WRIGLEYS
SOLICITORS

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Employment Law BULLETIN

Welcome to our February employment law bulletin.

Our bulletin this month includes commentary on a wide range of issues.

The Advocate General of the European Court has given his opinion in *USDAW v WWW Realisation 1 Limited* (the "Woolworths" case). This concerns the subject of information and consultation about collective redundancies and whether the trigger threshold of 20 employees to be dismissed should refer to the number of dismissals across all of the employer's establishment and not just a single establishment. The Advocate General favours an interpretation which would require the threshold to apply to each establishment before the duty is triggered, an opinion very much in favour of employers with multi-site activities.

The Northern Ireland Industrial Tribunal has applied the ruling of the European Court in *Karsten Kaltolf v The Municipality of Billund* on the question of whether obesity may amount to a disability for the purposes of the Equality Act 2010.

In *Sparks & Others v Department for Transport* the High Court ruled on whether provisions of a staff handbook about absence management were suitable for incorporation into an employee's individual employment contract. In *Stack v Ajar-Tec Limited*, the Court of Appeal has considered whether an unremunerated director was both an employee and a worker. In *Colomar Mari v Reuters Ltd* the EAT took a view on how long an employee could wait before losing the right to resign and claim constructive dismissal following an employer's repudiatory breach of contract.

There are two cases on TUPE. First, in *Salmon v Castlebeck Care* the EAT has confirmed that an employee of a transferor who was dismissed before the transfer but reinstated by the old employer after the transfer was in a position to transfer to the new, transferee, employer. And in *Rynda (UK) Limited v Rhijnsburger* the Court of Appeal has confirmed that a single employee may constitute an organised grouping of employees for the purposes of a service provision change under TUPE.

Finally, may I also remind you of our forthcoming events:
Click any event title for further details.

Interviewing and Selection Skills
• HR Workshop, 3rd March 2015

Capability Dismissals: Performance, Sickness and Mental Health
• Breakfast Seminar, 21st April 2015

and in conjunction with ACAS in the North East:

Understanding TUPE: A practical guide to business transfers and outsourcing
• Full Day Conference, 11th March 2015

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Wherever you see the BAILII logo simply click on it to view more detail about a case

1: DTI Guidance on Fit Notes and the new "Fit for Work" service

The Department for Work and Pensions has updated its guidance for employees, employers and line managers on Fit Notes to include details of the new "Fit For Work" service. The guidance may be accessed ***here.***

2: Increase in compensation limits from 6th April 2015

The Employment Rights (Increase of Limits) Order 2015 (SI 2015 No. 226) was laid before Parliament on 13th February 2015 and will come into force on 6th April 2015. It increases statutory compensation limits where the act complained of falls on or after 6th April 2015. The main changes are as follows.

Provision	Old Limit	New Limit
Maximum amount of a week's pay for the purposes of calculating a redundancy payment or for various awards including the basic award of compensation for unfair dismissal	£464	£475
Limit on amount of compensatory award for unfair dismissal	£76,574	£78,335
Minimum amount of basic award of compensation where dismissal is unfair by virtue of trade union membership or activities, carrying out health and safety activities, and for activities as a health and safety representative, trustee of an occupational pension scheme or employee representative under TUPE Regulation 13, section 188 of TULRE(C)A 1992 or the Working Time Regulations 1998	£5,676	£5,807
Limit on amount of guaranteed payment payable to an employee in respect of any day	£25	£26

3: Collective redundancies, the meaning of "establishment" and the "Woolworths" case in the European Court

As is known, UK legislation on the employer's obligation to inform and consult on collective redundancies provides that the duty is triggered only when 20 or more employees are proposed to be made redundant at any one "establishment". In the so called "Woolworths" case, ***USDAW and Another v WW Realisation 1 Limited (in liquidation) and Others*** (Case C-80/14), the EAT had ruled that the word "establishment" in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 should be ignored and, for the purposes of deciding whether the information and consultation rules are triggered, the threshold of 20 employees should refer to the number of dismissals across all of the employer's establishments, not just a single establishment. In the employment tribunal, each of the Woolworths shops was regarded as a single establishment and, as, in many shops, fewer than 20 employees were proposed to be made redundant, employees lost out on information and consultation. If however, employees across all establishments could be aggregated, the employees would be entitled to information and consultation rights. The EAT ruled in favour of the employees, regarding the words "at one establishment" in the legislation to be incompatible with the Collective Redundancies Directive.

However, the Secretary of State appealed to the Court of Appeal, which referred the case to the European Court of Justice. Another case in Northern Ireland, *Lyttle and Others v Bluebird UK Bidco 2 Limited* (Case C-182/13), involved the insolvency of Bonmarche. The Northern Ireland industrial tribunal referred similar issues to the European Court. Finally, the European Court decided to hear the USDAW case and the Lyttle case together with a referral from Spain in *Cañas v Nexea Gestiôn Documental SA Fondo de Garantía Salarial* (Case C-392/13).

The Advocate General has now given his opinion in these conjoined cases. He has declined to give an opinion favourable to employees and has considered that the word "establishment" should not be ignored. Further, an important aim of the Directive was to provide a minimum level of protection for workers, i.e. its "social protection aim". The Advocate General considered that local dismissals which are below the thresholds concerned do not pose the same threat to the survival of local communities as collective redundancies where more than 20 workers at the same place of business are made redundant. The Advocate General therefore considered that the social protection aim of the Directive did not support the broader interpretation of "establishment".
In his opinion, the word "establishment" denoted "the unit to which the workers made redundant are assigned to carry out their duties", which it is for the national court to determine.

Seemingly then, this would support the notion that a single shop in a national chain of stores such as Woolworths could be an establishment for these purposes. However it was important closely to look at the factual matrix concerning the local employment unit in each case. Thus:

> "To take an example, if an employer operates several stores in one shopping centre, it is not inconceivable that all those stores should be regarded as forming a single local employment unit. As observed by the Spanish government, that will depend on a number of factors:
>
> i. whether the joint entity in question can be said to have a certain degree of permanence and stability;
>
> ii. whether it is assigned to perform one or more given tasks;
>
> iii. whether its workforce, technical means and organisational structure are adequate for the accomplishment of those tasks. It is not necessary for the entity to have legal, economic, financial, administrative or technical autonomy in order to be regarded as an establishment."

The Advocate General's opinion is not binding on the European Court although, as a rule, the Advocate General's opinion is usually followed.

The decision of the European Court is awaited, later in the year.

4: Northern Ireland Industrial Tribunal finds disability harassment by reason of obesity

In the recent European Court of Justice decision in *Karsten Kaltolf v The Municipality of Billund* (Case C-354/13) the European Court considered whether obesity constituted a disability for the purposes of the Equal Treatment Directive 2000/78 (and hence the Equality Act 2010). It held that obesity does not in itself constitute a disability for these purposes but that, under certain

circumstances, the obesity of a worker, if it entails a limitation resulting in particular physical, mental or physiological impairments which hinder the full and effective participation of that person on an equal basis with other workers, then such a condition (provided the limitation is a long term one) can be covered by the definition of disability.

A Northern Ireland industrial tribunal has applied the *Karsten Kaltof* ruling in ***Bickerstaff v Butcher***. In this case Mr Bickerstaff was employed by Randox Laboratories Limited and sued his employer and a number of employees for harassment related to disability. The claimant suffered from gout and had a body mass index (BMI) of 48.5. He also had sleep apnoea and suffered from tiredness and loss of concentration. Generally, he had impaired mobility. One of his colleagues was held to have directed derogatory comments against the claimant for two years almost on a daily basis, commenting (inter alia) that the claimant was "so fat he could hardly walk" and other like abuse, liberally combined with expletives.

Following a detailed discussion of the definition of disability in the light of the *Karsten Kaltolf* case, the definition of harassment, and burden of proof, the industrial tribunal found that the claimant had been harassed and that he was harassed for a reason which related to his disability, namely his morbid obesity condition. This was unlawful disability discrimination.

5: Employer was not entitled to change its absence management procedures

It is trite law that a term which is contractual in nature can only be varied by agreement. A policy or a procedure may however be contained in a document other than the employment contract, such as in a free standing policy or in a staff handbook. If these are not contractual in nature they may be varied. But employers should take care lest the staff handbook has acquired contractual status. This was the problem in ***Sparks & Others v Department*** for Transport [2015] EWHC 181.

The claimants in this case were employed by a number of agencies under the auspices of the Department for Transport (including the DVLA and Highways Agency). The "departmental staff handbook" for each agency contained written provisions concerning attendance management. Although there were variations between each agency the number of days absence required before an informal process was triggered ranged from 8 to 21 days. Following unsuccessful negotiations for change the Department for Transport informed the claimants' trade unions that it would be imposing a new standardised attendance management procedure across all agencies. Under the new procedure, after the first "trigger point" of 5 days or 3 occasions of absence within a rolling 12 month period an informal review meeting was now to be held.

The claimants brought a claim to the High Court for declaratory relief, seeking declarations that the changes to the procedures were invalid, on the ground that the imposition of the new procedures was a breach of contract.

The High Court held that the absence management procedure was, under the original terms of the staff handbook, intended to be contractual. This was because the procedures were contained in part A of the handbook, which generally concerned terms and conditions, as opposed to part B of the handbook, which contained "guidance". Added to this, the provisions related to absence management read as if they were contractual and therefore they were apt for incorporation into the employment contract.

The Department for Transport then argued that the changes introduced were not detrimental but were, in fact beneficial. This was because, it said, it enabled both management and an employee to address any sickness absence issues at the very earliest opportunity and to provide a suitable framework to facilitate a return to work. Furthermore there was no evidence that any employee had actually suffered any detriment as a result of the new policy. However this argument did not hold. The Court held that the changes were detrimental notwithstanding the fact that there had been, as yet, no identifiable case of a specific employee suffering a detriment. Under the old system employees, might, in an extreme case, enjoy 21 days absence before the procedure kicked in. Under the new system they would face the procedure after only 5 days. Therefore there was potential for this to be detrimental to employees.

The Court held that not all of the provisions of the sickness management procedure were apt for incorporation to the employment contract. One example was that an employee was required to ring in to the office about absence by 10am. This would not have been appropriate to be a term of the employment contract as an employee might have been in breach of contract if she had rung in a few minutes after 10am. But the trigger provisions for engagement of the formal process were apt for incorporation. The potential consequences of the procedures were serious and were capable of leading to formal processes that could have resulted in written warnings and dismissal. The provisions were therefore contractual and could not be changed to the detriment of employees.

6: Was an unremunerated director both an employee and a worker?

Yes said the Court of Appeal in ***Stack v Ajar-Tec Limited.***

Ajar-Tec had three shareholders who were each directors, one of whom was the claimant, Mr Stack. He had no written employment contract. He also had other business interests. But for three years he devoted approximately 80% of his time to the company's business. It was common ground that he was never paid and never pursued payment. And there was no provision in the company's accounts reflecting liability to pay him.

But the employment judge, applying the indicia of a contract of service to be found in *Ready Mixed Concrete (South East) v Minister of Pensions and National Insurance* [1968] 2 QB 497, held that there was an express agreement that Mr Stack would do work for the company and it was an implied term that he would (eventually) be paid for what he did. He therefore concluded Mr Stack was an employee. It was unnecessary to decide separately the issue of whether he was a worker, but an analysis of the relevant factors brought the employment judge to the conclusion that he was.

The EAT reversed the decision of the employment tribunal on the basis that it was wrong to find an express contract of employment on the basis of an implied term that Mr Stack should be paid remuneration. In its view the arrangement lacked agreed consideration.

The Court of Appeal reversed the EAT, reinstating the employment judge's decision. The company was incorporated essentially by three promoters, each agreeing to bring different things to the venture. And it was in the nature of the agreement that Mr Stack accepted some obligation to work for the company. In this particular case it was not fatal to the existence of a concluded contract that the three promoters failed expressly to agree a term concerning remuneration.

The process of contract formation may be partly express and partly by implication. Here, given the way the three directors dealt with each other, a term for remuneration could be implied in order to give business reality to the transaction and create enforceable obligations between parties dealing with each other in circumstances in which one would expect that business reality, and those enforceable obligations, to exist.

7: Exchange of emails constituted a settlement agreement

An employee may claim constructive dismissal (and thereby, unfair dismissal) if the employer is in repudiatory breach of the employment contract. This means a serious breach either of an express term of the contract such as demotion or cut in pay or breach of an implied term such as trust and confidence. But an employee may lose the right to claim constructive dismissal if he or she waits too long before ending the contract and resigning. This kind of delay is called, in legal terms "affirmation". If the employee delays and continues in employment after a serious breach, for too long, he or she will be deemed to have affirmed the contract and the claim for constructive dismissal is no longer possible.

What amounts to affirmation depends on the facts of each case. In our July 2014 Employment Law Bulletin we covered the case of *Chindove v William Morrisons Supermarket plc* (UKEAT/0201/13) where an employee was held not to be prevented from resigning and claiming constructive dismissal notwithstanding a considerable delay between the breach of contract complained of and the resignation. Those delays were due to a combination of the employer's delay in dealing with the grievance and the employee's period of sickness.

The issue arose again in ***Colomar Mari v Reuters Limited.*** In this case the claimant claimed she was placed under an unreasonable workload and subjected to an abrasive management style. She also suffered from unwanted conduct amounting to harassment on the ground of sex. This caused her to be off work with stress and depression. When she returned to work she found her previous working area had been reallocated in her absence. She was continually asked to do work which was well below her level of expertise. A grievance which she took out was not dealt with satisfactorily. The final straw was a refusal of access to the IT system for a task which was well within her expertise. Her health relapsed and she was signed off with stress and depression. On 13th October 2010 she wrote to the employer, indicating that the situation was intolerable. However, the claimant continued in employment and accepted contractual sick pay until its expiry after 39 weeks in May 2011.

Eventually she resigned on 8th April 2012, more than 19 months after she had become absent on grounds of sickness and nearly 18 months after she wrote the letter of complaint on 13th October 2010.

The employment tribunal held that she had, by her conduct, lost the right to claim constructive dismissal by her delay and affirmation. In particular she continued in employment after the 13th October 2010 complaint. She repeatedly asked for email access to work. She accepted 39 weeks sick pay. She requested to be considered for permanent health insurance and attended welfare meetings during which her continuing employment was discussed. The employment tribunal also noted that although she was on medication this was on an extremely mild dose and she continued to travel abroad to her parent's home in Ibiza for breaks, as she had previously done when she was well. The tribunal concluded that she was able to take legal advice and did not accept that she was incapable, for medical reasons, of resigning or putting in a claim.

She appealed to the EAT. The EAT applied the case law in the area, including the EAT authority of *WE Cox Toner (International) Limited v Crooke* [1981] IRLR 443. In that case the EAT held that a mere delay by itself does not constitute affirmation of the contract, but if it is prolonged, it may be evidence of an implied affirmation. The importance to be afforded to the acceptance of sick pay should depend on the circumstances which may vary infinitely. Thus according to the EAT in Colomar Mari:

> "At one extreme the employee may be so seriously ill that it would be unjust and unrealistic to hold that acceptance of sick pay amounted to or contributed to affirmation of the contract. At the other extreme an employee may continue to claim and accept sick pay when better or virtually better and when seeking to exercise other contractual rights."

Merely accepting sick pay did not amount to affirmation, but there were other circumstances here. As the question of affirmation is a mixed question of fact and law and since the employment tribunal had applied the law correctly, there was no basis on challenging the employment tribunal's assessment of the facts and Ms Colomar Mari's claim therefore failed.

8: Northern Ireland Industrial Tribunal finds disability harassment by reason of obesity

Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 only employees who are employed in the undertaking or service changing hands *immediately before the transfer,* transfer under TUPE. The only exception is where an employee has been automatically unfairly dismissed on ground of the transfer prior to the transfer. So ordinarily, an employee dismissed prior to the transfer with an effective date of termination prior to the transfer on account, say, of misconduct or performance would not transfer. That is because the employee would not have been employed in the undertaking immediately before its transfer - and the dismissal is certainly not transfer-related.

But there may be an exception where an employee has been dismissed before the transfer and has lodged an appeal, and, following that appeal, is reinstated, even if this is after the transfer. This was the ruling of the EAT in *G4S Justice Services (UK) Limited v Anstey* [2006] IRLR 588. There an employee was dismissed for alleged gross misconduct on 13th April 2005. The employer's contract with the Home Office expired on 30th April 2005 and G4S took the contract over, under TUPE, with effect from 1st May. The former employer heard the employee's appeal in late June/early July. These appeals were successful, the dismissal overturned and reinstatement directed. But the former employer no longer had any work for the employee as the contract had been taken over by G4S. G4S refused to reinstate the employee on that contract on the basis the employer was not employed by the former employer immediately before the transfer. But, applying case law, Judge Peter Clark held that in the case where an employee's later appeal is successful the employee was regarded as not having been initially dismissed. The old employer having determined the appeal in favour of reinstatement, the original dismissals were expunged and the employees were to be treated as having been employed by the old employer up to the transfer date. Therefore the obligation on the old employer to reinstate the claimants to the home office contract transferred to G4S under TUPE.

In ***Salmon v (1) Castlebeck Care (Teesdale) Limited (in administration) (2) Danshell Healthcare Limited*** the EAT took this principle a step further. In this case, employees were again dismissed for alleged gross misconduct on 10th July 2013. They had a contractual right of appeal. Then there was a TUPE transfer from Castlebeck to Danshell. One individual's appeal had been heard before the transfer but not determined. Another employee's appeal was not heard until September 2013. Ultimately, the HR director of Castlebeck upheld their appeals, this being some time after the TUPE transfer. No express decision had been taken by the old employer to order reinstatement or to indicate in clear and unequivocal terms that the original contracts of employment revived. The employees ultimately claimed unfair dismissal in the employment tribunal against both Castlebeck and Danshell. The tribunal upheld their claims against Castlebeck but rejected their claims against Danshell on the basis Danshell had never been their employer.

The employment tribunal's judgment in dismissing the claims against Danshell had been based on two matters. First, it focused on whether there had been a positive decision to reinstate. In G4S the employer had positively ordered reinstatement. In Salmon it had not. Secondly, the actual outcome of the appeal had never been communicated to the employees.

Mr Justice Langstaff upheld the appeal. Relying on *Roberts v West Coast Trains Limited* [2004] IRLR 788 (a decision of the Court of Appeal) he regarded the effect of successful appeal against an earlier dismissal actually reviving, retrospectively, the contract of employment terminated by the earlier decision to dismiss. As such, the employee was to be treated as if [she] had before never been dismissed. Although G4S involved the employer's specific order for reinstatement Langstaff J, did not read Judge Peter Clark's judgment as requiring an order for reinstatement, in order for the contract to revive on there being a successful appeal. And further, the matter was put beyond doubt, according to Langstaff J by the Northern Ireland Court of Appeal decision in *McMaster v Antrim Borough Council* [2010] NICA 45, where the Court stated that, if a contractual disciplinary appeal succeeded:

> "… the employee is reinstated with retrospective effect. As the appeal decision has been taken within the terms of the relevant contract, it is not necessary to effect an express reinstatement to the position previously held by the employee, nor is it necessary to make an offer to him to enter into a new contract in order to continue the contract of employment. If the contractual appeal fails, the summary dismissal takes effect from the original dismissal."

Nor was it necessary to communicate the outcome of a successful appeal. Danshell therefore took responsibility for the employee, dismissed before the transfer, but reinstated only after the transfer. This case highlights the need for due diligence on the part of the transferee of an undertaking. And information about individuals dismissed prior to the transfer and whose appeals are outstanding should be provided by way of employee liability information under Regulation 11 of TUPE.

9: TUPE and service provision: single employee was an organised grouping of employees

The Court of Appeal has, in ***Rynda (UK) Limited v Rhijnsburger*** [2015] EWCA Civ 75 upheld the EAT decision in that case to the effect that a single employee could constitute an organised grouping of employees for the purposes of a service provision change under TUPE.

For a service provision change under regulation 3(1)(b) of TUPE there must have been, prior to the change, an organised grouping of employees, the principal purpose of which was to carry out the activities concerned on behalf of the client. In regulation 2(1) of TUPE it is stated that an organised grouping of employees may comprise a single employee.

In *Rhijnsburger* the claimant had worked for Rynda from the beginning of 2011. Prior to that she was employed by Drivers Jonas Deloitte. For the latter she was first employed under a fixed term contract to manage premises in the Netherlands. Subsequently she took on responsibility both for the Dutch portfolio and also a German portfolio of properties. Latterly, partly for health reasons, she ceased working on the German property portfolio and managed, solely, the Dutch properties. She was the only member of staff engaged in managing the office property portfolio in the Netherlands. Then she transferred employment to Rynda. She was dismissed in October 2011 having, seemingly, insufficient continuity of service to bring an unfair dismissal claim. She therefore claimed that the TUPE transfer from Drivers Jonas Deloitte before she took up employment with Rynda.

Lord Justice Jackson, giving the principal judgment in the Court of Appeal stated that the test was as follows:

> "If company A takes over from company B the provision of services to a client, it is necessary to consider whether there has been a service provision change within regulation 3 of TUPE. The first stage of this exercise is to identify the service for which company B was providing to the client. The next step is to list the activities which the staff of company B performed in order to provide that service. The third step is to identify the employee or employees of company B who ordinarily carried out those activities. The fourth step is to consider whether company B organised that employee or those employees into a "grouping" for the principal purpose of carrying out the listed activities."

In the present case Ms Rhijnsburger, the claimant, devoted all of her time to looking after the Dutch properties. No other employee provided any significant degree of assistance to her in that role. Therefore she was an organised grouping of employees for the purposes of the TUPE Regulations.

Two prior authorities where the employees had not, on the facts, been organised into a grouping for these purposes were *Eddie Stobart Limited v Moreman* [2012] IRLR 356 and *Seawell Limited v Ceva Freight (UK) Limited* [2013] IRLR 726. These cases could however be distinguished. In *Eddie Stobart*, the employees were not organised as to a client but organised as to the shift they worked on. It was a matter of fortuity that a certain client always placed its orders at such a time that the day shift dealt with them. But it was not organised or planned. So to, in *Seawell*, the claimant, Mr Moffat, was part of a team whose members (with the exception of himself) spent most of their time working for customers other than the client in question. And even though Mr Moffat spent most if not all of his time working for the client in question he was not part of a team that did so.

The present case was quite different. The claimant was not part of a team which delivered services to other clients. No other employee assisted the claimant in managing the Dutch properties. She was an organised grouping of employees and necessarily assigned to it.

10: Client Briefing: Employment Status

This client briefing just provides an overview of the law in this area. You should talk to a lawyer for a complete understanding of how it may affect your particular circumstances. In this briefing we highlight some common examples of “some other substantial reason” (SOSR) in the context of dismissing an employee.

Employee status

An employee is an individual who has entered into or works (or worked) under the terms of a contract of employment. The contract can be expressly agreed (in writing or orally) or implied by the nature of the relationship. To have employee status:

- An individual must be obliged to do the work personally (rather than being able to send a substitute);
- The employer needs to be obliged to provide the work and the employee is obliged to accept the work
- The employer needs to have some control over the way the employee carries out the work.

Worker status

Worker status is sometimes seen as a “half-way house” between employee and self-employed status. Workers are entitled to fewer statutory rights than employees but do have some key legal rights, including.

- Protection from discrimination;
- Protection against unlawful deduction from wages;
- Entitlement to the national minimum wage.

Self-employed status

The self-employed enjoy no statutory employment rights (although they may be protected by discrimination law).

What is the significance of the distinction?

LEGAL PROTECTIONS

- Some core legal protections only apply to employees, for example the right:
- Not to be unfairly dismissed;
- To receive a redundancy payment.

HEALTH AND SAFETY

Employers owe employees statutory health and safety protection. Self-employed contractors may not be covered under these duties, although they will be covered under the employer's occupier's liability.

TUPE TRANSFERS

Only an employee will be automatically transferred to any purchaser of the employer's business under a TUPE transfer.

TAX

An employer is responsible for deducting tax and national insurance at source (PAYE) from the salary paid to employees. Self-employed individuals are responsible for paying their own tax and national insurance under self-assessment.

INSURANCE

An employer must take out employer's liability insurance to cover the risk of employees injuring themselves at work. Self-employed contractors are unlikely to be covered by this type of insurance.

LIABILITY

An employer is liable for acts done by an employee in the course of their employment. This type of liability is unlikely to extend to self-employed contractors.

LEGAL STATUS OF VOLUNTEERS

The legal status of volunteers is not clear cut as there is a vast range of different types of relationships, from a purely voluntary to those that are clearly contractual and those in between, which are difficult to define. This ambiguity makes it difficult for organisations taking on volunteers to appreciate any legal obligations that they may owe them.

PRACTICAL TIPS FOR REDUCING THE RISK OF A LEGALLY BINDING CONTRACT

Organisations can reduce the risk of creating a legally binding contract with volunteers by:

- Avoiding making payments to volunteers that could be construed as wages. Payments to cover actual expenses should be clearly identified as such and ideally reimbursed against receipts;
- Removing, or at least minimising, any perks that could be regarded as remuneration;
- Avoiding using language that makes the arrangements sound contractual and adopting flexible language such as “usual” and “suggested”;
- Treating volunteers fairly;
- Having clear procedures for dealing with problems and grievances should help reduce the likelihood of disputes with volunteers.

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