



Employment and Pensions

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RIP Schedule 1!

We're fast heading towards the end of an era with the introduction of light touch regulation and the abolition of Schedule 1 of the Housing Act 1996 and the various good practice notes (GPNs) that work with it. This is likely to take place on 1 April 2010.

Schedule 1 prohibits the making of non-contractual payments or benefits to staff, board members or their families. In addition it contains legal measures ensuring that RSL board members and staff do not abuse their positions and deal with potential conflicts of interest that may arise.

It was anticipated that Schedule 1 would be replaced by a Code of Conduct, but in fact there is no replacement. While this may cause cheering from some quarters this does mean that all current RSLs (soon to be Registered Providers) will have to change the way in which they operate in a short space of time.

So what will be affected on the HR side?

- Contracts and remuneration;
- Severance payments;
- The settlement of disputes; and
- Managing conflicts.

Contracts of employment and remuneration

Without the guidance of GPN 10 and other good practice notes, what contracts can a Registered Provider enter into?

Each Registered Provider will have to consider its own obligations, look at its own constitution, any other external regulation (especially for charities) and refer to any external guidance it thinks appropriate. Identifying these parameters will take some time, and Registered Providers will be reassured that the TSA does not expect you all to be up and running on 1st April.

The principles of good governance require organisations in public life and charities to have a process in place for consideration of these issues,

not least to ensure that remuneration is set at an appropriate level for the organisation and the sector.

It is also worth remembering that the TSA will continue to regulate Registered Providers, and while account managers will be trained on the new lighter approach to regulation, they will undoubtedly remember what was required of RSLs before the changes.

Generally, the change will mean that Registered Providers can be much more flexible in the benefits and contractual arrangements that they offer staff. Whereas under Schedule 1 it was a requirement for RSLs to ensure that any benefits were contractual, under the new regime an element of discretion will be acceptable.



Source: iStockphoto

Board members

The abolition of GPN 5 means that there is no maximum payment level that board members can be paid, and no guidance on what steps for Registered Providers to take when deciding to pay

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board members. This gives some registered providers more leeway in how to remunerate board members.

Charities will need to consider CC11, the Charity Commission circular on paying board members, which is more restrictive than GPN 5, and take legal advice where relevant on what charity law will allow.

Severance payments

At present, Schedule 1 governs what an RSL can pay as severance in three different scenarios:

- Payments arising out of a dispute with the employee;
- 9th exemption payments; and
- Payments which require the use of a Special Determination.

As Schedule 1 and the various exemptions disappear, Registered Providers will have to consider the mechanisms that they wish to adopt to deal with such payments, and set up processes to manage HR decisions.

In setting up these mechanisms they will have to have regard to their constitution, any other regulatory framework and any appropriate code of conduct. Any existing schemes of delegation should be considered to make sure that they are still effective after the abolition of Schedule 1.

The Board will need to consider matters such as the right levels of approval for the payments to be made, the level of such payments and whether or not to seek legal advice to ensure that such payments are prudent.

Settlement of disputes

When it comes to settling tribunal claims RSLs have been able to rely on the fact that the settlement of a claim of up to £30,000 is relatively straightforward provided that written legal advice on the merits of the claim has been obtained. The decision to make such a settlement payment can be delegated by the RSL's Board. However, once this mechanism has gone what constraints will a Registered Provider have to contend with before a claim can be settled?

As tribunal claims generally have to be settled speedily Registered Providers should now consider how delegated decision making will work in practice.

Managing conflicts

Schedule 1 is very clear on how to manage conflicts. Without such guidance all Registered Providers need to consider how to deal with conflicts, bearing in mind what is set out in their constitution. The operational HR issues that are relevant will include the employment of those who are connected to existing employees or board members.

Board members also have specific duties to avoid and deal with conflicts which differ slightly depending on whether the registered provider is a charity, company or Industrial and Provident Society. Boards should be cognisant of these responsibilities in light of the abolition of Schedule 1. Registered Providers will need to consider their existing conflicts policy as a matter of urgency.

What can we do to help?

Please also see our attached flyer offering a range of our services focused on the new regime.

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