Because Recruitment Matters

Legal bulletin

What's in your Legal bulletin?

- An update on travel and subsistence schemes
- FAQs including right to work checks for LCCs
- **Legal Round up** including one of the first reported cases on the Agency Workers Regulations 2010.

Lewina Farrell, Solicitor and Head of Professional Services

An update on the travel and subsistence dispensation

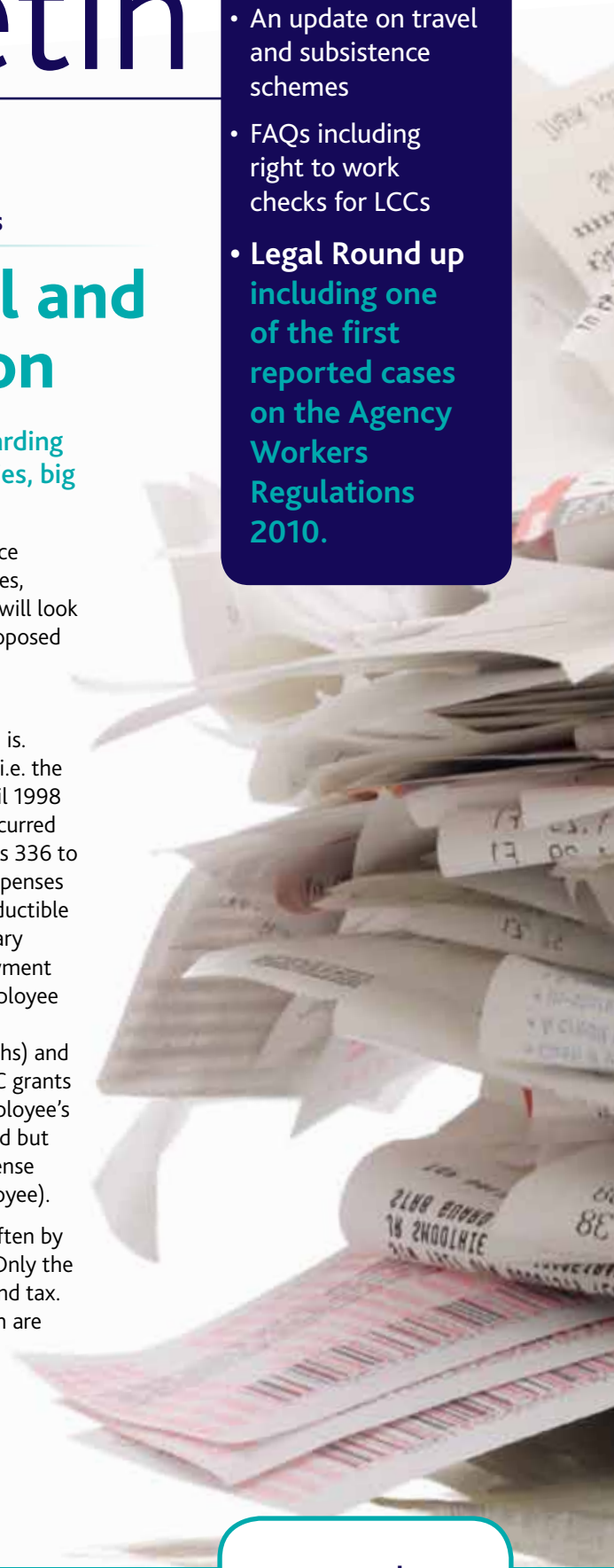
Throughout 2012 there were a number of news stories regarding tax avoidance schemes, including those utilised by celebrities, big business and the recruitment industry.

Within recruitment, particular attention was given to travel and subsistence dispensations operated by employment businesses and umbrella companies, including those incorporated both within and outside the UK. This article will look at current issues regarding the travel and subsistence dispensation and proposed Government action to tackle these.

What is the travel and subsistence dispensation?

We should just recap what a travel and subsistence expenses dispensation is. Ordinarily individuals cannot claim tax relief on normal commuting costs i.e. the costs of travelling from home to a permanent workplace. However, in April 1998 HMRC introduced new rules governing travel and subsistence expenses incurred in connection with business travel – these rules are now set out in Sections 336 to 342 of the Income Tax (Pensions and Earnings) Act 2003 (ITEPA). Such expenses are excluded from Class 1 national insurance contributions and are tax deductible provided: (1) the individual claiming the relief is an employee (for temporary workers this means being employed on an overarching contract of employment (by either an umbrella company or an employment business)), (2) the employee does not have a permanent workplace (a workplace will be a permanent workplace if the employee works there for a period of more than 24 months) and (3) the employee actually incurs those travel and subsistence costs. HMRC grants the employer a dispensation whereby the employer can record on the employee's annual P11D form what travel and subsistence expenses have been claimed but can dispense with the need to provide HMRC with a receipt for every expense claimed (though the employer should still obtain a receipt from the employee).

The expenses are deducted from the temporary worker's gross earnings, often by way of salary sacrifice, and thus do not attract national insurance or tax. Only the sum left after the deduction of the expenses attracts national insurance and tax. Therefore temporary workers whose employers have a HMRC dispensation are significantly cheaper than those whose employers do not.



How have HMRC monitored the use of the dispensation to date?

In 2008 HMRC consulted on various issues concerning the use of overarching contracts of employment for temporary workers, including the use of the travel and subsistence dispensation. REC responded to that consultation by reiterating that use of the dispensation was legitimate but that HMRC needed to monitor compliance with the rules. HMRC concluded that no further legislation would be required for the time being but they would continue to monitor the situation. Following the consultation HMRC released Business Brief 50/09 *"The application of Tax, National insurance and National minimum wage legislation"*. The Brief highlighted the growth in travel and subsistence schemes and pointed out that whilst workers may benefit from some savings in tax and national insurance contributions "the major saving is not to the worker, rather to the party who would bear the higher employer's NI contributions costs if it were not for the arrangement".

HMRC periodically reviews dispensations though it is clear that it cannot review all dispensations granted in a timely fashion, and indeed one of the complaints levelled against HMRC is that it seems to be doing little in the face of reported non-compliance. There are two things to say on this: (1) for confidentiality reasons, HMRC will not reveal what organisations it is investigating at any particular time. Organisations will only be named once a case is taken forward. Therefore HMRC cannot give precise details as to its compliance activity. (2) Where HMRC does review a dispensation, if it considers that the dispensation was not operated correctly, it will pursue the employment business or umbrella company for unpaid tax and national insurance.

This happened in *Reed Employment plc and others v HMRC* [2012] UKFTT 28 (TC). Reed had been granted a series of dispensations by HMRC over a number of years. Reed made daily payments to cover lunch and commuting to around 500,000 temporary workers between 1998 and 2006, which they maintained was part of a salary sacrifice arrangement. In early 2012 the First Tier Tax Tribunal found that the schemes Reed operated did not constitute effective salary sacrifice arrangements, as in reality no part of the salary was sacrificed. The tribunal judges said "The salary was paid in full, even if there was a later manipulation." In addition, it was ruled that the employed temporary workers were engaged under a series of job-by-job contracts rather than under a continuing contract of employment, which is a requirement of the dispensation. The Tribunal ruled therefore that each assignment should therefore be treated as a separate engagement. As a result the travel was to a permanent workplace and the expenses were deemed to be ordinary commuting expenses and therefore were non-deductible.

This decision turned on the contractual arrangements in place, the clarity of the arrangements in place and the fact that a salary sacrifice was found not to exist. The unpaid tax and national insurance, along with interest, has been calculated at £158m.

Issues in relation to the travel and subsistence dispensation

REC has reiterated that the use of the dispensation is legitimate provided it is done in compliance with the rules. Nonetheless our members regularly tell us that the market is being distorted by those who do not play by the rules and we have regularly raised this with both the Treasury and HMRC. A number of issues have arisen in relation to the use of the travel and subsistence dispensation. These are:

(1) Salary sacrifice by workers earning national minimum wage (NMW).

(2) The use of "pay day by pay day" schemes.

(3) Supplying workers through non UK based umbrella companies.

(4) Risk – who pays if the umbrella company doesn't?

(1) Salary sacrifice by workers earning national minimum wage (NMW): Prior to 2011 there was a concern that the dispensation could not be applied to workers earning close to the national minimum wage (NMW) i.e. that once the relevant sum was sacrificed those workers were not earning the NMW and that the expenses claimed could not be used to make up the NMW. HMRC tightened the rules on this by changing the NMW legislation with effect from 1 January 2011. From that date employers who operate travel and subsistence schemes are not able to take the expenses paid to the worker into account when calculating whether the NMW has been paid. Expenses payments made under the travel and subsistence schemes are now included in the list of disregarded payments meaning that employers must ensure that they pay their workers the NMW in addition to any payments workers are entitled to under the travel and subsistence scheme. Unfortunately the REC Policy and Legal teams continue to receive complaints that other employment businesses and umbrella companies are not complying with these rules.

(2) "Pay day by pay day" schemes: These include arrangements where expenses are not reimbursed but tax "relief" is claimed each pay day by the employer to reflect expenses incurred by the employee. HMRC has issued two statements on these schemes, in July 2011 and again in August 2012 confirming its view that these schemes do not comply with tax and social security legislation.

Separately, in January 2011 the GLA refused a licence to an umbrella company, FS Commercial Ltd. (FSC) which operated a pay day by pay day scheme. In November 2012 FSC lost an appeal against that licence refusal in the Gangmasters Licensing Appeal Tribunal. The judgment states that 'FSC knew that it was acting contrary to the Dispensation they had received from HMRC'. The Judge found that FSC had "failed to identify a single statutory provision" that supported the model it operated. She also said that "... It was reasonable and appropriate for GLA to refuse the licence on the grounds that standard 2.1 [concerning tax and national insurance contributions] had not been met. GLA would be in breach of its own duty to grant a licence to a company which chooses to flout the law, to disregard the HMRC guidance. The suggestion that GLA must grant the licence, [and] let FSC operate in the GLA industry, while HMRC challenges FSC's interpretation of the law in a different arena is wholly without merit. GLA's duty is to refuse a licence to a company who does not comply with the current tax legislation. It would be in breach of its duty to grant a licence to such a company....." Interestingly, FSC's tax advisor received significant criticism for advising FSC to operate the scheme in breach of the dispensation. Read the GLA press release here.

(3) Temporary workers working through overseas umbrella companies: A recent news story investigated the supply of teachers and other public sector workers through overseas umbrella companies. The story pointed out that in addition to the lost employee national insurance contributions and tax, those companies also did not pay employer's national insurance because they were based offshore (only UK based employers are subject to employer's national insurance). Thus the revenue loss to the treasury was even greater than it would be if those workers worked through a UK based umbrella company, which would pay the employer national insurance contributions.

(4) Risk – who pays if the umbrella doesn't? A particular issue for members is what risk either they or their clients face if an umbrella company they have engaged with does not make the appropriate tax and national insurance deductions and pay these to HMRC. HMRC have advised REC that the risk depends on whether the umbrella company is based inside or outside the UK. We will take each one in turn:

Overseas umbrella companies: In May 2011, HMRC advised REC that if a UK based temporary worker works for a UK client but through an overseas umbrella company, there is specific anti-avoidance legislation which permits HMRC to pursue the "host employer" i.e. the end client for employer's national insurance (see the REC Legal Guide for further details). Note: this does not apply to EU or Isle of Man based umbrella companies as HMRC has special agreements which treat the company as being a UK based employer for the purposes of PAYE and national insurance and so HMRC will pursue those companies for any unpaid deductions. Recent conversations with HMRC confirm that remains their advice. Essentially:

a) If the overseas umbrella company has a UK place of business HMRC will pursue the umbrella company for the unpaid contributions.

b) If the umbrella company does not have a UK place of business or HMRC is unsuccessful in pursuing the umbrella company, then they will pursue the end client. HMRC can do this by virtue of Section 689 of the Income Tax (Employment and Pensions) Act 2003 (ITEPA) and Schedule 3 of the Social Security (Categorisation of Earners) Regulations 1978. HMRC tell us that they have already successfully pursued end clients using this legislation though we do not know the sums or numbers of clients involved.

c) HMRC is currently exploring whether it can also pursue the supplying employment business. Their view is that often the use of an overseas umbrella company is an artificial construct – where this is the case HMRC will seek to "onshore" the debt and to pursue the employment business. There is some merit to the argument that if a temporary worker lives in the UK and works via a UK employment business for a UK client then there is no obvious reason for that worker to work through an overseas limited company (if it is solely for perceived tax benefits, then it must be recognised that many temporary workers also work through UK based umbrella companies because of the perceived tax benefits of working through those companies). However that does not mean that the current legislation allows for the on shoring of the debt – REC will continue to engage with HMRC on this point and will keep members updated.

UK incorporated umbrella companies: HMRC has told REC that if an employment business engages with a UK based umbrella company and that umbrella company fails to make the appropriate payments to HMRC, HMRC will pursue the employer i.e. the umbrella company, for the unpaid sums. If the umbrella company becomes insolvent or is otherwise unable to make the necessary payments, HMRC will pursue the former directors of the insolvent company. Therefore, HMRC will not pursue a recruitment business for sums due from a UK based umbrella company.

REC advice to members

- Members should ask all umbrella companies that they have engaged with to confirm that if they operate a travel and subsistence dispensation, that they operate it in compliance with all relevant legislation. Ask them to confirm if their use of the dispensation has ever been reviewed or investigated by HMRC and if so, what was the result. Bear in mind however that HMRC may not have yet managed to review a dispensation but this does not mean by itself that the umbrella is applying it correctly.

- If you engage with an overseas umbrella company consider, bearing in mind the Government's proposed action, whether to continue working with them. If you decide not to continue to work with an overseas umbrella company, you will need to review your contractual arrangements with the temporary workers working through that umbrella company e.g. if the temporary worker wishes to continue working for your clients, you will need to either engage the temporary worker on a contract for services, or as your own employee or via a UK based umbrella company. Importantly, do not rely on counsel's opinion or other legal advice given to that umbrella company to make your own business decision.

- If your business operates its own travel and subsistence scheme ensure that it operates within the terms of the dispensation granted. You should obtain detailed and specific advice from tax specialists on the scheme. The REC legal team cannot confirm whether a particular scheme meets the HMRC rules or not.

FAQs

Zoë Rogers-Wright, Legal Advisor at the REC brings you a sample of questions posed to the Legal Helpline

Q: The job centre has written to our employment business to seek information about an agency worker who we engage as they are investigating benefit matters. Are we able to pass the agency worker's details or is this a breach of Data Protection Act 1998?

A: Normally you would require your worker's consent to pass his/her personal data to a third party. An individual's personal data cannot be processed unless one of the conditions in Schedules 2 and 3 of the Data Protection Act 1998 (DPA) apply. In certain circumstances the DPA allows you to pass your agency worker's details to a third party where you do not have the individual's consent to do so. One of the circumstances is where it is necessary to do so in order for you to comply with a legal obligation.

An individual's personal data cannot be processed unless one of the conditions in Schedules 2 and 3 of the Data Protection Act 1998 (DPA) apply.

Section 109 of the Social Security Administration Act 1992 (the Act) has provisions which create a legal obligation for an employment business to comply with requests made by an authorised officer. The Act allows an authorised office to seek information from people and organisations for the purpose of preventing benefit offences, secure or detect benefit offences, investigate circumstances of accidents, injuries, diseases etc. People who are liable to provide information include but are not limited to 'any person who is carrying on, or has carried on, an agency or other business for the introduction or supply, to persons requiring them, of persons available to do work or perform services.' An employment business would be caught within this and would therefore be liable to provide information to an authorised officer.

When making a request for information the authorised officer must identify themselves to you as an authorised officer, they must also list the information that they are authorised to obtain from you under Section 109A/110A of the Act. In addition the notice to you should state that under S109b(1) and (2) of the Act, you are required by an authorised officer to provide information to which you have access.

So, provided such a request is made giving rise to a legal obligation to provide the information, you would not need to have your worker's consent to do so.

Q: Do I have to check whether a Limited Company Contractor has eligibility to work in the UK?

A: The starting point is that the Immigration, Asylum and Nationality Act 2006 (the Act) requires an employer to ensure that the individuals they employ have the necessary authorisations to work in the UK. An employer has liability to pay a civil penalty under the Act if it employs a person who is subject to immigration control and who does not have authorisation to work in the UK.

Where an employment business enters into a contract with a limited company contractor e.g. Joe Bloggs Ltd, arguably it has not employed a person who is subject to immigration control and therefore liability under the act will not arise for the employment business. However it may be the case depending on the contract between the contractor and the limited company that the Limited Company (Joe Bloggs Ltd) may well be the employer, this will mean it will be responsible for checking that any of its employees have the right to work in the UK.

The Act allows an employer to rely on the statutory excuse to avoid liability to pay the civil penalty, if it has checked and retained copies of certain documents that show the individual is able to work in the UK. Additionally, it is a criminal offence to knowingly employ a person to work in the UK who does not have the right to work and this applies irrespective of whether the relevant documents have been checked with copies retained (as set out above). This carries a sentence of an unlimited fine/and or imprisonment of up to two years.

Further, Regulation 18 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) requires an employment business to confirm certain information about work-seekers before it introduces or supplies them to a client. This information includes that the work-seeker has '.....the experience, training, qualifications and any authorisation which the hirer considers necessary, or which are required by law or any professional body to work in the position.' It is arguable that checking a work-seekers eligibility to work in the UK would be taken to be an 'authorisation...required by law.' If the work-seeker is a limited company, the same rules apply in respect of the individual who will be supplied by that company to the client. Where a work-seeker has opted out of the Conduct Regulations this provision would not apply.

Aside from the above statutory provisions, an employment business should also consider whether it has any contractual obligations to carry out checks on the individuals who will undertake work for the client by virtue of their contract with the client for example.

The Immigration, Asylum and Nationality Act 2006 (the Act) requires an employer to ensure that the individuals they employ have the necessary authorisations to work in the UK.

Q: My client wants me to advertise a position for a man and do not want me to put any females forward for the role as the individual would be required to work here in the UK and in the middle east. Is it okay if advertise for this position?

A: The Equality Act 2010 prohibits 'employers' from discriminating against employees because of a protected characteristic. Protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The protection given under the Act is twofold, and applies to both individuals who are currently working for an employer and applicants who are seeking employment.

Employment businesses and employment agencies are caught by the 'employment service provider' provisions in the Act. Employment businesses are also caught by the 'employer' provisions in the Act when engaging.

The Act prohibits (amongst other conduct) the following:

(a) Employers from discriminating against employees (including applicants) by not offering employment.

(b) Employment service providers from discriminating against a person in the arrangements the service provider makes for selecting whom to provide, or whom to offer to provide, the service.

(c) Employment service providers from discriminating against a person by not offering to provide the service to that person.

(d) A principal (for example a client using workers supplied by an employment business) from discriminating against a contract worker (a worker supplied by the employment business) by not allowing the worker to do the work.

As the client has stated that they do not wish any female candidates to be put forward for the roles, on the face of it, it could constitute direct discrimination because of the protected characteristic of sex. This is because a woman would be prevented from applying to the position because of her sex.

In complying with this instruction, an employment business/employment agency will potentially engage (b) and (c) above. The client could potential engage (a) and (d) above.

Occupational requirement defence
This will not amount to unlawful (direct) discrimination if the general exception set out in Schedule 9 paragraph 1 of the Act applies i.e. it must be the case that the requirement for candidates to be of a particular sex (male) is an occupational requirement for the work that will be carried out and that applying the requirement is a proportionate means of achieving a legitimate aim and that the person to whom a person applies the requirement does not meet it (or the persons has reasonable grounds for not being satisfied that the person meets it).

The explanatory notes that accompany the Equality Act state that the requirement applied must be 'crucial to the post, and not merely one of several important factors.' This provides a defence to employers, employment service providers and principals against a claim of direct discrimination.

There is also a specific defence open to employment service providers under Schedule 9 paragraph 5. This provides that an employment service provider will not unlawfully discriminate against a person as set out in (b) and (c) above if it can show that it has relied on a statement (made by the client for example in this case) that the requirement it has applied to the roles is lawful (i.e. is not unlawfully discriminatory because of an occupational requirement applies to the role and if it is reasonable for the employment service provider to rely on the statement).

A client will be guilty of an offence if it knowingly or recklessly makes such a statement to mislead an employment service provider.

The statement given by the client at present (i.e. the work will require the individual to work in the UK and the Middle East) does not shed any light on whether the occupational requirement defence might be met. The client's statement is too vague. You will need more details from your client before you will be in a position to determine whether it would be lawful or unlawful to accept the instruction and advertise the role accordingly. If the client's view is that the gender requirement is an occupational requirement you should seek a statement confirming the same from your client. Although the Act does not specify that this statement should be given in writing, from an evidential point of view, it is advisable to seek written confirmation of the statement. You will then need to take a view on the information provided; it must be reasonable for you to rely on the statement. In the absence of such a statement, unless you can demonstrate how/why the occupational requirement defence applies, there is a risk that accepting and acting on these instructions would be likely to be discriminatory.

The Equality Act 2010 prohibits 'employers' from discriminating against employees because of a protected characteristic.

Lorraine Laryea, Solicitor and Commercial Advisor

Legal round up

Employment Tribunal decision on the Agency Workers Regulations 2010: 'Flipping' agency workers onto a Swedish Derogation Contract.

In one of the first recorded cases in the Agency Workers Regulations 2010 (AWR) we now have an initial view of the Employment Tribunal's approach to 'flipping' agency workers onto a Regulations 10 compliant contract.

To recap: Regulation 10 AWR

Under the AWR, agency workers are entitled to equal treatment compared to a hirer's directly recruited workers after completing a 12 week qualifying period. The parity treatment is limited to the terms and conditions relating to pay, the duration of working time, night work, rest periods, rest breaks and annual leave. However where the temporary work agency engages an agency worker on a permanent contract of employment that complies with Regulation 10 of the AWR the agency worker will not be entitled to pay parity, but all other equal treatment rights apply. A Regulation 10 compliant contract (also known as a Swedish Derogation Contract or Pay Between Assignments Contract) must provide for the agency worker to receive a specified minimum amount of pay between assignments.

In order to be compliant, Regulation 10(1)(a) specifies that:

'the contract of employment was entered into before the beginning of the first assignment under that contract.'

It is this provision that formed the crux of the case reported below. If the contract does not fully comply with Regulation 10 it will not remove an agency worker's right to pay parity.

The case: Bray and others v Monarch Personnel Refuelling (UK) Limited

Facts:

The case involved a group of Claimants, all drivers supplied by Monarch (M) (a temporary work agency as defined under the AWR) predominantly to one particular client. In the lead up to the AWR coming into force on 1 October 2011, the client advised M that all existing assignments would end by 30 November and that further assignments from 1 December would only be available to drivers engaged under a Swedish Derogation Contract.

M consulted with its drivers during October and sought confirmation of whether they would accept a Swedish Derogation Contract. All of the Claimants agreed to do so, but one, H, requested a further meeting once the contract was issued. The contract itself was issued to the Claimants on 15 November 2012 with the same date. All of the Claimants, again with the exception of H signed and returned their contracts to M by 29 November.

On 1 December, all of the Claimants, including H turned up at the client depot for their assignments. H did not sign his contract until a couple of weeks later. Following queries raised by the Claimants about the effect of their contracts they subsequently issued claims in the Employment Tribunal for pay parity under the AWR, disputing that the Swedish Derogation Contracts were compliant with Regulation 10.

> 'the contract of employment was entered into before the beginning of the first assignment under that contract.'

The issue:

In effect the issue to be determined was a very narrow one. The ET had to decide whether the contract of employment was entered into before the beginning of the first assignment under that contract.

The arguments:

One of the arguments put forward by the Claimants was that the Swedish Derogation Contract commenced on 15 November and as the Claimants were already on assignments that had been on-going for several months, the contract had not been entered into before the beginning of the first assignment under that contract.

The judge rejected the argument that 'assignment' means the continuous period during which an agency worker is hired out to a hirer. Instead he found that assignment means 'a period of time' during which the agency worker is hired out to hirers' and agreed with M and their client that assignment meant the particular assignment received from the client from time to time. As such it was possible for work allocated to the Claimants that started on 1 December to be taken to be a separate assignment from those that preceded it.

Read in that way, it was clear that the 'first assignment under that contract...began on 1 December.'

It was held that the Swedish Derogation Contracts commenced on the date that the Claimants signed the contracts, with the exception of H. In his case it was held nevertheless that by turning up to undertake the assignment that commenced on 1 December, with the knowledge that assignments from that date would only be available to drivers on the Swedish Derogation Contract, he had accepted it and accordingly he entered into the contract on that date (1 December). Although this was the same date that the assignment commenced the Judge took the view that on balance, the contract still commenced before (even if only some minutes before) the assignment commenced. The important point was that H 'had received the protection that Regulation 10 requires' in that he had already been given the contract ahead of that assignment, which highlights the importance of the consultation process followed by M.

A further argument put forward by the Claimants, that the Swedish Derogation Contract was merely a variation of the original zero hours contract also failed. The Judge was satisfied that the Swedish Derogation Contract was a new contract particularly given that the change from the zero hour to the guaranteed pay between assignments was a 'fundamental change' to the terms.

The Judge also rejected the Claimant's request that a reference be made to the Court of Justice of the EU for further clarification of the application of Regulation 10, regarding this as unnecessary.

The decision:

The Claimants claims were all dismissed as it was found that M had properly implemented the Swedish Derogation Contracts.

It is not clear at this point whether the Claimants intend to appeal against this decision and this is only a first instance decision which will not be binding on other ETs. However it is of interest not only because it is an early reported case on the AWR but also because it provides an initial view of the issues that an ET may consider when determining the process followed by a temporary work agency when transferring workers on existing contracts onto a Swedish Derogation Contract.

The Claimants claims were all dismissed as it was found that M had properly implemented the Swedish Derogation Contracts.

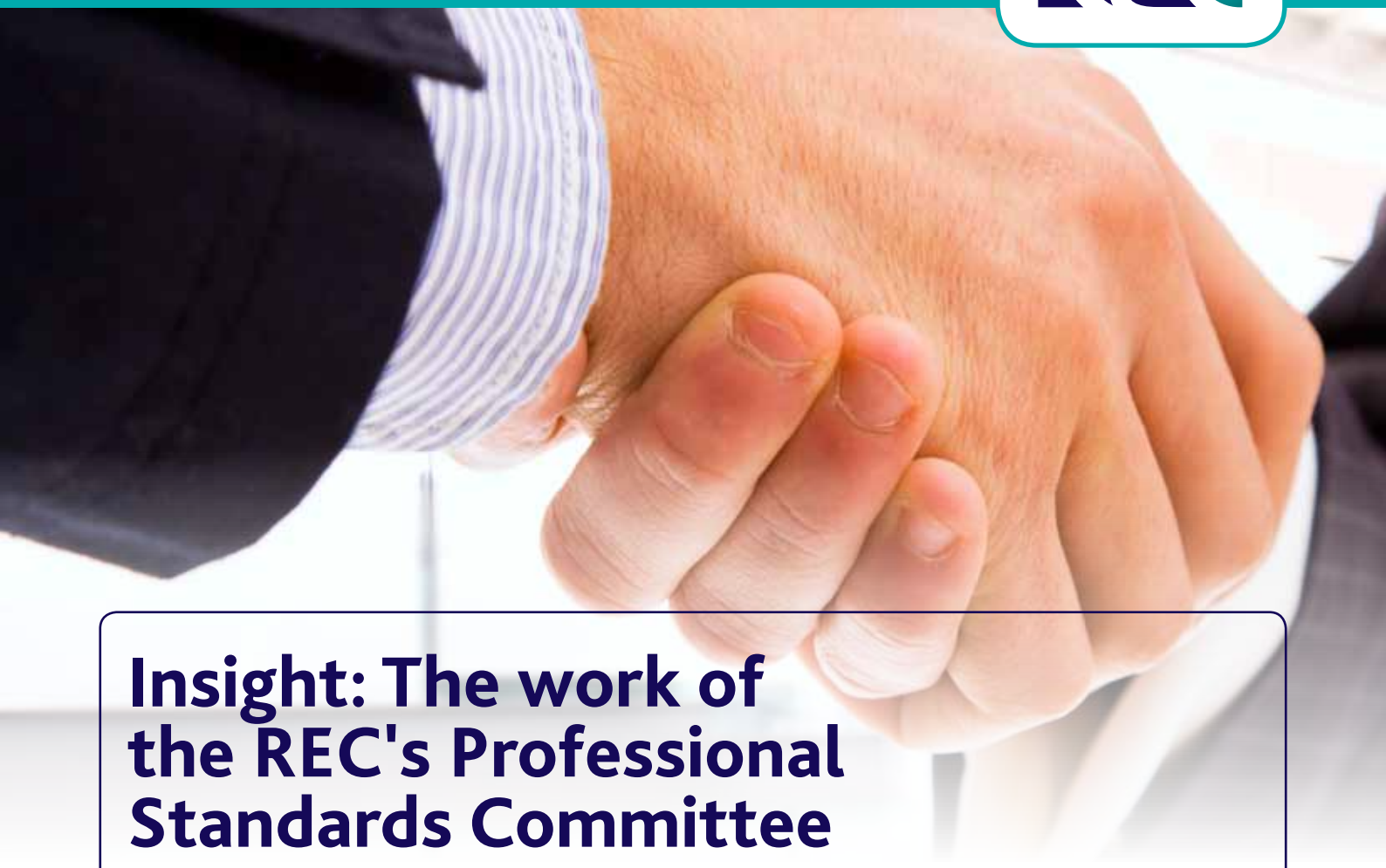
Employment Status: Stringfellows Restaurants Limited v Quashie

The Court of Appeal has reversed the decision of the Employment Appeal Tribunal (reported in the July/ August 2012 Legal bulletin) Tribunal to find that a lap dancer who worked in Stringfellows was not an employee but was self-employed.

The Court accepted the view that Stringfellows was not under an obligation to pay the dancer and that 'the club [Stringfellows] did not employ the dancers to dance; rather she paid them to be provided with an opportunity to earn money by dancing for the clients'.

The Court found that it would be an 'unusual case where a contract of service is found to exist when the worker takes the economic risk and is paid exclusively by third parties' (i.e. the club's clients). The Court also considered it relevant that the dancer had accepted that she was self-employed, and 'had conducted her affairs on that basis.'

The Court accepted the view that Stringfellows was not under any obligation to pay the dancer.



Insight: The work of the REC's Professional Standards Committee

The Professional Standards Committee (PSC) meets four times a year to consider any inspection or complaints cases referred to it by the REC Consultancy and Compliance team.

Those cases are usually either the more protracted ones where the REC member has been too slow in responding to or refuses to co-operate with the Consultancy and Compliance team or the most serious cases of unprofessional behaviour. Such cases are dealt with under the Complaints and Disciplinary Policy which both REC corporate members and IRPs are subject to.

The Consultancy and Compliance team and the PSC are keen to assist members reach the highest standards of professionalism in recruitment, as set out in the REC Code of Professional Practice and the IRP Code of Ethics and Professional Conduct (together the Codes). The Codes set the standards to which all REC and IRP members are expected to adhere.

The PSC has asked us to remind members that it has the authority to issue a sanction to any member which it finds has breached the Codes. Sanctions may be publicised and can include:

- compliance orders to undertake a specific course of action;
- a requirement to undergo an inspection;
- a reprimand of up to a period of 2 years depending on the seriousness of the case; or
- expulsion from the REC or IRP.

A recent case before the PSC included CV spoofing and continued unsolicited contact despite requests for this to stop. This resulted in a two year public reprimand and an inspection every six months until the expiry of the reprimand. A further case involved repeated unsolicited calls and emails to a work-seeker who had previously advised the agency that he no longer wished to receive such contacts. In this case, the PSC issued a six month reprimand and an inspection.

Members can download a copy of the Complaints and Disciplinary Policy and the Codes here.

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