
Employment in community buildings

Employment in community buildings

Most village halls employ some staff, generally part time. As a result trustees must be aware of their responsibilities as employers. This presentation aims to highlight some of the main issues that must be considered by village hall management committees intending to employ or direct someone, to carry out work.

Employee, self employed worker/contractor?

An employee is;

Someone who works under a contract of employment.

A self-employed person is;

Someone who works for himself or herself, instead of working for an employer that pays a salary or a wage.

A worker/contractor is;

Someone who works under a contract or other arrangement for a third party. This would be for example a cleaning company with whom the village hall has a contract.

For the sake of this presentation I will concentrate on the first two – as these are the most likely situations for a village hall.

What is an employee?

Employment status

The essential characteristics of the employment relationship are:

- (a) Obligation upon the worker to do work in return for benefits (financial and/or in kind) and
- (b) Mutual trust and confidence between employer and worker, and some or all of the following characteristics:

An employee

An employee;

- Has specific duties, hours of work and requirements concerning when and how they are to be fulfilled.
- Control of the work by the employer.
- Does not provide her/his own equipment or materials.
- Is an integral part of the employers organisation and forms part of the employer's administration.
- Must give personal service, i.e. cannot get someone else to do the work – 'sub-contract'.
- Bears no degree of financial risk.
- Enjoys other benefits of employment, e.g. paid holidays, pension contributions, a sick pay scheme, maternity/paternity etc.

- The employer will be responsible for the persons tax and NI liability

However - there is no single test of what constitutes employment. Usually it is a mixture of characteristics that point to whether someone is an employee or self-employed. If in doubt, you should check with HM Revenue and Customs.

Employee rights

An employee is entitled to the following rights: immediately

- Written statement of employment particulars.
- The national minimum wage.
- Statutory sick pay.
- Time off for public duties, e.g. jury service.
- Time off to look for work or make arrangements for training when being made redundant.
- Statutory redundancy pay.
- Time off for antenatal care, ordinary maternity/paternity/adoption leave.
- Time off for domestic emergencies.
- Protection under Health & Safety Regulations.
- Notice periods e.g. termination of employment.
- Trade union rights, e.g. time off for trade union duties and activities.
- Right to be accompanied by a trade union official or work colleague to a disciplinary or grievance meeting.
- Rights under the Working Time Regulations 1998, e.g. rest breaks (daily and weekly).
- Rights under the Data Protection Act 1998.
- Rights under the Human Rights Act 1998
- Rights under the Public Interest Disclosure Act 1998
- Not to be discriminated against or to suffer a detriment by reason of seeking to enforce that right, in relation to the protected characteristics covered by the Equality Act 2010

Employee rights cont.

If part-time:

- The right not to be treated less favourably in their contractual terms and conditions than comparable full-timers, unless different treatment is justified on objective grounds.
- Part time employees should be provided with a contract of employment and they have many of the same rights as full-time workers – such as sickness, holiday, payment terms (on pro-rata terms of course) Failure to treat pt workers equally can lead a claim to an employment tribunal.

If employed on a fixed term contract: (quite often used in the vol. sector where positions are 'grant-dependant')

- The right not to be treated less favourably than comparable permanent employees because of their fixed-term status, unless the difference can be objectively justified. The right not to be treated less favourably than permanent employees – e.g. the opportunity to receive training. Avoid using fixed term contracts to attempt to prevent the person that works for you gaining certain rights – beyond 4 yrs of 'fixed-term' contracts, a person is deemed to be a permanent employee and all the rights kick-in!

After 26 weeks continuous employment and employee can expect:

- Additional maternity leave
- Request flexible working arrangements
- Paternity leave
- Adoption leave

After two years continuous employment:

- The right not to be unfairly dismissed - This applies only to employees whose qualifying period starts on or after 6 April 2012 — so anyone employed by the employer on 5 April 2012 remains able to claim unfair dismissal after only one year.
- The right to receive redundancy pay.

Employment Status Indicator

- HM revenue and customs set up an ESI which ascertains employment status for tax purposes and other issues.

www.hmrc.gov.uk/calcs/esi.htm

Self-employed

As a basic rule of thumb - HM Revenue and Customs criteria are that self-employed people:

- Take risks with their own money in taking on the work - for example, they cannot demand extra payment if the work takes longer than originally planned.
- Are able to engage others to do the work on their behalf.
- Can decide where, when, and how the work is done
- Have to put right unsatisfactory work in their own time and at their own expense
- Provide their own equipment and materials
- Can hire someone else to do the work
- Can work for more than one client
- Have their own public liability insurance – separate to that of the village hall – (in the case of a cleaner - if they leave the hall wet and someone slips – or their own equipment starts a fire)

Village halls must be careful when giving work to someone who says that they are self-employed. The concern is that an individual offering themselves for a particular piece of work may not be truly self-employed in the eyes of the law of the Revenue. They may be self-employed in one job, but not in another. Check out the details.

Thus, a person answering an advertisement for a village hall cleaner may claim to be self-employed but, if they do not satisfy the Revenue's criteria, the village hall may find itself liable to the Revenue for unpaid income tax and National Insurance. This can go back 6 years!! If they are 'self-employed' the hall is not responsible for their tax or NI liability.

Suggestion - If someone applies for a position and says they are self-employed – ask for their HMRC code/number – if they do not have one – they are not self-employed. If their employment status for PAYE is not clear use HMRC's Employment Status Indicator

Self-employed

Someone is probably self-employed if they are exempt from PAYE, and if most of the following apply;

- They bid or quote for work
- They are not under direct supervision
- They submit invoices
- Responsible for their own NI and tax
- Don't get holiday or sick pay
- Operate under a 'contract for services/consultancy agreement' that uses a term like self-employed', 'consultant' or 'independent contractor'

Whilst the self-employed have no employment related rights, they do have a right to protection for their Health & Safety, discrimination and any rights set out in the terms/contract. The hall has a 'duty of care' to them and must comply with health and safety law.

Contractors

The village hall may have a contract with a Company, to deliver a service.

This could be a cleaning company who sends one or more of their employees to clean the hall – or a catering company that provides food for events that are run in the hall.

Here, the contract is between the hall committee and the company – not the person that actually undertakes the job.

In any event, the committee must ensure that the hall is a safe environment and that appropriate insurance is in place.

Claims on employment issues

Only an employee can make a claim against the village hall on key employment rights - such as:

- The right to claim unfair dismissal.
- Statutory redundancy payments.
- Maternity and parental leave.
- Statutory sick pay.
- Statutory dismissal.
- Disciplinary procedures.
- Most of the grounds for claiming paid time off.

The truly self-employed have no employment related rights whatsoever, because they are their own “boss” - but they do have protection for their health & safety, discrimination and any rights set out in the terms of their contract with the hall committee.

Legal responsibility of management committees

- Members of the management committee have a number of legal responsibilities which they should take into account when considering employment issues. Some of these responsibilities can be covered by insurance.
- All health and safety issues should be addressed in a positive manner so as to reduce, if not eliminate, exposure to liability.
- Hall committees must register and declare income paid to individuals they employ.

Insurance

- Employers must provide insurance for all employees to protect against accidents; this is required under the Employers Liability (Compulsory Insurance) Act 1969.
- In practical terms, virtually anyone, (full time, NI contributions or not) is likely to be considered an 'employee' under this Act.
- All employers must provide employers' liability insurance and the insurance certificate must be displayed on the notice board.
- A claim against an employer might, for example, be made if there had been a failure to provide a safe environment for the employee to work in and an accident had resulted – the employer will be liable.

Pensions

Until recently there was no obligation for employers to provide a pension.

However, a new law passed in 2012, introduced a duty for every employer to enrol workers into a workplace pension scheme, if those workers:

- Are aged between 22 and State Pension age.
- Earn more than £10,000 a year.
- Work in the UK.

This is called 'automatic enrolment'.

This scheme is being gradually introduced/phased-in between 2012 and 2018 and each employer will be given a staging date by which they have to enrol staff.

For organisations employing less than 30 employees that date will be between 1 November 2015 and 1 February 2018.

In practice, most Village Hall employees are likely to be earning less than the £10,000 threshold and therefore automatic enrolment will not apply. However if you do have staff earning above the threshold you need to check whether any pension scheme you are already operating qualifies under the new regulations (if not you will have to look for a new scheme in which to enrol eligible staff).

For more information go to: <https://www.gov.uk/workplace-pensions-employers>

Health and Safety

Statutory Rights of employees:

- Section 44 of the Employment Rights Act 1996 gives statutory rights for all employees in connection with the health and safety legislation.
 - In summary, safety representatives and other employees have the right to carry out activities in connection with current health and safety legislation without the risk of being dismissed, made redundant or otherwise treated less favourably for doing so.
- For example, leaving the workplace where they reasonably believe there to be immediate danger, or taking reasonable steps to protect themselves or others from immediate danger.

The statutory duties of employers

- These are covered by the Health and Safety at Work etc Act 1974 and regulations made under it. (*Certain parts* of this Act apply to village hall management committees even where they do not employ anyone: this arises because they admit the public to their premises and they have a duty to provide a safe environment)

An employer must provide:

- A safe place of work.
- Safe means of access to and exit from the workplace.
- Proper supervision of employees to ensure their health, safety and welfare at work.
- Information on health and safety.
- Training on health and safety.
- Adequate working conditions.

Health and Safety cont.

Every employer must conduct its undertaking to ensure, as far as reasonable practicable, that persons not employed by them are also protected from risks to their health or safety.

Managing employees and volunteers:

- Every employer must, by law, display a poster or distribute a pocket card, setting out information on health and safety law. This was updated in April 2009 (you could continue to use the pre-2009 version up to 5 April this year)

Health and Safety policies:

- Each employer of more than five persons must have a written health and safety policy which should be brought to the attention of each employee. Village halls that have fewer than 5 employees or only use volunteers are not obliged to have a health and safety policy, but are strongly recommended to do so, as good practice. You do not have to give everyone a copy.

Accidents at work:

- All accidents at work must be recorded in an accident book

Contract of employment and job description

Contract

- A contract comes into existence once the employee has accepted the job - in writing or not.
- The actual terms and conditions of employment may include:
 - (a) Express terms - these are terms that are discussed and agreed (whether in writing or not) between you and the employee.
 - (b) Implied terms - these are terms that are too obvious to mention (e.g. not to steal from employer, or if you are employed to drive, you must have a current driving licence!)
- Example contract – **Handout**

A written statement of Terms & Conditions is not the same as a contract of employment – it is the minimum information an employer must give to the employee - names of both parties, date employment began, wages/salary, hours, holidays, place of work etc

Job description

- All employees should be provided with a job description which sets out clearly their duties particularly important for employees such as caretakers and cleaners who may be unsupervised.
- Consider drawing up a job description before the position is advertised to help decide on the number of hours worked and appropriate level of pay. Once a job description has been drawn up and the duties agreed with the committee it should not be altered without agreement.
- Example Job description – **Handout**

Disciplinary and Grievance Procedure – **Handout**

Employers checklist

	Employer's Obligations	Action re- quired
1	Employer's Liability Insurance in force	
2	Employer's Liability Insurance certificate on display	
3	Voluntary organisation has Health & Safety Policy	
4	Employee has a Job Description	
5	Employee has a Written Statement of Terms and Conditions of employment (or Contract of Employment)	
6	Employee has Disciplinary and Grievance Procedure	
7	Employee has National Minimum Wage statutory notice	
8	Employee is paid (at least) National Minimum Wage	
9	Employer is applying Working Time Regulations	
10	Employer has employee's National Insurance Number	
11	Employer has advised Tax Office of names of employees	
12	PAYE and National Insurance contributions are being deducted from gross pay – or an exemption certificate has been received	
13	Employee receives itemised pay advice showing hours worked, gross pay, deductions for tax and national insurance, any other deductions and net pay	
14	Employee takes 4 weeks paid holiday	
15	Employer has record of pay, hours worked, tax and national insurance, sick pay and maternity pay for each employee	
16	Employer has essential details of employee including name, address, telephone number and next of kin	

Employers obligations

- Community buildings management committees that employ a cleaner, caretaker or anyone else whether on a casual or permanent basis are required by law to have **Employer's Liability Insurance**
- Employers must notify Her Majesty's Revenue & Customs department of the personal details of every employee and must deduct income tax and national insurance contributions unless a certificate of exemption is in force. (For example, if the person is over pensionable age)
- It is the employer (not the employee!) who would be liable in default – individual trustees would be held personally liable for any unpaid amounts for up to six preceding years!

Tax and NI

- Tax – each individual's personal allowance dictates how much they can earn before being taxed. There is no difference if people are employed or self-employed.
- If it is the person's one and only job and it is part-time, they are likely to be under the limit for tax and NI. If not, HMRC will advise and provide you with the 'Notice of Coding'
- E.g. If the minimum wage is being paid (currently £6.50/hr for persons over 21) they would have to work more than 23 hrs/week before NI kicks in.
- And more than 29 hrs to be liable for tax.
- Look on HMRC website for details for each individual case and advice on what you need to do as an employer.

Employment of Trustees

Paying a trustee to do work for the charity

Generally, charities can't pay their trustees for simply being a trustee. Some charities do, but can only do so because it's allowed by their governing document, by the Charity Commission or by the courts.

Trustees could be paid for:

building work such as plumbing or painting
providing specialist services, such as estate agency or computer consultancy
using trustees' own premises or facilities, for example as a meeting room
administration or secretarial work

Employment of Trustees

- Legal requirement: before paying a trustee, the law says you must:
 - produce a written agreement between the charity and trustee who is being paid
 - specify the exact amount to be paid
 - make sure the trustee is not part of any meeting regarding the payment
 - not make payments to half or more than half of your board – (the number of trustees receiving payment must be in the minority)

Employment of Trustees

When to get Charity Commission consent

Your governing document must specify that you are allowed to pay a trustee. If your governing document doesn't allow it, you may need to get the commission's consent to:

- employ a trustee
- pay a trustee for serving as a trustee
- pay a trustee's expenses or replace lost income
- pay a trustee for providing a service

- You need to get the commission's consent to pay or employ someone who is related or 'otherwise connected'. Someone 'connected' would be a spouse or partner, siblings, a brother- or sister-in-law, parents or business partner to a trustee.