

LEGALEYE

Tribunal win after speaking out about sexual harassment

Prospect member, Lizzie Walmsley wins her claim of unlawful victimisation after tweeting about sexual harassment and the #MeToo campaign.

Lizzie worked for the Big Lottery Fund as a Public Affairs Manager. In early 2018 she watched Newsnight, which included an item about the President's Club scandal, the harassment of hostesses and non-disclosure agreements. During the programme, she tweeted about her experience of sexual harassment in previous employment from her personal account:

"Having been a hostess, I can confirm you don't have to sign a non-disclosure contract unless there's something an employer wants to hide. 33 years this event has been happening. They knew. #Times Up #MeToo"

Significant media attention arose from her tweet, and on 24 January Lizzie sought the permission of various managers to conduct an anonymous press interview with the Times.

Afterwards she received an email from a senior manager criticising her for lack of judgment and exposing the Fund to reputational damage. The manager followed this up with a meeting where Lizzie was reduced to tears.

Lizzie was supported in raising a grievance by her union rep Tim King and negotiations officer Anna Farey. When the grievance was partially dismissed, they referred her to Prospect's legal team. A claim was made to the employment tribunal. Nicola Newbegin of Old Square Chambers represented Lizzie in the tribunal.

The employment tribunal found that the manager's conduct was unacceptable



Lizzie Walmsley



Some photos from 2018 - see page 4 for Prospect legal's year in numbers

1. Niki Savvides wins her claim of pregnancy discrimination against the British Museum;
2. The legal team reading LegalEye on the tube (Paula, Jane, Frances & Helen);
3. Training reps in Belfast on employment law, with Angela Moffatt, negotiations officer;
4. Met Office members win compensation after their equal pay claim;
5. Jane Copley presenting a session on GDPR at conference;
6. Sarah Morris wins damages after being refused part time working;
7. Marion Scovell gives evidence on NDA's in sexual harassment cases to the select committee;
8. Loraine Charles wins her tribunal claim of unfair dismissal;
9. Frances Cusack talking about workers' rights during union week.

and Lizzie had been victimised.

Lizzie had already decided to leave the Fund before this incident and she changed jobs in February 2018.

Lizzie said: "I'm so glad this is over and that the tribunal has found in my favour. If we as a society are to eradicate sexual harassment and inappropriate behaviour, it is vital that women are permitted to speak out about their experiences without fear or retribution and that the law protects us when doing so.

"Big Lottery Fund suffered no reputational damage from my actions and for them to come down so hard on me in the manner which they did was wholly unjustified and I am glad the tribunal recognised that."

"There are thousands of stories women have told before this one and there are many more still to come. To all the women out there who already have spoken up, thank you. And to all who haven't yet, know that you are listened to and supported. I can't change that I have been sexually harassed, but I can refuse to stay silent about it.

"I could not be more grateful to Prospect whose unwavering support and advice has brought us to where we are now. Without a doubt, they were integral to this win."

Legal Officer Linda Sohawon said: "We are delighted to win this case involving sex discrimination, particularly in the context of the #MeToo movement."

Failure to make reasonable adjustments on recruitment

Prospect member, Philip Hurst, wins a five figure sum in his claim of disability discrimination.

Phil had worked for the Driving & Vehicle Standards Agency (DVSA) as a driving examiner for several years until 2012. However, he sadly suffered debilitating health problems and eventually lost his job.

Phil got new employment in a very different field, and after addressing his health problems he was always keen to regain his career as a driving examiner. In April 2016 he applied to be re-employed by DVSA. He declared his disability and requested reasonable adjustments when he applied. He passed the tests and recruitment process for the job and was contacted about a start date. He requested that adjustments be made to enable him to start the job. At this point he was told that his application was refused because he had previously been dismissed on capability grounds.

Prospect supported Phil with a claim to the employment tribunal on the grounds of disability discrimination. On the first day of the hearing, where Phil was represented by Stephen Marsh of Garden Court Chambers, DVSA accepted that there was a failure to make reasonable adjustments and a judgment was made in his favour along with an order for compensation.

Phil said: "I am saddened I wasn't able to return to a role I thoroughly enjoyed, however I am delighted to have won. The compensation will go a long way to helping my future plans. The support of Prospect has been fantastic throughout and shows the importance of being part of a union." Marion Scovell, head of Prospect legal, said: "We were very happy to win this case, but it is very disappointing that Phil has not been able to continue in his chosen career."



Philip Hurst

Employment rights for freelance workers

Two members from the BECTU sector of Prospect have won compensation for employment rights.

Many workers are engaged on a freelance or consultancy basis and treated as self-employed with no employment rights. That is fine where the worker is genuinely self-employed, but we have seen many cases where workers are being denied statutory rights and the 'self-employed label' is not a true reflection of the working arrangements.

There are three types of employment status; employees with full rights, workers with lesser rights and the genuinely self-employed.

Workers are entitled to some rights such as; holiday pay, the minimum wage, and equality rights. See Prospect's members' guide to atypical workers for more detail on this (bit.ly/2AYFUPR)

Prospect has taken many cases to the tribunal to establish the correct employment status. Two recent cases highlight these issues.

A member had been working as a freelancer for a media company for several months. After raising his right to holiday pay with the employer he was told there was no more work for him. He sought advice from Simon Nightingale, BECTU organising official who raised the case with Prospect legal.

We submitted a tribunal claim for the holiday pay and a claim of

unlawful detriment as he had been dismissed because of seeking to assert his statutory rights. The case was eventually settled with a payment of compensation.

Simon said: "Many freelance workers are entitled to statutory rights, particularly holiday pay. Sometimes the member is not aware of this and often they are losing out. The union can help our members secure these rights."



Simon Nightingale

Another member who had worked for a company as a freelancer for many years was dismissed when the work moved to another part of the country. The company said he was not entitled to redundancy pay because he was not an employee.

Prospect contended that the reality of the working arrangements meant he was an employee. We advised him to make an application to ACAS for early conciliation as a first step towards starting tribunal proceedings. The case settled for the full redundancy payment during conciliation.

See our blog on page 4 for more on employment status.

Success on shared parental leave

Shared parental leave (SPL) allows parents to share 50 weeks of leave and 37 weeks of pay following the birth of a child.

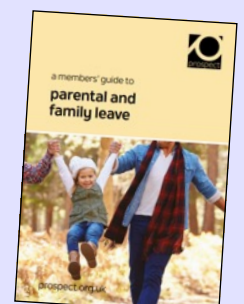
However, many employers who provide enhanced rates of maternity pay (typically 6 or nine months full pay) only pay SPL at the statutory rate (which is usually much lower). In many cases it does not make financial sense for parents to use their SPL entitlements. SPL was introduced in April 2015, but 2018 statistics showed that take up could be as low as 2%.

Prospect brought two employment tribunal cases challenging the employer's failure to pay equivalent shared parental leave to fathers. We argued that the policy of paying

enhanced maternity pay to mothers but only statutory pay to fathers was discriminatory. Both cases settled shortly before a final hearing.

Frances Cusack from Prospect legal said "Prospect welcomes all efforts to give parents greater choice about how to manage childcare and encourages employers to look at their policies to ensure that they are fair for all workers."

For more information on parental and family leave rights see our guide at: bit.ly/2TiCYoB



Accidents can happen - but you are better off with Prospect

Accidents sadly happen when you are least expecting them. But with Prospect membership you can be assured of an effective and totally free legal service.

David Pickavance, a Prospect member from Bangor, recently had an accident when he slipped on a wet, steep and mossy path leading to toilets. He sustained an injury to his knee and shoulder. He felt that the road had been poorly lit and maintained so he approached Prospect's solicitors, Pattinson & Brewer, for advice. They took up the case for him and commenced a legal claim against the council. After months of negotiation a settlement was achieved and David received compensation for his injury.

David said: "I was very pleased with the professional service I got from the union's solicitors. I've been a union member for decades and never thought I would need their help, but this shows how good it is to have a union behind you."



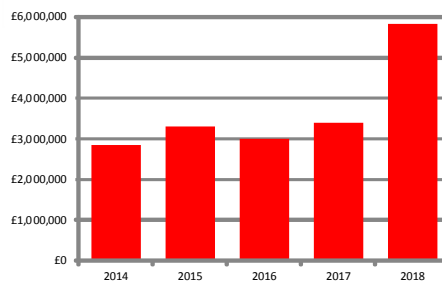
Helen Hall

Helen Hall, senior legal assistant said: "The great advantage of pursuing claims through

our legal scheme is that members recover 100% of their damages, unlike many high street firms who take a percentage."

2018 Personal Injury Scheme

In 2018 Prospect (including the BECTU sector) recovered close to £6 million in compensation for members in personal injury claims. This is the highest figure in recent years, the past 5 years are shown in the chart below.



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

Do you need help or advice?

For employment law & issues at work contact your local Prospect rep or your full time negotiator.

For all general information, advice or membership queries contact the Prospect Member Contact Centre on 0300 600 1878.

For personal injury or non-work related advice call our solicitors' helplines:

- ✓ Prospect members (except those below) call 0808 28 193 28
- ✓ BECTU sector members (excluding C&D or BT members) call 0800 587 1278
- ✓ All members in Northern Ireland call 0800 587 1278



See our legal advice guide for details of all the legal services for members:

bit.ly/ProspectLegalGuide

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

Legal Word Search

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

Words To Find:

Clinical	Medical
Complex	Negligence
Courts	Proceedings
Defamation	Paralegal
Injuries	Prosecution
Jurisdictions	Representatives
Liability	Wills

Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) To treat someone unfavourably because of raising sexual harrasment can be:

- a) Indirect discrimination
- b) Victimisation
- c) Unfair dismissal

2) A father or co-parent can share parental leave for a period of up to:

- a) 50 weeks
- b) One year
- c) 26 weeks

3) Freelance workers...

- a) Have no legal rights at work
- b) Have all legal rights after working continuously for five years
- c) Are entitled to paid holiday

Answers

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

4) Disabled workers are entitled to reasonable adjustments:

- a) Only after they have completed 3 months at work
- b) To be given an automatic interview for a job they apply for
- c) From the start of their employment

5) what is the fee for applying for settled status

- a) No fee
- b) £65
- c) £150

6) Applications for union recognition are brought to...

- a) The employment tribunal
- b) The high court
- c) The central arbitration committee

Prospect Legal - 2018 in numbers:

- 5.5 million+:** In damages for [personal injury claims](#)
- £900,000:** Received by members as a result of settlement of their tribunal case
- £52,000:** Compensation received by one member for a [successful sex discrimination case](#), when she was dismissed for not being able to work full time
- 900+:** Members received legal advice through our solicitor's helpline for non-work issues
- 896:** Followers on twitter for @LegalProspect (let's make it 1,000!)
- 100s:** Of union reps trained on GDPR
- 76:** Members at the [Met Office](#) received payments in respect of their tribunal claim for equal pay
- 29:** New employment tribunal cases
- 14%:** The threshold met to win a welfare benefit tribunal for [industrial injuries disablement benefit](#)
- 6:** Claims to the tribunal for harassment under the Equality Act, two racial and four sexual harassment cases
- 5:** Successful applications for union recognition through the Central Arbitration Committee
- 4:** Health and safety inspectors were witnesses to support their ex-colleague in a [successful tribunal claim](#) for unfair dismissal
- 4:** Submissions to government on improving the law on [employment status](#), transparency in the labour market, enforcement of tribunals, and agency workers
- 3:** Members settle in full their tribunal claims for redundancy payments following the end of their [fixed term contracts](#)
- 1:** Appearance giving evidence to the [Women & Equalities Select Committee](#) on non-disclosure agreements and sexual harassment in the workplace
- 1:** Successful tribunal claim of [pregnancy discrimination](#) against the British Museum
- 1:** Member wins damages in [discrimination claim](#) when she is refused the right to work part time

Blogs round-up

The not good enough work plan



The government describes its Good Work Plan as the 'largest upgrade in a generation to workplace rights', but it is a huge missed opportunity to tackle the blight of insecure work.

The Good Work Plan, published on 17 December, is the result of a number of consultations following Matthew Taylor's review of Modern Working Practices published in July 2017. (bit.ly/2B91Qb9)

Legal successes show why Prospect is good for you



This blog for Prospect's union week in November looks at the benefits of membership (bit.ly/2Cmaind)

Non-disclosure agreements in discrimination

Prospect has made a submission to the Women & Equalities Select Committee on the use of Non-Disclosure Agreements in discrimination cases.

Marion Scovell, head of Prospect legal, argues that pre-event Non-Disclosure Agreements should never be enforceable in respect of discrimination issues arising in the workplace.

Confidentiality provisions in settlement agreements should not be banned entirely, as they can be helpful to the employee, but they should be regulated.

We believe a statutory code of practice should be introduced, to advise employers to use any confidentiality provisions sparingly and not as a matter of course, as is so often the case currently in the private sector.

To read our submission to the Women & Equalities Select Committee visit: bit.ly/2CNuGxJ

Rights for EU Nationals

Prospect continues to lobby for the rights of EU Nationals living in the UK.

We are delighted Thompsons solicitors have produced a detailed guide on how to apply for settled status for Prospect and BECTU members.

Sue Ferns, Prospect's senior deputy general secretary, said: "This guide provides some much needed clarity and support for those applying for EU settled status. We will do everything we can to help those EU workers who work in the UK and wish to stay.

Ever since it was proposed, we have campaigned against the £65 settled status fee, but just because its been scrapped does not mean that is the end of the matter for our members."

Stephen Cavalier, chief executive of leading trade union law firm Thompsons Solicitors, said: "all EU nationals already living in the UK deserve to have their rights guaranteed. Instead, the government is insisting on a complex process."

To download the guide visit: bit.ly/2S110tW



Prospect members at a meeting in May 2017

Know your rights

Prospect produces a range of guides to help members understand their rights at work, these include fact cards, members' guides and other publications. To download updates, briefings and guides: bit.ly/Emp_Legal

