



(photo: Helen Hall)

Left to Right: Frances Cusack, Prospect Legal Officer, Oluwagbemi Ogundolie and David Renton,

Dismissal for 'minor issue' was unfair

A security officer employed by Interserve and based at BBC New Broadcasting House has won his unfair dismissal claim.

BECTU sector member, Oluwagbemi Ogundolie, had worked for Interserve for 12 years when he was dismissed for failing to report an incident. He was covering for a colleague at the front desk, when an unauthorised individual was escorted out of the building by a member of staff.

Oluwagbemi assumed that the incident would be reported by one of his colleagues for whom this was their main role and so did not report it himself. It later transpired that it had indeed been reported. During the investigation process, Oluwagbemi apologised and said he would handle things differently should such a situation arise again. Despite this, Interserve decided to dismiss him for gross misconduct.

Tony Norton, negotiations officer, referred the case to Frances Cusack, Prospect Legal.

The case was heard at the London Central Employment Tribunal in October. David Renton of Garden Court Chambers represented Oluwagbemi.

The employment judge found that the dismissal was unfair. He said the nature of the allegation was minor and that there was no requirement for every security officer to report the breach.

The judge found that Oluwagbemi believed that a colleague would report this and his only failure was to check that this had been done. Therefore, the judge found Oluwagbemi's actions did not constitute gross misconduct.

Frances said: "There is a high threshold for claimants bringing cases of unfair dismissal. This case is a reminder to employers to properly consider the severity and impact of an employee's actions before taking the decision to dismiss. We believed that the decision to dismiss Oluwagbemi was harsh and are delighted that the judge agreed!"

Oluwagbemi said: "I am very happy that the tribunal found that the decision to dismiss me was unfair. I would not have been able to challenge this without the support of my trade union."

Prospect wins claims for failure to consult

Four licensed aircraft engineers have won their tribunal claim after their employer, FlyBMI, failed to consult with them about redundancy when the company went into liquidation.

Staff were sent an email on Saturday 16 February telling them that the company would be entering administration the following Monday, 18 February and that all staff would be redundant.

Employers are under a duty to consult with the recognised trade union or affected employees. In this case, no consultation occurred prior to the company entering administration and staff being made redundant.

The members, Andrew Gillon, James Hall, James Campbell and Philip Neale contacted their negotiations officer, John Stevenson who referred the case to Frances Cusack, Prospect Legal. The members were represented at the tribunal in October 2019 by David Renton of Garden Court Chambers.

The judge found that this was a serious case, where no consultation at all had taken place. She awarded the maximum compensation of 90 days' pay to each member.

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LegalEye

This is the latest edition of the legal team's regular e-newsletter, which features success stories from around the union and highlights updates and changes in the law relevant to members. Previous editions are at:

bit.ly/NationalNewsletters

If you or someone else would like it in an alternative format, email

prospectlegal@prospect.org.uk



Prospect wins claims for failure to consult



Left to Right: Frances Cusack, Prospect Legal, Steve Jary, national secretary, Tim Maskens, Glenn Smith and Tony Harbron, members at Lydd ATC, and Adam Ross, Old Square Chambers

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Frances said: "We are delighted the judge recognised there was a wholesale failure to consult with the workers. It is important that employees are kept informed, particularly where their livelihood could be at risk.

Unfortunately it is all too common for employers to renege on their duty to consult. In February 2019, Prospect won a case for three members at Lydd Airport following a failure by their previous employer, London Ashford Airport Ltd, to consult staff properly when they were TUPE transferred to a new employer. The judge found in their favour and awarded compensation. For more on this story see: bit.ly/lyddairport.

"Prospect strives to engage with employers to ensure members are consulted about issues affecting them" said Frances "but we will also seek to hold them accountable where they do not comply with their obligations."

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/membersguides

 @prospectlegal



Social Partnership for Wales

In July, the Welsh Government committed to introducing a new Social Partnership Act to promote good quality work and access to employment rights in the public sector and for public procurement contracts.

We asked Prospect negotiations officer, Gareth Howells, who sits on the Wales TUC, to tell us more.

Q: Can you sum up the key provisions of the Act?

A: The partnership builds on engagement with unions and employers. The Act enshrines the current non-statutory social partnership model in law and ensures that agreements reached are enforceable.

Q: Why is this a priority for the Welsh Government?

A: The ongoing nature of the challenges faced at work is well known. The growth of in-work poverty, false self-employment and compulsory zero-hours contracts have had a corrosive effect on the health and well-being of many workers. The First

Minister of Wales, Mark Drakeford, and the Welsh Government strongly supports a social partnership as a means of

progressing agreed agendas of broad benefit to society as a whole.

Q: What are the next steps?

A: The bill will be brought forward before the end of this Assembly term. There is an intention to see a Social Partnership and Fair Work Directorate established within the Welsh Government.

Q: What was Prospect's involvement?

A: The Wales TUC is playing a key role in this through the tripartite (government, employer and union) arrangements in Wales. Prospect, through its membership of the Wales TUC General Council, has made a significant contribution to the development of the social partnership approach.



Gareth Howells

Facts & history matter with workers' rights & Brexit

Read Mike Clancy's blog on the threat to workers' rights bit.ly/rights_brexit



"The **rights** that UK workers enjoy were not just given, but result from **hard fought** trade union and progressive campaigning for reform."

Mike Clancy
General secretary



Applying for settled status?

With continued uncertainty about the impact of Brexit, many Prospect members who are EU Nationals are applying under the government's scheme for 'settled status'.

If you need help or advice on making an application see the excellent guide produced by Thompsons Solicitors for Prospect and BECTU members here: bit.ly/settledstatusguide. If you need more advice contact Prospect Legal.

Thompsons and Prospect are running a phone in session on settled status on 14 November at 13:00-14:00. To register please email pam.virdee@prospect.org.uk with your name and branch.





Damages for negligent dental treatment

A Prospect member wins damages for clinical negligence.

Ms D's dentist failed to identify extensive dental disease, which was later picked up by a hygienist. She was referred to a specialist who undertook a significant amount of dental work, including the loss of several teeth.

She sought advice from Prospect's solicitors, Pattinson and Brewer. The case was taken up by Peter Mordecai, a specialist in clinical negligence cases.

The case was eventually settled out of court for significant damages.

Ms D said: "Peter successfully guided me through the legal maze of my claim for damages. The complexity of the litigation would have baffled me

without his dedication to a successful outcome."

Peter said: "Whilst no amount of money can undo what happened, we are pleased that the matter has settled and our client can move on from this terrible event."

Helen Hall, senior legal assistant explains: "Prospect members can seek specialist advice on legal claims for clinical negligence, where they believe a doctor, hospital – or in this case a dentist – has failed to use due care and attention. Our lawyers will provide free initial advice to determine whether a case looks viable and if appropriate they will advise on possible funding for the case."

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 members) call 0800 587 1278
- All members in Northern Ireland call 0800 587 1278

See our legal advice guide for details of legal services: bit.ly/prospectlegalservices

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



Union week 2019

This year's union week is 9 – 16 November. During the week there will be an extra push to recruit new members and hold events in workplaces to talk about the union.

Members of the legal team will be joining colleagues at these events, so watch out for something in your area:

prospect.org.uk/get-involved/union-week/

Social media: #WeAreProspect #WeAreBectu

The more members we have — the stronger our voice.

Ask your colleagues to join us at www.prospect.org.uk/join or www.bectu.org.uk/join or call **0300 600 1878** for more details.



Paula Mitchell from Prospect Legal heading off for last year's Union Week

Legal Word Search

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

Words to find:

Consultation	Recognition
Discrimination	Freelancer
Compensation	Reasonable
Damages	Adjustments
Unfair	Settled
Equality	Status
Tribunal	Conciliation

Workers' Rights Quiz

All the answers can be found in this edition of LegalEye

1) What is the maximum compensation a judge can award when an employer fails to consult on redundancy?

- a) 50 days' pay
- b) 90 days' pay
- c) 100 days' pay

2) What form of discrimination is currently outlawed in Guernsey?

- a) Sex discrimination
- b) Race discrimination
- c) Disability discrimination

3) If you are injured while having hospital treatment, what type of claim would you have?

- a) Professional misconduct
- b) Personal injury
- c) Clinical negligence

4) The Welsh social partnership model encourages dialogue between:

- a) Government and employers
- b) Unions and employers
- c) Government, unions and employers

5) Protection from Islamophobia at work is covered by what law?

- a) Equality Act 2010
- b) Employment Rights Act 1996
- c) Employment Relations Act 1999

6) The World Health Organisation has declared what an 'occupational phenomenon'?

- a) Hay fever
- b) Diabetes
- c) Burnout

Answers

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



Prevention is better than cure

Prospect has called for a new statutory duty on all employers to prevent sexual harassment at work in our response to the government consultation.

While the consultation predominantly addressed issues of sexual harassment, we called for the provisions to apply in respect of harassment on other grounds as well, including race and sexual orientation.

As trade unions play a key role in promoting equality, we contended a key point to prevent harassment would be to promote collective bargaining.

See our submission: bit.ly/harassmentconsultation

Successful harassment claims

In the last year Prospect Legal has run four employment tribunal cases under the Equality Act, for members who have been subjected to harassment at work.

There were two claims of sexual harassment, where the members had been assaulted at work.

We have also sadly seen a growing number of complaints of racial harassment. We presented claims for two members who had been subjected to Islamophobic comments at work.

All these cases were settled shortly before the tribunal hearing.



These experiences helped inform our response to the consultation above.

Guernsey equality law

The law in Guernsey outlaws sex discrimination, but no other forms of discrimination, such as race, disability, age or sexual orientation.

Prospect Legal was delighted to respond to the recent consultation on a new comprehensive Legal framework.

We supported proposals to take many of the best bits from the law in the UK, Ireland, and Australia and made suggestions for further improvements.

Stephen Langford, Prospect negotiator, said: "Guernsey has very little in the way of employment-related legislation. The adoption of the proposals would be a significant step forward for our members."

See our submission: bit.ly/guern_con



One-sided flexibility

In our response to a government consultation on measures to address 'one-sided flexibility', we raised concerns about unfairness and the lack of financial security for many on zero-hour or other atypical contracts. Usually the so called 'flexibility' only benefits employers and not workers.

We advocated for workers to be given better notice of shifts and to be compensated if shifts are cancelled.

See our submission: bit.ly/onesidedflexibility

Burnout— a workplace hazard

The World Health Organisation (WHO) has declared burnout an "occupational phenomenon".



Prospect legal officer, Jane Copley, looks at what this means for tackling 'burnout' at work.

The legal team deals with many cases for members with stress, anxiety and depression, including claims of disability discrimination and for personal injury.

WHO has included burnout on its International Classification of Diseases (ICD) list. They describe burnout as "resulting from workplace chronic stress that has not been successfully managed". This can lead to exhaustion, depleted energy, negative feelings about work, and reduced effectiveness.

Some commentators have claimed that by 2020, depression will rank second only to heart disease as the leading cause of disability worldwide, which prompts us to consider early intervention methods of stress reduction as well as a renewed focus on dealing with mental health issues.

Despite a myriad of initiatives designed to increase awareness of mental health, employers are still reluctant to address mental health problems. This creates a stumbling block when trying to deal effectively with workplace stress.

It is important that employers create a genuinely supportive culture – as opposed to merely applying policies – and address the early warning signs of stress. All too often, members come to us with mental health issues that need not have escalated if there had been more supportive workplace practices, better informed management and a wider acknowledgement of the seriousness of workplace stress.

For more information see Prospect Members' Guide – Preventing work related stress: bit.ly/preventingstressguide

New from Prospect Legal Briefings—bit.ly/emplawbriefing

- Equal Pay – Identifying & tackling inequality
- Collective Redundancies - Protective Award Claims

Updates—bit.ly/emplawupdate

- Maximum compensation for unfair dismissal
- Shared parental leave, case update
- Calculation of holiday pay

- Inducement to cease collective bargaining
- Equal pay - particular disadvantage
- Woman who called colleague a 'knob head' was unfairly dismissed
- Disability discrimination and job applications
- Whistleblowers and disclosure
- Calculation of holiday pay in NI
- Social media and 'the course of employment'
- Age discrimination