

Contracts for paid parish workers

There can be many types of paid workers involved in parish life, including PCC employees, self-employed people and individuals who can help out on a casual basis. Please see the Checklist for Determining Employment Status.

This guidance provides details about which paperwork you should have in place.

Typically, the types of contracts that might be needed are:

- Permanent and open ended contract of employment eg. Administrator or Office Manager
- Fixed Term contract of employment e.g. subject to funding or to cover maternity leave
- Self-Employment Contract for Services for example a Consultant or Contractor or someone for a specific project
- Organist could be self employed or employed. Further guidance is provided below/
- Clergy Office Holder – these are dealt with by the Bishops Office and HR
- Casual/zero hours

Contracts of employment

A contract of employment is an agreement between an employer and employee which is legally binding. The term is defined by the Employment Rights Act 1996 as a contract **of** service or apprenticeship.

Any employee who has been employed for one month or more has the statutory right to a written statement of particulars of employment. They are entitled to receive this written of statements within 2 months from the start of employment.

Employment contracts consist of a mixture of Express and Implied terms:

- Express terms: those that are actually stated in writing and which must meet minimum legal standards in many areas, such as the right to paid holidays and the right to rest breaks.
- Implied terms: those that are not necessarily written down but still apply. For example, a duty of mutual trust and confidence between the employer and employee.

Legally, there are minimum terms that need to either be included in a basic contract or another document. As a parish you should plan in advance as to what terms you plan to offer your employee. If you employ more than one person, these terms should be kept as consistent as possible.

What information do we need in order to draft an employment contract?

- Who is the employer going to be?
- Will it be permanent or fixed term?
- How much will we pay and what will we base it on?
- How many hours per week will they work?
- What pension scheme will we provide?

- What length of notice shall we apply?
- Do we have written procedures in place?
- Are benefits going to be more than the statutory minimum?

Fixed term contracts of employment

Why use a fixed-term contract?

You may want to use a fixed-term contract for a number of different reasons, including:

- To cover maternity leave
- To cover long-term sick leave
- Where there is a specific project where particular skills are required

Some things to remember

Fixed-term employees have the right not to be treated any less favourably than comparable permanent employees. Therefore they are entitled to the same equivalent benefits. Normally the only difference in the written contract would be in relation to an end date (and any notice required etc) and perhaps a pro-rata holiday allowance and salary.

It is important that fixed term contracts explain whether notice to end the contract is required or not and whether it can be ended because of a specific event, for example, because of a withdrawal of funding from an outside party.

Where a fixed-term employee's contract is terminated, this amounts to a statutory dismissal, even if this is at the expiry of the fixed term. Therefore, where they have more than 2 years' employment, they will have the right to claim unfair dismissal. This means that a standard redundancy procedure should be followed.

Any fixed-term employees who have been on successive fixed-term contracts will automatically become permanent employees after four years.

Casual worker (zero hours) contracts

There has been a lot of bad press recently in relation to zero hour contracts, in particular where some employers have been using them unfairly.

However, if used properly and fairly by ensuring that both parties have the ability to reject work and also allowing individuals to work elsewhere when they are not doing work for you, they can be a useful tool.

Zero hours contracts are good for when services are required on an ad hoc and casual basis. There is no obligation (whether actual or implied) on the part of the organisation to provide an individual with work and the individual is not under any obligation to accept any work offered.

The individual would not be an employee of the organisation, just a worker. This means that they would not be automatically entitled to certain benefits such as sick pay. They would receive holiday entitlement based on the hours they work.

The individual is paid only for hours actually worked and there will be deductions of income tax, in the same way as if they were an employee, but this is for administrative convenience only.

Self-employed contracts for services

If an individual is identified as being self-employed, it is always a good idea to provide a contract for services in writing.

We recommend that you ensure the following is in place at the point of signing:

- Commencement date and duration of agreement- *clear parameters should be given*
- Purpose of the agreement- *a scope of the work required*
- Fees- *is it a one off fee or hourly?*
- The ability to provide a substitute in the event that the individual is not available
- Confidentiality and data protection rights
- Publication of material- *who owns the rights? Normally this would be the PCC*
- Insurance and liability- *the individual should have their own public liability insurance*
- Termination clause

Try to avoid employment phrases such as 'line management', 'salary' or 'Job Description'.

Remember: The HMRC may want to look at both the written contract and your working relationship with the individual. It is therefore necessary to ensure that regular reviews take place so that the documentation reflects the true situation.

Organists: employed or self-employed?

The appointment of Organists and Directors of Music is covered by Canon Law (Canon B20), contract law and as appropriate, employment law. Separate guidance is available from the National Church

<https://www.churchofengland.org/media/3956676/organists.pdf> about the engagement or employment of Organists.

A sample contract can be obtained <http://www.churchmusicians.org/node/149>

The status of the working relationship between the Organist and Parish can usually be determined using the 'Employment Status Indicators'. In most cases, as there is generally a high degree of mutuality and control, you will find that the organist is an employee of the PCC.

In terms of the remuneration, there has been a tradition of describing payment to the Organist as an honorarium. However a true honorarium is a 'one-off' payment after

the event to say thank you to someone, it is not usually pre-determined. Therefore, paying a regular sum of money each week or month (even where it is topped up occasionally with separate payments for weddings, funerals etc.) is likely to be regarded as a 'salary'.

Recent employment tribunal case law (2008 onwards) suggests that tribunals are of the mind that most if not all organists are employees; even if the parties have explicitly agreed at the beginning of the working relationship that it is one of self-employment.

FAQs

I would like to employ a member of our PCC to do some book keeping for a few hours each week. Is this ok?

We would always recommend that parishes think carefully before employing a trustee or even someone who worships in their congregation. Whilst it is likely the employment would work well, we do often hear of situations where it isn't working which can mean there is not only the employment relationship to rectify but it also creates issues pastorally.

The Charity Commission does have [guidelines](#) relating to employing Trustees. The PCC's governing documents (The Church Representation Rules and The Parochial Church Councils (Powers) Measure 1956) do not normally allow for trustees to be paid, so the PCC would need to apply to the Charity Commission for permission before employing the individual.

A member of staff has been on a fixed-term contract for 3 years and it is coming to an end in two months' time, are they entitled to a redundancy payment?

The ending of a fixed-term contract counts as a statutory dismissal in law and as the individual has more than two years' service they are also protected under the unfair dismissal legislation. Therefore, we would recommend that you follow a standard fair dismissal/redundancy procedure for the position, which will include entitlement to a statutory payment if the person is made redundant. Further details in relation to redundancy can be found on the [ACAS website](#).

A member of staff has resigned but does not want to give their full contractual notice, can we insist that they do so?

The duty to give notice is part of a contract of employment. If your employee doesn't give the right notice then that would be a breach of their contract. This can occur if the contract requires notice to be given in writing but it was only given verbally or for example, if not enough notice (or none at all) is given. The practical response would be to sit down with the individual and try to negotiate with them. A claim in the courts for breach of contract would cost the parish time and money, so trying to settle the issue informally would be the best solution.

The advice in this document has been taken from the Diocese of London and this is acknowledged with thanks.