

# LEGALEYE

## Prospect wins sex discrimination case against ONS

Prospect member, Olwen Renowden, won her tribunal claim of sex discrimination after she was denied promotion.

Olwen worked as a grade 7 economist for the Office for National Statistics (ONS).

In February 2017 two senior jobs were advertised at the higher grade 6. Olwen had previously worked at this level and had an impressive career history. However she was rejected for both posts without even being interviewed. The two successful candidates were male. ONS then appointed a third man to another grade 6 economist job without advertising the post.

Olwen noted that there were more than 114 economists in grade 6, but there were no women.

Olwen sought advice from Prospect and presented a claim to the employment tribunal. Her case was heard at the Cardiff tribunal between 7th and 10th January 2019. Ben Middleton, national secretary was a witness as he had accompanied her at the internal grievance. David Renton of Garden Court Chambers represented her in the tribunal.

By the time the tribunal took place Olwen had resigned from the ONS.

The tribunal upheld Olwen's claims of direct and indirect sex discrimination and found she had not been promoted for reasons related to her gender.

ONS was ordered to pay compensation for injury to feelings.

The tribunal found that it was "reasonable to infer that the culture of



[prospect.org.uk/join](http://prospect.org.uk/join)

Olwen Renowden

the respondent is one where advantage and favouritism to males is not recognised as potentially discriminatory".

The employment tribunal agreed that "favouritism" existed towards male staff and that those who should have addressed it, failed to do so, concluding that "the approach to gender balance... pointed towards a culture where discrimination and, in particular, sex discrimination, is not properly understood by those who are required to ensure its elimination".

Olwen said: "I believe this case illustrates an important reason why progress on diversity is so slow. There

could have been five women (or more) on this claim, but only I was a member of a trade union, and had the support to make it possible.

"I hope we can use this result to make a real difference given there are over 1400 economists in government, and our profession is too influential to only represent the few" continued Olwen.

Jane Copley, legal officer, said: "We are pleased with this result, and we hope this sends a strong message to employers that lip-service in respect of gender balance will not be tolerated and they can expect to be challenged on it".

## Seven-year legal battle brings discrimination victory for dozens of civil servants

Almost 50 civil servants who were subjected to race or age discrimination by the Home Office have together secured more than £1m in compensation following a tribunal hearing.

The tribunal came about after a successful case in 2012, when Prospect had won an employment tribunal claim against the Home Office for our member Graham Dean. The tribunal had found that the Home Office's then promotion procedure, using a core skills assessment (CSA),

discriminated against black and minority ethnic (BAME) and older workers.

Following that case the CSA was changed for the future. But the change wasn't applied to other staff, who had previously been affected by the test.

Forty seven further cases were presented by members of PCS and Prospect. PCS members, represented by Thompsons solicitors, were the test cases.

*This story continues on page 2*

## 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.

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

## Seven-year legal battle brings discrimination victory for dozens of civil servants

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Despite having already lost the tribunal in 2012, the Home Office robustly resisted the new claims, with appeals going to the Supreme Court.

The case eventually returned to the employment tribunal for a three week hearing in March 2019. But after the first couple of days, the Home Office agreed to settle all the claims without admission of liability and to pay the 47 claimants £22,000 each.

Nicola Braganza, of Garden Court Chambers, who represented the claimants throughout said:

"These claims concerned serious systemic race and age indirect discrimination in the Home Office promotion processes dating back to before 2003. For years, and as highlighted by the unions, the Home Office was effectively cultivating a white and under 35 management work force in the face of diversity data, that BAME and older staff were being blocked in greater numbers from progressing in their careers."

Marion Scovell, head of Prospect legal, said: "We are delighted that this long running saga is at an end."

Having won Graham's case in 2012, it was very disappointing that the unions were required to present more claims to seek equality for other members affected by the discriminatory promotion process."

A Prospect member included in the successful settlement said: "I only wanted to be interviewed for the role that I had been successfully fulfilling for over a year. Thank you Prospect, for bringing such a demonstrably discriminatory selection system to an end - hopefully for good."



Nicola Braganza

## Equal Pay at the ENO

15 BECTU sector members at the English National Opera (ENO) have benefitted from a negotiated pay review to remedy an equal pay problem.

Union members had raised concerns about unequal pay amongst the technical staff employed by the ENO. The predominantly female workers in the costume, wardrobe and wigs departments found they were being paid less than colleagues in other technical roles such as in props, sound and lighting departments.

A detailed job evaluation study and pay audit showed that many jobs, mostly undertaken by women, had been historically undervalued. This is a classic case of equal pay for equal value. As a result all salaries in costume, wardrobes and wigs were brought in line with those in other technical departments.



Helen Ryan, arts and entertainment assistant national secretary at BECTU, said "We are pleased that ENO has shown great leadership and listened to BECTU members to effectively tackle the gender pay disparity."

Karen Hopkinson, chair of the ENO union branch, added. "It is incredible that we have broken through the first barrier of gender pay equality within theatre, but this is only the first hurdle and only the first company to right a historic wrong."

"I would encourage all of my colleagues within costume, wardrobe, wigs and make-up to feel empowered by this outcome" continued Karen.



Karen Hopkinson (Centre) with two colleagues outside the ENO

## Jersey members win appeal in the Royal Court

The Fire and Rescue Service Association (FRSA) branch of Prospect in Jersey has won the latest round in their battle to enter into arbitration to seek compensation from their employer for changes to their pension scheme.

There was a change to pension arrangements from January, which has left the members worse off and they are requesting compensation from their employer, the States Employment Board (SEB).

The firefighters have historically agreed not to strike as they are classed as an 'essential public service'. This agreement was reached on the basis that the employer would negotiate with them, including going to arbitration if necessary, on issues covered by the agreement.

Prospect members used the Jersey law to complain to the employment tribunal that the employer was refusing to arbitrate with them. They were represented at the tribunal by Prospect negotiations officer, Bob King.

The employment tribunal in 2018 ruled in favour of the union and declared that the case should proceed

to arbitration. SEB sought to appeal but this was initially rejected by the tribunal, so they then took their appeal to the Royal Court.

The case was heard on Tuesday 26 March 2019 in the Royal Court with the union represented

by Advocate Morley-Kirk of Viberts. Judgment was handed down on 18 April.

The Court rejected SEB's appeal and confirmed the original decision of the employment tribunal. The case should now proceed to arbitration.

Bob King, Prospect negotiations officer, said: "I am very pleased that the Royal Court dismissed the States' appeal. These are firefighters, dedicated to public service, and I think they have been treated very shabbily. I am proud of the commitment shown by our members".

"I would also like to thank our Jersey lawyers, Viberts for their excellent representation" continued Bob.



Advocate Morley-Kirk

## Expert advice on PI claims

Prospect and BECTU's personal injury scheme provides members with expert advice and representation. Last year almost £6 million pounds was recovered in damages for members bringing claims.

Personal injury claims can arise where the accident or illness occur through the negligence of the employer or a third party.

Members are eligible for advice in respect of an injury arising from an incident at work, such as a fall or faulty equipment. The scheme also covers members who have developed an illness or disease through work, for example, exposure to asbestos, hazardous substances or work-related stress.

Members, their partner and their children under 19 are also covered for an injury or illness that arises outside of work.

The union's legal scheme means you will receive a high quality and responsive service. Our partner law firms all have well respected specialists in personal injury law and you can rely on their expertise. Unlike many other firms you could go to, by bringing your claim through Prospect's lawyers you will always retain 100% of your damages payments.

**If you have an accident at work Helen Hall, senior legal assistant, who administers PI cases for Prospect, advises:**

- ✓ Always report it to your manager
- ✓ Complete the accident register or book
- ✓ Make a note of what happened and who witnessed it
- ✓ Make a simple map of where the incident occurred
- ✓ Take photos of the site or equipment and of your injuries
- ✓ Consult your doctor and ensure it is recorded
- ✓ Discuss it with your Prospect health & safety rep
- ✓ Contact Prospect Legal for advice on making a claim as soon as possible



## 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)



## Do you need help or advice?

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

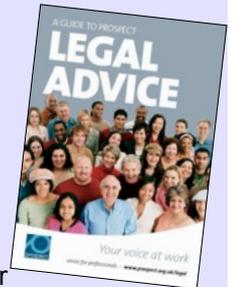
For all general information, advice or membership queries contact the Prospect Member Contact Centre on 0300 600 1878.

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](http://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

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

### Words To Find:

Constructive	Limitation
Damages	Representation
Discrimination	Royal Court
Equality	Safety
Fixed Term	Solicitors
Harassment	Supreme Court
Holiday	Tribunal

## Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

**1) An employer making 50 redundancies must begin consulting with the union how many days before the first dismissal takes effect?**

- a) 90 days
- b) 30 days
- c) 45 days

**2) An appeal from the Jersey employment tribunal goes to:**

- a) The Royal Court
- b) The Court of Appeal
- c) The European Court of Justice

**3) Compensation for injury to feelings is payable in cases for ...**

- a) Unfair dismissal
- b) Failing to renew a fixed term contract
- c) Discrimination

**4) If you have not been paid overtime you were due you could bring a claim of:**

- a) Equal pay
- b) Personal injury
- c) Unlawful deduction of wages

**5) To start a claim to the tribunal you must usually first apply ...**

- a) To ACAS for early conciliation
- b) For permission for leave to appeal
- c) To the Equality & Human Rights Commission

**6) When a woman on maternity leave is facing redundancy the employer must ...**

- a) not treat her any differently to anyone else
- b) ensure that she is given correct notice
- c) offer her any suitable vacancy

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

## Ask LegalEye

**Q.** I am a union rep and we have just heard the company is planning 50 or so redundancies. The CEO said she would set up consultation meetings. What does that involve?

**A.** An employer proposing to make 20 or more employees at one establishment redundant over a 90 day period is under a statutory duty to consult with the recognised trade union. If there is no union, they must consult with workplace representatives. The employer must provide information in writing about their proposals for redundancies. Consultation must be undertaken 'with a view to reaching agreement' and 'in good time'. Where there are 100 or more redundancies, the consultation must begin at least 45 days before the first dismissal takes effect. In any other case it must be at least 30 days before. The consultation must include ways of avoiding the redundancies, reducing the numbers, and mitigating the consequences. See Prospect's Guide to Redundancy - [bit.ly/2KPvbi8](http://bit.ly/2KPvbi8)

**Q.** I worked 10 hours overtime in February, but despite numerous assurances that I will get the overtime pay in my monthly salary this still hasn't been paid to me. Can I take them to a tribunal over non-payment?

**A.** As long as you can show that you were definitely entitled to be paid for the overtime, you could bring a claim of unlawful deduction of wages to the employment tribunal. This claim would need to be started by presenting an application to ACAS for early conciliation within three months of the date the payment was due. You would also need to present a grievance. However before doing that you should contact your union rep to see if they can check with HR or pay roll what the problem is, they might be able to sort it out for you informally. If that doesn't work they will ask the full time officer for advice about the legal process.

*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.*

## Consultation on extending redundancy protection for pregnant women and new parents

Prospect has responded to the government's consultation on extending protection against redundancy to pregnant workers and parents returning from maternity leave.

Currently, where a woman on maternity leave is facing redundancy the employer must offer her any suitable vacancy. In our response to the consultation, we have argued that this protection should be extended to the period of pregnancy and for at least six months after returning to work.

We also believe similar rights should be provided for other employees taking adoption, paternity, shared parental leave, or parental leave, particularly this must include equivalent protection for same sex-couples. See the full submission at: [bit.ly/2UBbpf2](http://bit.ly/2UBbpf2)

## New briefings on tribunal procedures

The process of bringing a case to the tribunal can be a stressful one for members and appearing in front of the tribunal can be daunting.

To assist members who are thinking of pursuing legal action, Prospect has produced a series of employment law briefings on the stages of an employment tribunal claim. The briefings set out some of the considerations members should bear in mind before starting the process as well as looking at what each stage entails. The briefings are available at: [bit.ly/2KsZ8Vg](http://bit.ly/2KsZ8Vg)

## Blogs

### Winning for women at work

Prospect has provided legal support to many women who challenged entrenched discrimination and harassment at work.



Over the decades, it has been the brave and determined efforts of these women which has developed equality law and made the workplace fairer for all.

We are proud of our women members who made a stand for equal rights. This blog highlights our high profile legal successes over the past year ([bit.ly/2ZfTo4k](http://bit.ly/2ZfTo4k))

### Legal action by judges and firefighters could have repercussions for public sector pensions

This blog, from Stewart Mott, assistant pensions officer, looks



at a key case on age discrimination in transition periods in public sector pension schemes

The court of appeal and two employment tribunals, have ruled against the government in two cases relating to judges' and firefighters' pension schemes which could have far reaching consequences for other public sector pensions.

We are now waiting to hear if the Supreme Court will allow an appeal by the government. ([bit.ly/2Zg92wM](http://bit.ly/2Zg92wM))

## New Updates from Prospect legal

- ✓ Compensation & remedies for unfair dismissal and discrimination cases: [bit.ly/2DgBjKe](http://bit.ly/2DgBjKe)
- ✓ Annual revision of compensation limits: [bit.ly/2lqZRVO](http://bit.ly/2lqZRVO)
- ✓ Employment Tribunal cases: [bit.ly/2UoDJMI](http://bit.ly/2UoDJMI)

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

