sex discrimination and unfair dismissal after being made redundant because she could not work full time. We reported the case in Legal Eye in April 2017. The final judgment on remedy was released earlier this year.

Ann, a successful and well respected HR Manager, had worked part time for Coherent Scotland for over nine years, due to child care responsibilities. The company decided they needed a full time HR manager and rejected Ann's suggestions for a job share. They made her redundant when she refused to work full time.

An employment tribunal in Glasgow found the employer's 'blinker' approach to job share was unlawful. They ruled it was an unfair dismissal and unlawful sex discrimination.

The tribunal at the first hearing ordered that the company should reinstate Ann as a HR manager. The company refused to comply, so there was a second hearing on remedy. Ann was again represented by Nicola Braganza, of Garden Court Chambers.

The tribunal accepted the company's arguments that it was not practicable for them to reinstate her and instead ordered compensation of over £52,000.

Ian Perth, Prospect negotiator, said: "This financial penalty should act as a



Left to Right: Ann Downie, Ian Perth and Nicola Braganza.

deterrent against discriminatory work practices. Countless women continue to face discrimination in the workplace and trade unions are able to provide support to help people get a remedy to their injustice."

"It is extremely rare for tribunals to order reinstatement, so it was very disappointing that the company refused to take her back" continued Ian.

Ann said "To address the gender pay gap we need more women in senior roles, notably in science and engineering, and we must challenge the blinkered approach that such roles can only be undertaken by a single full time employee.

"Prospect's support was crucial in fighting and winning my case and trade union membership has never been so important to campaign, fight for and promote equality."

## Cycling accident results in compensation

Ivan Gillespie, from the Isle of Man, had an accident whilst riding his mountain bike. He was on an established mountain bike trail which passes over a number of bridges. He rode over a bridge which consisted of wooden posts that had not been properly secured. His wheel went into a gap resulting in him being thrown from his bicycle. Ivan injured his neck and shoulder which needed specialist physiotherapy and damaged his knee, which required an operation.

Helen Hall Prospect senior legal assistant explains: "Ivan sought advice through Prospect's legal services and I was pleased to say that we cover accidents out of work. We referred Ivan to our lawyers on the Isle of Man, Gelling Johnson Farrant (GJF) and personal injury specialist Chris Grimson took up the case."



Chris Grimson, GJF, at the scene of the accident.

"The insurers for the Isle of Man Government initially denied liability, arguing that they are only responsible for walkers, not cyclists on the trail" continued Helen, "But the case was eventually settled after Court proceedings commenced".

Ivan said: "The union gave this case its backing to the full. My lawyer, Chris Grimson, was excellent. That is the wonderful thing about being a member and I am very grateful to them. Without Prospect's help the claim would not have happened."

## Legal Services for members

Your Prospect membership gives you access to a high-quality, responsive and effective range of legal services.

The union is uniquely placed to assist with problems at work. Our workplace knowledge, combined with legal expertise, provides you with an invaluable service.

### Our legal advice scheme covers:

- ✓ rights at work
- ✓ personal injury
- ✓ LegalLine telephone advice service
- ✓ regulatory, professional and criminal law
- ✓ other legal services on; defamation, clinical negligence, wills and criminal injuries compensation

### 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

### Accessing advice

- ✓ For information, advice and queries relating to membership call the Prospect Member Contact Centre on 0300 600 1878
  - ✓ For employment law & issues at work contact your Prospect rep or your full time negotiator
  - ✓ For personal injury & accident claims call the LegalLine on 0808 2819328 (Members in Northern Ireland, Channel Islands & The Isle of Man should call 020 7902 6624)
  - ✓ For non-work related legal matters call the LegalLine on 0808 2819328
  - ✓ BECTU sector members (non C&D or BT) for non-employment issues (including personal injury & accident claims) call the solicitors helpline on 0800 587 1278
- See our legal advice guide for details ([bit.ly/ProspectLegalGuide](http://bit.ly/ProspectLegalGuide))



## Legal Word Search

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

### Words To Find:

Asbestos	Litigant
Barrister	Negligence
Industrial	Personal
Deafness	Injury
Fees	Vicarious
Interim	Liability
Payments	Whiplash

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

### 1) An NDA is...

- a) No discrimination action plan
- b) A non-disclosure agreement that binds a worker to confidentiality
- c) national disability agreement

### 2) Which employers must report their Gender Pay Gap?

- a) All private, public & voluntary sector employers with 250 or more staff
- b) Public Sector employers
- c) All employers with at least 100 employees

### 3) New tax laws from 6 April 2018 mean...

- a) The whole of a termination payment will be taxable
- b) Holiday pay can be paid tax free
- c) Termination payments will be deemed to include pay in lieu of notice which is taxable

### 4) A failure to allow a woman to work part time after maternity leave, would most likely amount to:

- a) Harassment
- b) Direct discrimination
- c) Indirect discrimination

### 5) Prospect's legal advice scheme covers personal injury claims:

- a) Arising in work or outside of work
- b) Only work-place accidents
- c) Only where the accident happens in England or Wales

### 6) The General Data Protection Regulations come into force from

- a) 25 September 2018
- b) 20 June 2018
- c) 25 May 2018

### Answers

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

## A round up from Prospect blogs on workers' rights

### Women's rights at work - sisters are doing it for themselves

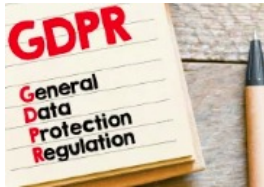
With issues of sexual harassment, unequal pay, a lack of flexible working and



even the shoes we wear, women still face inequality at work. For International Women's Day, we look at some of the issues for women at work in 2018 and how unions successfully tackle these problems. [bit.ly/2H5UsOC](http://bit.ly/2H5UsOC)

### Data protection: all you need to know about GDPR

Data protection legislation is changing as GDPR comes into force on May 25th.



This blog looks at the changes, the implications and what you need to do to ensure compliance. [bit.ly/2jKLaO6](http://bit.ly/2jKLaO6)

### Same-sex pension rights: the government has finally acted on a landmark court ruling

The government has finally responded to last year's Supreme Court ruling



on equal pension benefits for same-sex partners in the event of a scheme member's death. [bit.ly/2rulpF6](http://bit.ly/2rulpF6)

## Gender Pay Gap reporting

From this April all organisations with 250 or more employees are required to report their Gender Pay Gap (GPG).

You can see the GPG for your employer at: [bit.ly/2GuaqSR](http://bit.ly/2GuaqSR)

There was a flurry of activity and media reports as the deadline drew near. In Prospect areas, reflecting the overall trends, pay gaps varied enormously. Some organisations reported pay gaps well below the median figure of 9.7% for all employers, while others were considerably higher. As expected the reports have demonstrated that there is still a glass ceiling barring women from progression to the very senior roles.

As Prospect researcher, Nick Kardahji, reports in his blog ([bit.ly/2KMXZUx](http://bit.ly/2KMXZUx)), the reports must be the start of the process not the end.

Prospect reps will be encouraging employers to take action to reduce the pay gap using a range of measures, including:

- ✓ Undertaking a full equality audit
- ✓ Looking at how the pay gap applies in respect of BAME or disabled staff
- ✓ Reviewing procedures and practices on: appointment, promotion, development opportunities, flexible working & performance management.

Prospect has a new e-learning tool on GPG: [bit.ly/2Wxpjas](http://bit.ly/2Wxpjas)

### Disability pay gap

A new report from the TUC issued on 25 May shows an average pay gap for disabled workers of 15%, showing how important it is that we challenge employers to calculate and act on any pay gaps on disability and race. For the report visit: [bit.ly/2xbrl6T](http://bit.ly/2xbrl6T)

## Prospect legal on the road

Members of the legal team are always happy to come out to branches to talk about all things legal.

Recent events have included legal advice stalls, talks on flexible working, GDPR, equality rights and the role of the union.



Jane Copley, Prospect legal officer, joins Devonport Dockyard recruitment week, where she even gave advice to those queuing for pasties at the Prospect van.

## Taxing termination payments

New rules on taxation of termination payments apply from 6 April 2018.

In brief, the new rules mean that pay in lieu of notice will always be taxable. If the compensation payment does not identify payment in lieu of notice separately, then part of the payment will be *deemed* to be notice pay and will be taxable. The remainder of the payment for compensation for loss of employment will still be subject to the rule that the first £30,000 can be paid tax free. For more on this see our employment law update at [bit.ly/2KYQ3iY](http://bit.ly/2KYQ3iY).

This is complex and if you are in this situation you should always take advice from your Prospect negotiator.



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## New Briefings & Updates from Prospect legal

- ✓ 0445 - On call and working time ([bit.ly/2leSaSg](http://bit.ly/2leSaSg))
- ✓ 0446 - Taxation of termination payments ([bit.ly/2KYQ3iY](http://bit.ly/2KYQ3iY))
- ✓ 0447 - Annual revision of compensation Limits ([bit.ly/2IXB01Y](http://bit.ly/2IXB01Y))
- ✓ 0448 - 90% increase in tribunal claims ([bit.ly/2wC13zL](http://bit.ly/2wC13zL))

## Know your rights

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)

