



## EMPLOYED OR SELF-EMPLOYED

It is recommended that this document is read before completing the most appropriate contract for your club.

The PGA recently revised their contracts for the PGA Professional. We are grateful to the PGA for allowing access to this documentation and are delighted to add it to the GCMA Library. As before, accompanying each of the contracts are drafting notes. The pages of guidance are essential for completion of such an agreement and should be read alongside library document '*General Guidance Notes for the PGA Standard Contracts*' (Document No: 1237)

The drafting notes cover the definitions used within the contract and refer extensively to the PGA Standard Contract documents. This new document '*Employed or Self-Employed*' (Document No: 1250) is also essential reading before completing the most appropriate contract for your golf club. As before, the Contract will need tailoring to suit individual circumstances where required and are provided as guidance only. Reference to the six sets of contracts are as follows:

	Library Document No:
<b>1 Golf Club employing a PGA Professional (contract)</b>	<b>1238</b>
<b>Drafting Notes for Golf Club employing a PGA Pro</b>	<b>1239</b>
<b>2 Head PGA Professional employing PGA Pro (contract)</b>	<b>1240</b>
<b>Drafting Notes for Head PGA Pro employing a PGA Pro</b>	<b>1241</b>
<b>3 PGA Professional employing non-PGA Pro (contract)</b>	<b>1242</b>
<b>Drafting Notes for PGA Pro employing non-PGA Pro</b>	<b>1243</b>
<b>4 PGA Professional employing PGA Assistant Pro (contract)</b>	<b>1244</b>
<b>Drafting Notes for PGA Pro employing PGA Assistant Pro</b>	<b>1245</b>
<b>5 Golf Club employing a PGA Assistant Pro (contract)</b>	<b>1246</b>
<b>Drafting Notes Golf Club employing a PGA Assistant Pro</b>	<b>1247</b>
<b>6 Self Employed (contract)</b>	<b>1248</b>
<b>Drafting Notes for Self Employed</b>	<b>1249</b>

*[This document is prepared for guidance and is accurate at the date of publication only. We will not accept any liability (in negligence or otherwise) arising from any member or third party acting, or refraining from acting, on the information contained in this document.]*

## **ARE YOU AN EMPLOYEE?**

*By Leigh Dewdney, Associate at Osborne Clarke solicitors.*

The law on employment status and employment rights is confusing. This article considers the status of PGA Professionals and the factors the courts will take into account when determining a PGA Professional's employment status.

There are three categories of worker:

- Employees;
- Workers; and
- Self employed (also known as independent contractor).

### **Are you an employee?**

All employees should be working under (or should have worked under) a contract of employment. A contract of employment is a contract of service.

The PGA has now launched a suite of employment contracts which are available and can be adapted and adopted by PGA Members.

### **Are you a worker?**

The employment statutes are very unhelpful in defining what constitutes a worker; there are different definitions in virtually every statute. However, it would seem that a PGA Professional is a worker if he:

- has a contract (written/expressed/implied); and
- is obliged to personally provide services; and
- is not in business on his own account.

It is unlikely that any PGA Professionals will be classed as workers.

### **Are you self-employed?**

If a PGA Professional is neither an employee nor a worker then he is an independent contractor (self-employed). A person who is self employed should be engaged under an agreement traditionally referred to as a "contract for services" whereas a person who is employed is engaged under an agreement traditionally referred to as a "contract of service".

The PGA expects that only PGA Professionals who are engaged by Golf Clubs or who provide only coaching services to either other PGA Professionals or Golf Clubs are genuinely self employed.

**Why should you be concerned?**

Employment status is important because it governs an individual's statutory protection. Employees have a far greater range of legal rights than independent contractors or workers.

Employees have the following rights which are not afforded to an independent contractor or a worker. The right:

- that their employer follow a statutory grievance procedure or disciplinary procedure, where appropriate;
- to a written statement of employment particulars;
- to an itemised pay statement;
- to ordinary and additional maternity leave;
- to paternity leave;
- to parental leave;
- to a minimum period of notice; and
- to claim compensation if unfairly dismissed (or unfairly selected for redundancy).

PGA Professionals should also be aware that an employee has protection on the transfer of an undertaking. An undertaking includes any trade or business. The governing regulations are complicated, but this could mean that a PGA Professional who is employed by one PGA Club Professional immediately before the transfer automatically becomes the employee of the new PGA Club Professional from the time of the transfer, on the terms and conditions held with the previous PGA Club Professional.

The new PGA Club Professional would also inherit the previous club professional's rights and liabilities in relation to that employee and any dismissal of the employee (whether before or after the transfer) for any reason connected with the transfer will be automatically unfair unless the reason is an economic, technical or organisational reason entailing changes in the workforce, in which case the dismissal is fair if reasonable in the circumstances.

Those who are classed as employees or workers benefit from rights such as:

- protection against unlawful deduction from wages;
- protection against detriment for exercising rights in respect of working time cases i.e. national minimum wage etc;
- the right to holidays under the Working Time Regulations;
- the right to the national minimum wage;
- a maximum 48 hour week, rest breaks; and

3546049\_1.DOC

- the right to be accompanied at disciplinary and grievance hearings.

An independent contractor will only benefit (as will an employee and a worker) from the right not to be discriminated against on the grounds of sex, race, sexual orientation, religion and religious belief, age and disability and from the health and safety obligations that companies owe.

### **What is your status?**

When considering this question it is important to be aware that neither the label you have been given nor the fact that you do or do not pay tax under Pay As You Earn is conclusive. The courts and tribunals take a variety of factors into account.

The courts will decide whether there is a contractual relationship between you and the alleged employer – but the mere fact of describing the relationship as "self-employed" or "employed" will not be conclusive. In considering whether there is such a relationship the courts look behind the contract to see whether there is mutuality of obligation and control.

Mutuality of obligation exists where the employer is obliged to provide work and the PGA Professional is obliged to accept it. Control exists where the employer controls what the PGA Professional does and how he does it e.g. by dictating when and where he turns up.

If there is mutuality of obligation and control this still does not mean that there is a contract of employment. The courts will look to other additional factors, including:

- whether the contract imposes an obligation on the PGA Professional to provide the work personally to the employer i.e. as a pro do you have freedom to delegate the running of the shop or lessons;
- who decides when the work will be done?
- who is responsible for tax and national insurance?
- whether the individual is in a position to profit from the efficient performance of the work e.g. keeping lesson fees, running the shop;
- whether the PGA Professional can hire his or her own assistants;
- who bears the financial risk i.e. inventory of stock in the shop?
- who provides the shop and necessary equipment e.g. cash register, shop fittings?
- whether the PGA Professional is subject to disciplinary, grievance and/or performance procedures;
- whether there are any arrangements for the payment of sick pay/holiday pay;
- whether there any fringe benefits e.g. a car; and/or
- whether the PGA Professional is able to work for any other third party.

3546049\_1.DOC



The court will look at these factors as a whole. As previously mentioned a PGA Professional will usually be an employee unless he is engaged by a Golf Club or providing coaching services, in which case he may not be.

### **Conclusion**

Until legislation gives clear guidance as to the different status of employees, workers and independent contractors, tribunals will continue to look at the relationships between the parties as a whole, emphasising different factors in each case.

The best way to avoid any future disputes regarding the status of the relationship is for PGA Professionals to ensure that the contractual arrangements put in place correctly reflect the ongoing relationship and practice. This involves considering the degree of control, mutuality of obligations and other factors identified by the courts, at the outset of the relationship. Both the employer and the employee will then be aware of their mutual duties and the responsibilities involved. Simply choosing the self-employed route as the most tax efficient will not be enough.

To assist PGA Professionals with this the following pro forma contracts are available for download from the PGA's website. The PGA encourages PGA Professionals and Golf Clubs to use these contracts wherever possible:

### **Employment Contracts:**

PGA Professional employing another PGA Professional

Golf Club employing a PGA Professional

PGA Professional employing a non-PGA Professional (e.g. someone to help in the shop)

A PGA Professional employing an Assistant Professional

### **Self employed contract:**

Golf Club engaging the services of a PGA Professional

There are general guidance notes on the website to assist you in deciding which contract to use and a specific set of guidance notes to assist you in completing the contract you decide to enter into.