



# Employment Status Refresher Webinar

In partnership with Scottish Athletics & Scottish  
Gymnastics

May 2023



# Session Objectives

- Recap on the services available through the partnership between AAB People and Scottish Athletics and Scottish Gymnastics;
- How to establish the differences between Employees, workers and Self-employed individuals;
- Understanding the employment rights associated with each type of individual;
- Exploring the differences in contracts between the three groups;



# Session Objectives (cont.)

- Exploring the potential risks Clubs could face if the appropriate contract and employment rights are not provided;
- Exploring what Clubs should do if they need to correct the employment type and contract of an individual.
- Recap of checklist for recruiting and onboarding new employees



# About AAB People



# AAB People's Partnership with Scottish Athletics and Scottish Gymnastics



- With the Expert HR support available through AAB People and Scottish Gymnastics and Athletics Clubs can access different resources for HR guidance.
- Can speak with your partnership manager on first point of call, or can contact myself directly - no need for prior approval
- You can visit the Hub: [Scottish Athletics & Scottish Gymnastics - French Duncan - Professional Chartered Accountants](#)
- Email and phone advice from myself, any HR issue or support with reviewing and drawing up documentation for policies or meeting invitations/ guidance or process guidance



# Introduction

- Employment status is becoming a much more important topic amongst businesses due to the rise of the gig economy.
- In addition, there are more workers combining work with education or caring responsibilities, or who just want a better work-life balance, and who wish to work only when they choose to.
- Employers need to know what their responsibilities are in this new environment, not least because of the legal risks involved if they don't.



# Introduction

- Employment Status has always been important, but has gained traction in recent years due to media coverage.
- Uber case in 2019
- Accessibility of employment law information
- Tribunal fees abolished
- Furlough scheme has had the unexpected consequence of highlighting those who fall through the gaps





# Establishing Different Types of Employment





In UK employment law, there are three principal categories of employment status:

- **Employees** working under a contract of employment, who have full employment rights.
- **Workers**, who have a status in between employment and self-employment.
- The genuinely **self-employed**, who are independent contractors.



- But labels **don't** determine employment status – that depends on the terms of the contract and your custom & practice.
- It is not a choice.
- Clubs may have all three categories.





What are the employment rights  
of a 'genuine' worker?

Employees are workers, but workers aren't necessarily employees.



Workers only have some of the rights afforded to employees.

**Workers are entitled to:**

- National Minimum Wage/National Living Wage.
- A written statement of terms on the day the contract starts – workers as well as employees have this right from 6 April 2020.
- An itemised pay slip on or before the day payment is made – from 6 April 2020.
- Working time rights, such as weekly and daily statutory rest breaks, and a 48-hour maximum working week (although they can choose to opt out and work for longer).
- Protection from discrimination and from mistreatment following whistleblowing.
- Protection from unlawful deduction from remuneration.
- Health and safety protection.
- Auto enrolment on to a pension scheme.
- Paid annual leave.







What are the employment rights  
of an employee?

An employee is an individual who has agreed to be at the service of an employer, who must do the work in person and whose work is controlled by the employer.

The statutory definition in the Employment Rights Act 1996, is an "*employee means an individual who has entered into or works under ... a contract of employment*"

### **Employees have the right to everything a worker was entitled to AND:**

- Protection against unfair dismissal.
  - A statutory redundancy payment after two years' service.
  - Minimum statutory notice.
  - A companion during a disciplinary or grievance hearing.
  - Statutory maternity, paternity, adoption, and shared parental leave and pay, and statutory sick pay.
  - TUPE protection (provided TUPE applies to the transfer of undertakings concerned).
  - Request flexible working.
  - Paid time off for trade union duties and for ante-natal care, and unpaid time off to deal with emergencies for a dependant.
- 



What are the employment rights  
of a 'truly' self employed  
individual?

## **Self-employed contractors have no employment rights, apart from:**

- Health and safety protection.
- Protection from discrimination (in some cases) and from mistreatment following whistleblowing
- Claims would usually be made through civil processes and not employment tribunal, unless they proved they are not self employed.







# What are the employment rights of a volunteer?

**Similar to self-employed individuals, volunteers do not have rights like employees workers. They are not paid for the work they complete but they are provided with a volunteer agreement which should not:**

- the level of supervision and support they would get
- what training they would get
- whether they are covered under the organisation's employer or public liability insurance
- health and safety issues
- any expenses the club will cover





# What Contracts Apply to Different Types of Employment?

# Employment Contracts



[This Agreement details the particulars of employment between [Insert company name and full address] and [Insert Employee Name and full address] in that it contains all of the main elements as required under the Employment Rights Act 1996.

#### Date of Issue

The date of issue of this Agreement is [Insert Date] and as such it supersedes any other Agreement previously issued.

#### Date of Commencement of Employment

Your employment with the company commenced on [Insert Date] and this will remain your continuous service date for all purposes.

#### Application

All information you provided to the company during the application process including in your C.V. and in the interview process should have been accurate, truthful and up to date. If the company establish that you falsified or provided exaggerated, misleading, inaccurate or incomplete information this will be considered by the firm as an act of gross misconduct and your employment may be terminated.

#### Right to Work in UK

You must have and maintain the right to work in the UK. If you are employed under the conditions of a work permit, your continuing employment is subject to you complying with the permit and renewing it whenever necessary. You must notify your Manager at least three months before the expiry of any permit, and you are responsible for paying any costs associated with its renewal. You must notify your Manager straight away if you lose or restrictions are placed on your right to work in the UK.

If you cannot demonstrate that you have the right to work in the UK, you will be liable to dismissal without notice. You consent to us carrying out reasonable further checks during your employment to satisfy ourselves that you have the right to work in the UK.

#### Place of Work

Your normal place of work will be [Insert full address]. You will not be required to work outside the United Kingdom

**OR** [You may be required to work outside of the United Kingdom for a period of not longer than one month consecutively to attend training, conferences and the like.]

It is a condition of your employment that you comply with any reasonable request to change your place of work. You may also be required to work at any other premises of the company [or client premises] on a temporary basis, and we will endeavour to give as much notice as possible of any such change.

#### Job Title

You are employed as a [Insert job title] and you will be required to carry out any other reasonable duties falling within your capabilities, as required by the needs of the company.

#### Reporting Structure

In the course of your duties, you will report to [Insert job title].

#### Probationary Period

Your employment is subject to your satisfactory completion of a [three] [six] month probationary period. During the first month of your probationary period, your employment may be terminated without notice. Thereafter, please refer to the Termination of Employment clause.

#### Hours of Work

Your contracted hours of work are [Insert Hours] hours per week. You will be advised of your daily starting and finishing times. The company reserves the right to vary these hours and start and/or finish times according to business requirements. You may be required by the company at any time to work hours in addition of the above where this is necessary to meet operational requirements and emergencies.

#### Overtime

It is essential that you are flexible in your working hours. Overtime is not paid except in exceptional circumstances and must in all cases be authorised by your Line Manager. You may be eligible to accrue Time Off In Lieu (TOIL) as outlined within the Employee Handbook and should also be authorised by your Line Manager.

OR

[Insert overtime rules]

#### Breaks

The Company will ensure that it complies with current legislation with regards to breaks.

#### Remuneration

Your [salary] [hourly rate] is £[Insert Amount] [per annum] [per hour] subject to the appropriate statutory deductions payable monthly by Bank Automated Clearing (BAC) transfer on the [Insert date] of each month. Any over or underpayments into bank will be adjusted the following month or as soon as possible and shown on your payslip.

[Insert other remuneration package details e.g. car allowance, life assurance, health insurance]

#### Bonus / Commission

We operate a discretionary bonus / commission scheme, and details will be issued to you separately.

#### Annual Leave

- You are entitled to 5.6 weeks (28 days) worth of annual holiday entitlement with pay, including public holidays specified on an annual basis. The amount you receive and accrue will be reduced on a pro rata basis if you work less than 5 days per week, and further information on your pro rata entitlement will be provided by the company
- Your annual holiday entitlement under this clause accrues daily at the rate of 1/260 of your whole annual entitlement
- The company's holiday year runs from 1<sup>st</sup> January to 31<sup>st</sup> December
- If you begin work part way through the holiday year, your holidays will be reduced on a pro-rata basis

- In most circumstances, holidays cannot be carried forward from one year to the other
- Holiday pay is payable at your normal rate of pay
- Holidays cannot be booked without the prior agreement of the company. You are required to give as much notice as reasonably possible, and at least one week in advance of any holiday you wish to take
- You should have holidays authorised before booking, as the company will not accept liability for any expense incurred by employees who book holidays without first having obtained prior agreement
- On termination of employment you are entitled to receive holiday pay that has been accrued for the current year up to date of termination, less any holiday already taken. Should holiday taken already exceed your accrued entitlement, you will be required to refund an amount equivalent to the number of days' holiday by which you have exceeded your entitlement. This sum may be deducted from your final salary.

#### Deduction from Wages

The company may deduct monies from your wages in respect of:

- any fines, penalties or losses sustained during the course of your employment and which were caused through your conduct, carelessness, negligence, recklessness or through your breach of the Company's rules or any dishonesty on your part;
- any damages, expenses or any other monies paid or payable by the Company to any third party for any act or omission by you, for which the Company may be deemed vicariously liable on your behalf;
- any other sums owed to the Company by you, including, but not limited to, any overpayment of wages, outstanding loans or advances, or relocation expenses;
- any deductions otherwise entitled under this contract;
- where you have entered into a separate agreement with the Company, any outstanding costs detailed in the agreement.

You authorise the Company to make any such deductions from any and all monies owing to you by the Company.

#### Pension Scheme

The company will adhere to current pension legislation as required and will communicate with you accordingly.

#### Training

The company is committed to training all employees and as such regular in-house training will take place. From time to time you may be required to undergo training courses at the company's expense and you will be expected to attend such courses when required to do so.

It is a condition of your employment that should you cease to be employed by the company during or within a period of 12 months after the completion of any such training; (howsoever caused, including your resignation or your dismissal by the company) or fail to complete or withdraw from the training at any stage you will be required to refund the company with the full cost of this training. The company reserves the right to deduct any monies owed by you from your final salary.

#### Health & Safety & Security

All employees must observe all health, safety, security and environmental rules, thereby ensuring a safe environment for colleagues and customers. The company sets very high

standards in accordance with the Health and Safety at Work Act 1974 and any breach of the rules will be regarded as a serious disciplinary offence.

Surveillance cameras are installed for your protection. You should be aware that the information collected by these cameras is monitored regularly by the company and/or external company representatives appointed by the company at its discretion.

#### Confidentiality

##### Option 1 – basic

You acknowledge that during the course of your employment you will have access to confidential information belonging to the company. Likewise you will have access to client information that is confidential or client information that is embargoed from the public domain until a certain date and/or time. You shall not at any time, during or after your employment, except in the proper course of carrying out your duties, whether directly or indirectly disclose to a third party or make use of any confidential information.

##### Option 2 – detailed

You agree that at all times, whether or not in the employ of this organisation and except where such information is in the public domain, that you will:

- maintain the strictest secrecy with regard to the business affairs of the company and its customers/clients, except to the extent that you may be authorised or ordered to disclose them for example by, any authorised supervisory or enforcement agency (such as the police, a regulatory body given powers under the Financial Services Act or HM Revenue & Customs);
- refrain from revealing or using confidential information regarding systems and programme design, and data for personal gain;
- use computer equipment and access the internet only when authorised to do so and only for official employer business, as unauthorised usage could result in damage to the equipment and loss of stored data.

In the interest of clarity, you are expected to take all reasonable steps to prevent the publication or disclosure of the following:

- details of requirements of contractors (whether they be clients, customers, suppliers, consultants or other contractors) of the firm including, without limitation, the fees and commissions charged to or by them and the terms of business with them;
- any information or document relating to the company's expansion plans, business strategy, marketing plans, financial information and results, any confidential employee information you are aware of and any incidents or investigations in relation to the company;
- confidential reports or research commissioned by or provided to the company;
- any information relating to the research activities, inventions, secret processes, designs, formulae and service lines;
- any information relating to the production methods, tools and techniques used by the company;
- any confidential transactions, and;
- any other information which you are told is confidential or you should reasonably know is confidential.

You undertake to familiarise myself with the data protection procedures set down by the company as a result of the UK General Data Protection Regulation and understand that the company is obliged as a consequence to view any breach of these procedures as a serious matter that could result in summary dismissal under the organisation's disciplinary procedure.

You understand that any breach of this agreement could result in the companies sensitive and confidential data being disclosed to competitors or other interested parties and any such conduct on my part may render me liable to summary dismissal under the disciplinary procedure.

#### Changes to Terms and Conditions

At times your main terms and conditions of employment may be subject to variation e.g. through legislative changes or negotiated agreements. If such a change is necessary, the company will consult with you and you will be notified in writing within one month of the changes taking effect unless otherwise agreed between the parties.

#### Lay Off/Short Time Working

The company reserves the right to implement short-time working with reduced pay or a period of temporary layoff without pay where this is required due to a downturn in work, to avoid redundancies or for other needs of the company.

The company will advise you of the circumstances and likely duration where any such period will be implemented. Reasonable notice will be given before the commencement of any such period, and a minimum 7 days' notice will be given.

#### Data Processing

By signing this Agreement, in the legitimate interests of employment you authorise the company to collect, record, organise and store data relating to you in accordance with the relevant data protection regulations. For the necessary performance of this employment contract, the company will be required to share your data with relevant third parties for example the company's pension provider. Further details are contained in the Data Protection Policy and Privacy Notice.

#### Collective Agreements

No collective agreements apply to your employment with the company.

OR [Insert details of collective agreement]

#### Absence from Work

The company rules on absence from work, including Company and Statutory Sick Pay and Procedures, are contained in the Employee Handbook.

#### Grievance Procedure

The company's grievance procedure including how to appeal a decision are contained in the Employee Handbook, and do not form part of your contract of employment.

#### Disciplinary Procedure

The company's disciplinary procedure including how to appeal a decision are contained in the Employee Handbook, and do not form part of your contract of employment.

#### Sole Employment

You are not permitted without the prior written consent of your Line Manager to take any other employment during the term of this employment. Such consent will not be unreasonably withheld.

#### Post-termination restrictions

The following post termination restrictions apply:

**[Non-dealing]** [You agree that you shall not for a period of [12/6/3 months] after termination of your employment supply, directly or indirectly, any goods or services to customers of the Employer with whom you had contact during the last [12] months prior to the termination of your employment, whether solicited by you or not.]

AND/OR

**[Non-solicitation]** [You agree that for a period of [12/6/3 months] after the termination of your employment you shall not solicit custom from any customer of the Employer with whom you had contact during the [12] months prior to the termination of your employment.]

AND/OR

**[Non-poaching]** [You agree that you shall not for a period of [12] months after termination of your employment whether as principal or agent or employer or otherwise, whether directly or indirectly, recruit or try to recruit any person as an employee or consultant or in some other capacity if that person was at any time during the last [six] months of your employment employed by the Employer and you had regular contact with him/her through your employment with the Employer.]

AND/OR

**[Non-competition]** [You undertake not to compete directly or indirectly, whether as director, shareholder, employee, consultant, proprietor or agent or in any other capacity, with that part of the Employer's business with which you were involved as an employee in the [12] months prior to the termination of your employment for a period of [12] months after termination.]

Each of the above restrictions in this clause shall be construed as an entirely separate obligation. The enforceability of one or more of these provisions shall not, in any way, be affected by the enforceability of any other provision. In the event of any part of this clause being rendered void or unenforceable, then that part shall be deleted or modified as necessary to make it valid, and as far as the content allows, all other provisions in this clause shall be unaffected.

#### Notice to Terminate Employment

In normal circumstances you are entitled to the following periods of notice from the company to terminate your employment:

- If you have accrued less than one month's continuous service, no notice
- If you have accrued one month, but less than 2 years' continuous service, you are entitled to [one week's] notice
- If you have accrued 2 years' continuous service or more you are entitled to one week's notice for each year of continuous employment, up to a maximum of 12 weeks

If you wish to terminate your employment you are required to give [one month's] notice in writing.

The company reserves the right to make payment in lieu of notice.

The company reserves the right to require you not to attend work during any period of notice, but to remain available for work throughout that period, regardless of whether the notice was given by you or the company.

In the event that your employment with the company is terminated for gross misconduct the notice detailed above will not apply.

#### Acceptance of Terms

#### IF USING HR SYSTEM / EMAIL / DOCUSIGN

*Please note, we operate a paperless system and have sent you this document electronically. We would ask you to confirm acceptance using the details provided, and this will constitute that you have read and understood the contents of this agreement, and any additional policies issued to you, including the Employee Handbook.*

OR

#### IF USING PAPER FORMAT

*We would ask you to confirm acceptance by signing below, and this constitutes that you have read and understood the contents of this agreement, and any additional policies issued to you, including the Employee Handbook.*

Signature of Employee \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

Signature of Company \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_



# Contracts for workers





## Casual Worker Agreement

### Between:

[Insert]

And

[Insert worker name and address]

### Hours

The company's need for individuals to perform work varies from time to time, and you have confirmed that you may be available for work. The company is not obliged to offer you work at any time, and you are not entitled to a minimum number of hours of work per day, week or year. If the company does offer you work, you are under no obligation to accept it.

In the event that you do agree to undertake work you will be required to complete it to the company's satisfaction.

Your hours of work for each shift will be determined by the company in advance of the shift and be made available to you **via the rota**.

### Continuity of service

This agreement governs the relationship between you and the company in the event that the company offers you work, and you choose to accept it. It does not create legal relations until you choose to accept a shift.

There is no continuity of service between you and the company between the termination of one shift and the commencement of the next shift. If you accept a shift, your period of continuous employment will begin on the date on which the shift starts and will end on the date of termination of the shift. No employment with a previous employer or under a previous shift counts towards a period of continuous employment.

Where the company offers a shift to you, it does not give rise to a presumption that it will offer you further shifts, nor that you will accept any work that it offers to you in the future.

### Notice of shift

A minimum of **seven** calendar days prior to the commencement of an shift, the company will **send an email to your personal email address/telephone you** to explain the work that it wishes you to carry out and the date that the shift is due to start. If you wish to accept the shift, you must confirm your acceptance to the individual who notified you of the shift at least **three** working days before the start date of the shift.

If you do not wish to accept the shift, you should contact the person who notified you of the shift at least **three** working days before the start of the shift.

### Pay

You will be paid an hourly rate of £[Insert hourly rate]. Your pay will be calculated according to the number of hours that you work, subject to deductions for tax and national insurance contributions. You will receive your pay monthly by direct credit transfer to your personal bank account on **the last working day of the month**.

If you have worked any shifts after our internal payroll cut-off date, these will be paid to you the following month.

### Annual leave

Workers are entitled to the equivalent of 5.6 weeks' holiday per holiday year, including bank and public holidays. Your entitlement will be calculated on a pro rata basis, depending on the number of hours that you work at an accrual rate of 12.07% based on each hour worked based on the average hours worked over the previous 52 weeks. Holiday pay is payable at your normal rate of pay.

### Sickness

If you become sick during a shift, you must advise your manager that this is the case. If you are sick and cannot attend for a shift, please give us as much notice as possible and ideally at least one hour before your shift is due to begin so we can find cover. We ask that you confirm the reason for your absence, and how long you expect to remain absent. You must keep the company informed of subsequent sickness absences and your availability. For all absences in excess of seven days, you must provide a medical certificate from your doctor.

You should not accept a shift if you know that you will be unable to work all or any of the hours agreed because of sickness or injury.

### Health, Safety and Security

All workers must observe all health, safety, security and environmental rules, thereby ensuring a safe environment for employees, workers and customers. The company sets very high standards in accordance with the Health and Safety at Work Act 1974 and when you are working you are expected to adhere to the company's health, safety and security procedures.

### Ending this agreement

Since there is no obligation to offer or accept work, there is no requirement for either the company or the casual worker to give notice of intention to terminate this Agreement, the parties may end the arrangement at any time without notice.

If you have been offered and have accepted work and you change your mind about the acceptance of this work, then the company would appreciate notice from you before the work is due to commence.

As a matter of courtesy, the company will try where possible to inform you should it no longer wish to offer you work and you are asked, albeit not obliged to inform your Line Manager should you no longer wish to accept work from the company.

### Agreement

*I hereby confirm I have read, understood and accept the contents of this agreement and have retained the second copy of this document which was issued to me:*

Signature of Worker

\_\_\_\_\_

Print Name

\_\_\_\_\_

Date

\_\_\_\_\_

*We hereby confirm that we will retain this agreement in the worker's file:*

Signature of Company

\_\_\_\_\_

Print Name

\_\_\_\_\_

Date

\_\_\_\_\_

Contracts for Self-Employed Individuals  
(Contract for Services)



## Contract for Services

This contract for services is made on [Date]

Between:

[Company Name and Address]

&

[Name of contractor and Address]

It is agreed as follows:

### Definitions

In this contract the following words and expressions shall have the following meanings unless the context otherwise requires:

- Commencement Date: [Date]
- Services: [Specify Services]
- Termination Date: [Date]

### Appointment

With effect from the Commencement Date, the Contractor is appointed as a self-employed contractor to the Client for a period [Number of Months] months to carry out the Services, such services to be provided using reasonable skill and care.

### Duties

During their appointment, the Contractor agrees:

- to devote such of their time, attention and skill to the business of the Client as shall, in the opinion of the Client, be necessary for the proper and timely performance of the Services provided that the Contractor must devote not less than [Number of Hours] hours per week in the performance of the Services, unless otherwise agreed with the Client;
- to carry out the Services in an expert and diligent manner and to provide their services to the best of their commercial, technical and creative skill;
- to the best of their ability, promptly and faithfully to comply with and observe all lawful, reasonable and proper requests that may from time to time be given to them by the Client;
- during their appointment, not to undertake any additional activities or accept any other engagements that lead or might lead to any conflict of interest between the Contractor and the best interests of the Client; and
- to keep the Client informed of progress on the Services and in particular to liaise with [Name and Job Title] in respect of the day-to-day performance of the Services.

While the Contractor's method of working is entirely their own and they are not subject to the control of the Client, they shall nevertheless comply with any reasonable requests of the Client.

### Delegation of work

The Client shall not be obliged to provide the Contractor with any work and the Contractor will not be obliged to accept or perform any work offered, unless and until the Client has requested and the Contractor has agreed to perform such work.

If the Contractor is unable at any time to perform the Services due to circumstances beyond their control, the Contractor may delegate performance of the Services to such suitably qualified and experienced personnel as they may from time to time deem appropriate. This delegation will be subject to the Client's consent, which will not be unreasonably withheld. The Contractor must notify the Client if this power to delegate is exercised and provide details of the name and appropriate qualifications of the delegate.

The Contractor must promptly notify the Client in the case of illness or accident that prevents the performance of the Services in accordance with this contract.

### Fee

A fee of £[Insert Amount] per day together with value added tax thereon (if applicable) shall be payable to the Contractor for the provision of the Services and such fee shall be payable monthly in which the Services have been performed.

The Contractor shall submit an invoice to the Client on, or as soon as reasonably possible after, the last day of each month detailing the Services provided within that month and the fees due in respect thereof and where they are registered for value added tax shall show any value added tax separately on such invoices.

In the event that there are periods when there are no Services for the Contractor to perform, the Contractor shall not be paid for these periods. The fee is payable only in respect of Services actually provided.

### Expenses

The Contractor shall be entitled to be reimbursed by the Client for all out-of-pocket expenses wholly, exclusively and properly incurred in the performance of the Services subject to the Contractor providing the Client with vouchers, receipts or other evidence of actual payment of such expenses and subject to the arrangement being specifically agreed in advance by the Client.

### Office facilities

The Client will provide the Contractor with such office facilities, including the provision of secretarial support, as it shall deem necessary to enable the Contractor effectively to perform the Services, but as a general rule the Contractor is expected to provide and pay for their own tools, machinery, equipment, materials and support staff.

### Confidentiality

The Contractor hereby agrees that during the course of their appointment under this contract they are likely to obtain knowledge of trade secrets and other confidential information with regard to the business and financial affairs of the Client and those of the Client's clients, customers and suppliers, details of which are not in the public domain ("Confidential Information"), and accordingly the Contractor hereby undertakes to and covenants with the Client that:

- they shall not at any time after the Termination Date use or procure the use of the name of the Client in connection with their own or any other name in any way calculated to suggest that they continue to be connected with the business of the Client or in any way hold themselves out as having such connection;
- they shall not use the Confidential Information other than during the continuance of this contract and in connection with the provision of the Services; and

- they shall not at any time after the date of this contract (save as required by law) disclose or divulge to any person other than to officers or employees of the Client whose province it is to know the same any Confidential Information and they shall use their best endeavours to prevent the publication or disclosure of any Confidential Information by any other person.

The restrictions set out above shall cease to apply to information or knowledge that comes into the public domain otherwise than by reason of the default of the Contractor.

### Delivery up of documents

Upon the expiration or termination of their appointment under this contract for whatsoever cause or otherwise on request, the Contractor shall forthwith deliver up to the Client or its authorised representative all electronic and hard copy documentation which may be in their possession, custody or control and which are the property of the Client or which otherwise relate in any way to the business or affairs of the Client and no copies of the same or any part thereof shall be retained by them. They shall then (if required by the Client) make a declaration that the whole of the provisions of this clause have been complied with.

### Termination

Either party shall have the right at any time to terminate this contract by giving not less than 1 weeks' notice to the other party.

In addition, the Client shall have the right to terminate this contract at any time by summary notice without any payment in lieu in the event of the Contractor:

- being in material or persistent breach of any of the terms of this contract;
- having a bankruptcy order made against them or making any arrangement with their creditors or having an interim order made against them;
- being convicted of any criminal offence other than a minor driving offence under the Road Traffic Acts;
- persistently and wilfully neglecting or becoming incapable for any reason of efficiently performing the Services, including a failure to remedy any fault in work produced within a reasonable period of time of being notified of that fault; or
- doing any action manifestly prejudicial to the interests of the Client or which may, in the opinion of the Client, bring it into disrepute;
- and the Contractor shall have no claim against the Client in respect of the termination of their appointment for any of the reasons specified above.

### Tax liabilities

The Client and the Contractor declare and confirm that it is the intention of the parties that the Contractor shall have the status of a self-employed person and shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of their fees and accordingly the Contractor hereby agrees to indemnify the Client in respect of any claims that may be made by the relevant authorities against the Client in respect of income tax and national insurance or similar contributions relating to the Contractor's services under this contract.

### Warranties

The Contractor warrants to the Client that:

- by entering into this contract they will not be in breach of any obligations to or agreements with any third party;
- they will take out and maintain throughout the term of this contract adequate insurance in respect of public liability insurance coverage to protect themselves against any liabilities arising out of this contract and shall produce, on request, a copy of the insurance policy certificate for inspection by the Client; and

- they will take out and maintain throughout the term of this contract adequate employer's liability insurance coverage to protect themselves against any liabilities arising out of this contract in respect of all and any workers they utilise to carry out the Services and shall produce, on request, a copy of the insurance policy certificate for inspection by the Client.

**Data protection**

The Contractor and the Client agree to comply with all applicable data protection legislation, including but not limited to the Data Protection Act 2018 and any amendments thereto.

**No employment**

Nothing in this contract shall render or be deemed to render the Contractor an employee or agent of the Client and the Contractor hereby agrees that they are a self-employed independent contractor and not an employee or agent of the Client. This contract does not create any mutuality of obligation between the Contractor and the Client.

The Contractor does not qualify for any company benefits from the Client.

**Force majeure**

If either party to this contract is prevented or delayed in the performance of any of their respective obligations under this contract by "force majeure", then such party shall be excused from performance for so long as such cause or delay shall continue.

For the purposes of this contract, "force majeure" shall be deemed to be any cause affecting the performance of this contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of either party and shall include, but not be limited to:

- strikes, lockouts or other industrial action;
- civil commotion, riot, act of terrorism, war threat or preparation for war;
- fire, explosion, storm, flood, earthquake, subsidence, epidemic, bad weather or other natural physical disaster;
- impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and
- political interference with the normal operations.

**Entire agreement**

This contract contains the entire agreement and understanding of the parties relating to the subject matter of this contract and extinguishes all previous agreements between the parties relating to the subject matter hereof.

**Survival of causes of action**

The termination of this contract howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

**Waiver**

The failure of any party to insist upon strict performance of any provision of this contract or the failure of any party to exercise any right or remedy to which they are entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this contract.

No waiver of any of the provisions of this contract shall be effective unless it is expressly stated to be such and signed by all the parties to this contract.

**Severability**

If any provision of this contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this contract shall continue in full force and effect as if this agreement had been signed with the invalid, illegal or unenforceable provision eliminated.

**Law and jurisdiction**

This contract is governed by the laws of Scotland and the parties submit to the jurisdiction of the courts of Scotland.

*We hereby agree to abide by the above terms outlined in this Contract for Services and will retain a copy on file.*

**Contractor Signature** \_\_\_\_\_

**Contractor Name (Print)** \_\_\_\_\_

**Date** \_\_\_\_\_

**Signature on behalf of the Company** \_\_\_\_\_

**Name and Job Title (Print)** \_\_\_\_\_

**Date** \_\_\_\_\_

# Volunteer Agreement



## Volunteering Agreement

This Volunteer Agreement is a description of the arrangement between *[insert name of organisation]* ("the Company") and you *[insert name]* ("the Volunteer") in relation to your voluntary work.

Your volunteer role is *[insert details]* which commences on *[insert date]*.

The intention of this agreement is to assure you that we appreciate your volunteering with us and to indicate our commitment to do the best we can to make your volunteer experience with us a positive and rewarding one.

This volunteering agreement sets out the Company's expectations of you in the role of volunteer and what you can expect from the Company.

As a volunteer you will not receive any remuneration, benefits or other allowances, other than the reimbursement of your expenses as detailed below.

The Company commits to the following:

### Induction and training

The Company will provide an induction process to the Company's work and its employees and provide you with necessary training to enable you to carry out your volunteer role.

### Supervision and support

The Company will:

- communicate to you the required standard of service provided by the Company and support you to achieve and maintain this standard
- allocate a named member of staff who will regularly meet with you to discuss and review your role
- provide support to allow you to develop within your role
- provide support to allow you to develop positive working relationships with other volunteers and Company employees.

### Health and safety

The Company will provide you with reasonable training to allow you to carry out your role in compliance with the Company's health and safety policy.

### Reimbursement of expenses

The Company will reimburse all reasonable expenses incurred by volunteers in order to carry out their volunteer role including expenses for *[insert details, e.g. travelling expenses, subsistence allowance]*. Reimbursement will be in line with the Company's expenses procedure.

### Providing insurance cover

The Company will provide necessary insurance cover that covers you whilst you are carrying out any approved and authorised voluntary work. This will include insurance cover for driving Company vehicles but does not include private vehicle or contents cover.

### Equal opportunities policy

The Company will ensure that all volunteers are supported in accordance with the Company's Equal Opportunities Policy.

### Addressing volunteer concerns

The Company will endeavour to ~~fairly and appropriately resolve any concerns or issues~~ you encounter during the course of your volunteering activities with the Company. Please initially raise such concerns with *[insert name and job title]* to allow the Company to investigate and resolve these.

### Volunteer agreement

I, *[insert name in capitals]*, agree to be a volunteer with *[insert name of organisation]* and commit to the following:

- to help the Company fulfil the following services *[insert details of services here]* to the agreed standards which have been clearly explained to me
- to perform my volunteering role to the best of my ability, and not undertake any volunteering work in which I have not been adequately trained
- to perform my volunteering role to the required timescales
- to adhere to the Company's policies and procedures, including the code of conduct, health and safety policy and equal opportunities policy
- to maintain the confidentiality of the Company's information, and that of its clients/customers both during and after my volunteering role
- to ensure that any private vehicles used to carry out the volunteering role are appropriately taxed and insured. The vehicle will also be maintained and serviced in line with manufacturer's recommendations
- to provide details of referees on request who may be contacted and to agree to a criminal record check or any other necessary check
- to let the Company know as soon as possible when I am unable to volunteer so that the Company can make other arrangements

### Acknowledgement

You acknowledge that you have received and understand this agreement and agree to carry out your volunteering role in line with the required standards. You will also maintain confidentiality of any information received regarding the Company during your volunteering role.

This agreement is not intended to be a legally binding contract and is binding in honour only.

The agreement does not create an employer-employee relationship and may be cancelled at any time at the discretion of either party.

Signature of Volunteer

---

Print Name

---

Date

---

Signature on behalf of Company

---

Print Name

---

Date

---



# Establishing Employment Status



# Establishing Employment Status

- Government tools are a good starting point, but can often over simplify the issue – don't rely on this solely.
- Employment status can be very complicated and determining the legal outcome is based on case law, which can change.
- Be wary of allowing someone's choice sway your decision in determining their status





# Tests to Establish Status

## 1. Control

What level of control does the employer have? For example, is the individual told when and where and how to work? Are they provided with training and equipment? Would the individual be reprimanded if they did not comply?

## 2. Personal Service

Can the individual send someone else to do the work, or are they required to complete the job personally?

## 3. Mutuality of Obligation

This refers to the obligation for the employer to provide work and pay for it, and the Individual's obligation to complete this work



# Tests to Establish Status

**Employee:** employers have full control, they cannot send someone in their place and there is an obligation for work to be provided and obligation for it to be completed.

**Worker :** some control, they cannot send someone in their place and there is not an obligation for work to be provided and obligation for it to be completed.

**Self-Employed (Contractor):** no control, they can send someone in their place and there is no obligation for work to be provided and obligation for it to be completed.

**Volunteer:** Grey area but generally same as contractor



# Establishing Employment Status

**Courts and tribunals have largely determined the tests for deciding whether someone is an employee, a worker or self-employed.**

**Factors indicating employment include an individual:**

- Having to perform the work personally.
- Having to carry out the work when required (and the club would also be obliged to provide it).
- Being integrated within the business (for example, by being part of a team).
- Being controlled by the organisation in the way the work is done.



# Establishing Employment Status

**Courts will also look at whether the nature, length, and pay and benefits of the engagement, are consistent with other employees in the organisation.**

**The dividing line between employment and self-employment can be blurred, but factors suggesting self-employment include individuals:**

- Actively marketing their work outside the organisation, being able to decide how it is done, and (possibly) providing a substitute to carry it out.
- Not being integrated within the business, or subject to a high level of control.
- Supplying their own equipment.
- Accepting the risk of not being paid if the work is not done.
- Submitting invoices for payment.
- Having no obligation to accept work.



# Establishing Employment Status

**Workers tend to have some of the characteristics of both, and the definition of a 'worker' has been further embellished by a number of gig-economy cases:**

- Claims brought against organisations such as Uber, Pimlico Plumbers and CitySprint concerned whether the claimants were genuinely self-employed, or workers.
- Generally these workers could not be employees because they could choose to work when they wanted to, or work no hours at all.





# Case Law

# Uber V Aslam 2021

- Uber had maintained the drivers were running their own businesses as independent third-party contractors and, therefore, did not have any worker rights. Uber said that it was only a technology platform and not a transportation business, with its subsidiary (Uber London) acting as a booking agent for drivers. Uber argued that, when a journey is booked through the app, the contract is directly between the driver and the passenger to provide transportation services. Uber's case relied on the fact that the drivers could work when they wanted to.
- The drivers did not claim they were employees, but workers and, therefore, entitled to the minimum wage under the National Minimum Wage Act 1998 and to paid leave under the Working Time Regulations 1998.



# Pimlico Plumbers Ltd Vs Smith

- The Supreme Court considered the true employment status of a plumber engaged under a 'self-employed' contract. After working for some six years the plumber had a heart attack and asked if he could work three, instead of five, days a week.
- The refusal of this request led to claims of unfair dismissal, unpaid sick pay, holiday pay and shortfall in wages. For the unfair dismissal claim, he had to show he was an employee. For the remaining claims, he had to show he was a worker.
- Pimlico argued that the company was, in reality, a client or customer engaging the services of a self-employed plumber. Relevant facts included that Smith was paying tax on a self-employed basis and worked solely for Pimlico. However, he could choose when he worked and which jobs he took. He was also required to provide his own tools and equipment but:
  - he wore a branded uniform
  - He rented a branded van
  - his customers made payments to the company rather than to him
  - there was no right of substitution and had to work to company standards





# What are the risks for employers?

- It is your responsibility as an employer to ensure that you have assessed employment status correctly.
- Ignorance is not an excuse.
- Financial risk can be significant
- Be conscious that this often comes up when something becomes an issue

## Claims

- Tax liability is often the main concern;
- Build up of statutory rights e.g. annual leave, sick pay;
- Increased H&S responsibilities;
- If treating an employee as self-employed then risks can include all employment tribunal claims, namely, the big three: **constructive dismissal; unfair dismissal and discrimination.**



# How to Correct Employment Status

- If you are aware or are made aware by an employee that they are on the wrong contract, it is important that you do not ignore this
- It is important that you assess if the employee is definitely on the wrong contract, review how the employment works before you decide to change contracts.
- Do not change just on request of an employee, if they are an employee requesting to change to self employment, probe into this, to find out the reasoning.
- If someone is changing their role and wants to work for their employer as a self-employed contractor, it is advised that a two week break is provided between employments.
- If an individual is on a worker's contract, sit down with them to go over why their contract needs to change.



# Recent Developments

- On 17 December 2018, the Government published its Good work plan, setting out its "*vision for the future of the UK labour market*".
- In the Good work plan, the Government announced that it would introduce legislation "*to improve the clarity of the employment status tests*" and tackle the issue of employers "*trying to misclassify or mislead their staff*".
- Harper Trust v Brazel – entitling all workers to at least 5.6 weeks each year regardless of hours worked.



# Guidance for Employing an Individual



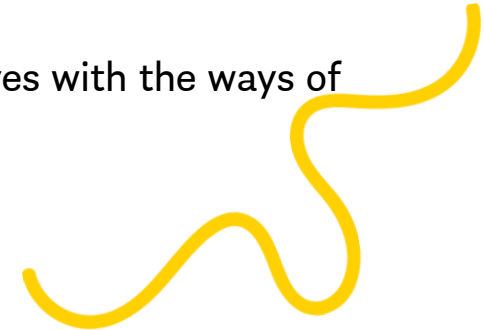
- Check you have appropriate funding to bring someone on as an employee and what you plan to pay them. This must be at least national minimum wage: [National Minimum Wage and National Living Wage rates - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- Check what type of role you need. Will this be a permanent staff member or will this just be for a fixed period (e.g. working for 6 months over a specific event).
- How many hours will you need them for? Review work required, could set a minimum number of hours with a view to increase based on workload.
- Draw up a job description or person specification for this role. Speak with Scottish Athletics/ Gymnastics if you need support on this as they may have pro-forma templates for descriptions/ specifications.
- Recruit for the role; you can use the Sport's website, the individual club website, job advertising sites such e.g. S1 Jobs (this will have a fee to use.)
- Set up interviews with candidates to ask questions relating to their experience and why they would like to work with the club.
- Draw up an offer letter for the perspective chosen applicant. Make the offer conditional based on them having appropriate references, right to work and any DBS checks.



# Guidance for Employing an Individual



- Make sure that applicant has appropriate right to work in the UK
- Make sure any other necessary checks are completed and clear (e.g. DBS checks).
- Check if this employee would be eligible for auto-enrollment to pension Scheme. Draw up the employment contract, speak with Georgia Wilson from AAB People for support with the contract is required. It is important to remember to provide the employment contract before or on day one of employment.
- Inform HMRC of your new employee and set them up on your payroll prior to them starting with the business.
- Make sure you have an employee handbook or relevant policies in place, please speak with myself if you are not sure which policies you require.
- Have a time period set for an induction for the employee once they arrive so they can familiarize themselves with the ways of working with the club.



# Importance of Employee Induction



An effective employee induction can bring multiple benefits to a business, including:

1. Enhanced productivity
2. Greater job satisfaction
3. Reduced risk of accidents or incidents
4. Improved communication
5. Consistent company culture



# Summary



- It is important to establish the nature of the employment relationship as this is key to determining the employment rights to which an individual is entitled.
- Carry out the necessary tests to assess what type of contract fits the role
- Make sure you provide the employment rights necessary for each
- Employees have full employment rights.
- Workers have limited employment rights, such as the right to receive the national minimum wage and rights under the Working Time Regulations 1998 ( such as holidays).
- Self employed individuals do not have employment rights.
- There is an extensive history of case law on determining employment status.
- Assess your risk now and don't ignore the situation.



Any Questions?





What are the rules around provision of travel expenses to Employed and Self employed individuals. Are there set costs per mile we need to adhere to for employed individuals?



When a coach is self employed is the individual or the club responsible for ensuring they pay tax and insurance contributions?



Can you performance manage a self employed Coach? If not, why? And what can we do if there are performance issues?



Thank you!



If you have any further questions please contact [Georgia.Wilson@FDPeople.co.uk](mailto:Georgia.Wilson@FDPeople.co.uk) or call 07708871638

