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BC DISEASE NEWS

A WEEKLY DISEASE UPDATE

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Welcome

Welcome to this week's edition of BC Disease News.

In the last week, the Institute of Paralegals has called for looser restrictions on McKenzie friends. Elsewhere, a joint survey by the London Solicitors Litigation Association (LSLA) and New Law Journal, has found that two-thirds of litigation lawyers say increased court fees have deterred clients from commencing proceedings.

This week we present a two part feature in which we look at the issues which can arise in EL/Disease injury claims as a result of the changing nature of the UK workforce. In part one we focus on agency and temporary workers and consider what are the health and safety obligations owed to these workers? Do they differ from permanent employees? And finally, who is considered to be the employer of agency workers and who has responsibility for them? In part 2 of this feature we will look at contractors and self-employed workers.

Any comments or feedback can be sent to Boris Cetnik or Charlotte Owen.

As always, warmest regards to all.

SUBJECTS

Increased Court Fees Impact – Conflict of Interest in ABSs and CFAs – Paralegals and McKenzie Friends – AI in Judicial Reasoning – Law Firm's Claim For Fees Dishonest – *Lowin v W Portsmouth & Co Ltd* (2016) - Agency Workers: Employees?

Increased Court Fees Have Deterrent Effect

A joint survey by the London Solicitors Litigation Association (LSLA) and New Law Journal, has found that two-thirds of litigation lawyers say increased court fees have deterred clients from commencing proceedings. [1]

Further to this, 87% said that increased fees would influence clients' decision-making in the future, with 82% of litigators expecting costs to increase again in the next five years. An equally high, 80% said costs budgeting had driven up overall costs.

On the topic of funding, two-thirds of litigators said they had used third-party funding, 57% discounted conditional fee agreements (CFAs) and 48% normal CFAs. Compared to a small 30% of litigators who said they had been able to secure 'economic' after-the-event insurance cover for their clients.

Overall, the majority of lawyers welcomed summary assessment of costs by the trial judge.

Commenting on the results of the survey, Ed Crosse, president of the LSLA said:

'Front-loading of the increased court fees has delivered a heavy blow to commercial litigation, especially to smaller businesses which now feel deterred from pursuing legitimate claims. It's also leading to more shopping around by larger business who are baulking at the increasing costs of litigating here. It would have been fairer to have sought to generate this increased income during different phases of the litigation thus better aligning fees with the status of the case'.

Neuberger Cautions Against Risk of Conflict Of Interest in ABSs and CFAs

The Supreme Court president, Lord Neuberger, last week gave a speech on ethics and advocacy at the Royal Courts of Justice during which he warned that alternative business structures and conditional fee agreements are two 'concerning' developments which could pose a threat to lawyers' ethical duties.[2]

He stated: '*The investors will often have no interest in lawyers' ethical duties and will ultimately only be concerned with the bottom line. One must* […] *be concerned with a change which increases the temptation for a lawyer to fail to accord with her ethical duties'.*

He added: '*If we really believe that lawyers, and indeed other professionals, should not be placed in a position of conflicting loyalties the case for success fees may appear to many people to look a little shaky'.*

But he admitted that these fee arrangements did help improve access to justice. He also said he hoped lawyers' commitment to high ethical standards was 'sufficiently robust' to resist the temptations conditional fee arrangements or ABSs give rise to.

Neuberger also warned that the high level of regulation in the legal profession could lead to an 'attractive culture', which takes high ethical standards for granted, being replaced by a 'box-ticking' exercise.

He said: '*Professional ethics cannot always be reduced to simple rules, and if that leads regulators to produce increasingly complex and detailed rules, I wonder whether we are better as a result.'*

Neuberger suggested that lawyers should be taught more about their ethical duties while training.

Some have suggested that these observations have come a little late in the day what with the implementation of the Legal Services Act in 2007, the SRA Code of Conduct in 2011 and the Legal Aid, Sentencing and Punishment of Offenders Act in 2013.

Paralegals Seek More Lenient Restrictions on McKenzie Friends

The Institute of Paralegals has called for looser restrictions on McKenzie friends in the interest of cheaper assistance, 'badly needed innovation' and freedom of choice.[3]

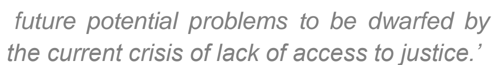
The Institute are responding to the consultation from the judiciary which proposed a ban on paid McKenzie friends, which we reported on in edition 143 of BC disease news. The Institute argue that the risk posed by McKenzie friends is 'vastly outweighed' by the harm faced by many litigants who are currently priced out of the system.

The Legal Services Board (LSB) have also indicated their disapproval with a total ban on fee charging for McKenzie friends. The Legal Services Board's Chief Executive Neil Buckley said:

'We recognise that the justice system is currently going through a period of significant change and that this brings challenges for consumers and in particular for the Judiciary. We welcome this consultation in light of these changes and support some of the proposals set out in it. However we are not convinced that the case has been made for an outright ban on fee charging McKenzie Friends. We know from our 2016 individual legal needs survey that 64% of consumers with a legal problem do not seek independent assistance in dealing with it. In this context, any moves to restrict consumers' choices should be targeted and based on evidence of detriment. We do not believe that the consultation paper adequately explains why a ban is necessary, what harm the ban would address or what the consequences of the ban might be for consumers. In these circumstances we do not support this particular proposal'.

The Institute of Paralegals said that McKenzie friends should be regulated and be given rights of audience and the right to conduct litigation. It said specifically:

'*We acknowledge the potential problems that extending the rights of McKenzie friends would bring, but we believe those*



future potential problems to be dwarfed by the current crisis of lack of access to justice.'

The Forum of Insurance Lawyers warns against the dangers of McKenzie friends becoming 'pseudo lawyers' if they are allowed to recover fees and it went on to predict it would prompt 'serious issues' around consumer protection.

In edition 134 of BC disease news we reported on the case of *R (on the application of LAIRD) v Secretary of State for The Home Department & (1) Belinda McKenzie (2) Sabine McNeil,* whereby it was held not to be appropriate to make a costs order against two McKenzie friends who had gone outside their remit when representing a claimant.

Artificial Intelligence Replicates Judicial Reasoning

It was suggested this week at the Law Society's Robots and Lawyers conference that computer programs can already match judges in decision-making. [4]

A poll of more than 300 attendees at the conference found that 48% of respondents' firms already use some form of artificial intelligence (AI), however, only 4% agreed that lawyers will eventually be replaced by robots.

However, the University of Liverpool have conducted research which suggests that a decision-making algorithm could be as effective at dispensing justice as a judge. Professor Katie Atkinson, head of the university's department of computer science, said the university had researched whether its computer programs could replicate the reasoning that judges go through. Looking at 'a body of case law' covering 32 cases, the programs had a 96% success rate and got only one case wrong, she said. Atkinson said she saw the technique as a 'decision support tool' to help make reasoning 'faster, more efficient and consistent', assimilating data over time 'so it will be there to help and support with the reasoning'.

However, Jonathan Smithers, the Law Society president told the event that machine-learning and AI must still be subject to the rule of law. This, he said, may require the extension of the concept of 'legal person' to less traditional entities. He said:

'The avenues for rights and redress used to be narrow, used to be restricted to people, but they are widening. This expansion, however, does not necessarily mean that robots will be recognised as legal persons or that they will automatically have rights.'

Professor Katie Atkinson stated that law firms had approached her with vast amounts of data that they did not know how to process. She claims there are algorithms which are developed enough to process this kind of data.

Some are still sceptical about the use of AI in the legal system, but Smithers pointed out that '*…unless we show leadership and take action in this field, unless we show determination and imagination in this sector, our legal system may not be fit for purpose'.*

High Court Find Law Firm's Claim For Fees 'Largely Dishonest'

The High Court, in the decision of *Alpha Rocks Solicitors v Alade* (HC13 D00617) has described a law firm's claims for unpaid fees as 'largely dishonest' and dismissed them as 'wholly without merit'. [5]

These were a claim for £131,500 for fees and disbursements said to have been incurred in defending a county court action in the 'Rufus' matter, and a claim for fees and disbursements of over £21,500 for a Land Registry claim in the 'Catherine' matter.

Mr Rosen QC, sitting as a deputy High Court judge, said Alpha Rocks *'appeared to demonstrate a high level of ineptitude'*. He went on to say that '*much of its argument might be described as perverse naïve or even preposterous. But it is important not to conflate or confuse such characteristics with dishonesty and fraud, not to let the deficiencies in ARS' records and personnel, and the conduct and presentation of its case, detract or divert from, or obscure or cloud, a measured or objective legal analysis…However, after five days of trial…I must conclude that many of its shortcomings in dealing with and for Alade were not the result of negligence or eccentricity, however gross'.*

Mr Rosen ruled that the Catherine claim was "false" and the Rufus claim was 'false as regards a majority of the fees charged'.

Mr Rosen dismissed a further claim for £15,170 'said to have been agreed' for a freezing order in the Rufus matter since it was based on an 'alleged agreement for which there is no proper factual or legal basis'.

He said a fourth claim of £3,500, referred to as the 'landlord matter', failed entirely on liability.

The judge concluded that many of the shortcomings of Alpha Rocks in its dealings with Mr Alade could only have resulted from a "dishonest plan to charge for sums to which it knew it was not entitled on the basis claimed, or was at least reckless as to the same".

However, Alpha Rocks Solicitors (ARS), based in south London, hit back, saying the decision of Murray Rosen QC "grossly undermines equity and justice". It intends to appeal.

We reported in edition 116 of BC disease news on the Court of Appeal judgment in *Alpha Rocks Solicitors v Benjamin Oluwadare Alade* [2015] EWCA Civ 685, in which it was ruled that the High Court had been wrong to strike out the claims made by Alpha Rocks on the grounds of exaggeration and inaccuracy, because the then judge Kevin Prosser QC, had not sought to hear oral evidence before reaching his conclusion.

Part 36 Trumps Part 47 Costs Cap: Case Comment: *Lowin v W Portsmouth & Co Ltd* (2016)

The case of *Lowin* concerned an appeal from a decision of Master Whelan which found that

the cap on the costs of a provisional assessment under CPR r.47.15(5) did trump a party's entitlement to having the costs of that assessment on an indemnity basis under r.36.17(4) where the party had been awarded more than their Part 36 offer.

The appellant had claimed against the respondent company for damages, but accepted the respondent's Part 36 offer. The appellant then made a Part 36 offer for her costs.

Master Whelan ordered the respondent to pay the appellant's costs, with a provisional assessment if not agreed. The costs could not be agreed and so the master provisionally assessed the appellant's costs at a higher sum than her original offer (£255 higher), and ordered the respondent to pay under r.36.17(4), and to pay the costs of the assessment on an indemnity basis.

However, the respondent submitted that r.36.17(4)(c) did not trump the application of r.47.15(5), which capped the maximum amount awarded for a provisional assessment at £1,500 (excluding the drafting of the bill of costs and with any VAT and court fees to be paid by the party).[6]

The issue was whether, if a costs assessment went no further than a provisional assessment, the appellant, who could invoke Part 36 in her own favour, was limited to the capped costs under r.47.15(5), or whether the Part 36 provisions entitled her to a costs assessment on an indemnity basis.

Master Whalan, at first instance, stated that the respondents were correct and the cap in 47.15(5) remained intact. In particular, he drew a distinction between the instant case and the decision in *Broadhurst v Tan* [2016] EWCA Civ 94 – in which the Court of Appeal held that Part 36 could dislodge the fixed cost provisions contained in Section IIIA of Part 45, in respect of low-value road traffic accidents. We reported on the judgment in *Broadhurst* in edition 125 of BC disease news which can be accessed **here**.

On appeal, the appellant continued to argue that *Broadhurst* did apply to the instant case. In the same way that in *Broadhurst*, incorporated Rule 36.14 without modification into Section IIIA of Part 45, so, it was submitted, Rule 47.20(4) incorporated Rule 36.17 without substantive modification into Part 47. In *Broadhurst*, the Court of Appeal held that, as a matter of construction, Rule 36.14 therefore continued to have '*full force and effect'*. The Appellant argued that the same principle applied in respect of Part 47 in this case.

Mrs Justice Laing agreed with the appellant's submissions and held that there was a conflict between the two rules in this case. However, she stated that the reasoning contained within *Broadhurst* could be used in this case to provide a solution and that if the draftsman of the Rules Committee had wished Part 36 to be modified so that the cap would remain then that would have been stated.

As an additional point, Laing J pointed out that this decision would act as an incentive to parties to accept reasonable costs offers because if they did not, they would be at risk of adverse costs orders pursuant to Part 36.

As such the appeal was granted and the matter remitted to Master Whalan to re-assess the appellant's costs of the detailed assessment on an indemnity basis, without those costs being capped by rule 47.15(5).

Feature Agency Workers: Employees For The Purpose of Employer's Liability?

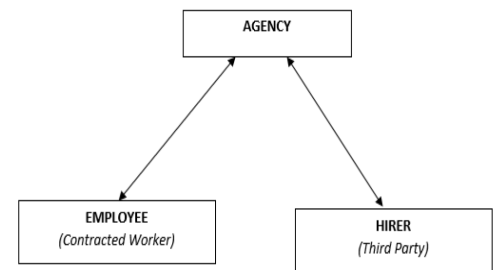
Introduction

Agency and temporary workers, independent contractors and self-employed persons are an increasingly important part of the UK labour workforce due to increasing employer desire for workforce flexibility and an increasing migrant population.

In this two part feature we look at the issues which can arise in EL/Disease injury claims as a result of the changing nature of the UK workforce. In part one we focus on agency and temporary workers and consider what are the health and safety obligations owed to these workers? Do they differ from permanent employees? And finally, who is considered to be the employer of agency workers and who has responsibility for them? In part 2, we will look at contractors and self-employed workers.

What are Agency Workers?

Agency work is a triangular relationship between agencies which engage workers to contract their services to a third party hirer.



An agency worker will have a contract for their services with an employment agency but will work temporarily for a third party hirer.

An individual will not be an agency worker if they either, find work through an agency but work for themselves, in this instance they may be self-employed, or if they use an agency to find permanent or fixed-term employment (the worker will need to check this with the hirer). Also, individuals will not be considered an agency worker if they take a 'pay between assignments' contract, in this case they are an employee of the agency (this is an agreement which ensures that they are paid even when they are not working).

Agency workers as part of UK Workforce

There is some dispute over the number of agency workers in the UK. A report by one of Europe's largest employment agencies, CIETT, reveals that the number of agency workers in the UK doubled between 1996-2006 and the UK now has the highest agency work penetration rate in Europe (defined as the average daily number of agency workers as a percentage of total employment – 4.5% compared to 0.1% in Greece). The BERR Survey of Recruitment Agencies reported in 2011 that there were approximately 1.5 million agency workers in the UK.[7] However, the REC report that the number of temporary workers increased from 1.384 million to 1.673 million between 2008 and 2014 representing a 20% growth in temporary workers.[8]

Further to this, ACAS say two-thirds of these agency workers are in clerical, semi-skilled and unskilled occupations and the average time an agency worker stays in a job is 4.5 months. The Food and Drinks Federation state that just over 40% of all companies in this industry use agency workers as an integral part of their business model.[9]

Migrants make up a significant proportion of agency workers in the low-skilled sector. The Migration Advisory Committee's report in 2014 commented that recent migrants, particularly from Central and Eastern Europe, are increasingly dependent on agencies as providers of labour, in fact they are reported as being six times more likely to be recruited through an employment agency than the general UK workforce.[10] Of those applying for registration with the UK Workers Registration Scheme, 50% claimed to be in temporary employment.[11]

Agency Worker v Employees

Most agency workers are classed as 'workers' and not 'employees' but the distinction is not always clear or well defined. The TUC state that an individual is more likely to be an employee if:[12]

- the employer provides work within set hours and pays you for being available to work;
- a person has to accept the work provided by your employer and are not free to turn work down;
- the employer controls what you do and lays down how and when you do it;
- a person has to carry out the work personally, and cannot send someone else to do it on their behalf;
- the employer supplies the tools or other equipment for the job; and
- the employer deducts tax and National Insurance (NI) from wages (although some *workers* also have this).

They advise that an individual is more likely to be a 'worker' if:

- the employer only offers work as it is available, and the individual is hired to complete a task rather than to attend between set hours;
- the individual can decide when to work, and turn down work when offered;
- the individual can send someone else to do the work in their place;
- the individual provides their own tools and equipment; and
- the individual does not have tax and National Insurance (NI) deducted from what is probably called a payment or fee rather than wages (though some *workers* do have deductions).

All workers, including agency workers, are entitled to, amongst other more general employment rights, health and safety at work.

This right is provided for in the Agency Workers Regulations 2010 which gives 'workers' the entitlement to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job.[13]

S.5 of the Regulations state that:

'5.—*(1) Subject to regulation 7,* [qualified period of 12 weeks has been completed] *an agency worker (A) shall be entitled to the same basic working and employment conditions as A would be entitled to for doing the same job had A been recruited by the hirer—*

> *(a)other than by using the services of a temporary work agency; and*
> *(b)at the time the qualifying period commenced.'*

The HSE also state that when dealing with an agency/temporary 'worker' the employment agency and the hirer must take reasonable steps to identify any known risks concerning health and safety and satisfy itself that the hirer has taken steps to prevent or control the known risks. This must be done before the work starts and must include obtaining the following information from the end user:

- what the worker will be required to do and any health and safety risks, including what steps the hirer has taken to prevent or control such risks;
- what experience, training and qualifications are necessary for the job.

The HSE has also responded to the increase in agency and migrant workers by providing dedicated resources and guidance on the duties of the agency worker and the agency in relation to health and safety.[14] In particular they say that hirers should consider providing English for Speakers of Other Languages (ESOL) courses for workers who need to improve their English amongst other suggested tools for ensuring that non-English speaking workers understand their health and safety obligations.

But what happens when something goes wrong and a 'worker' is injured at work? Who is responsible – the agency or the hirer?

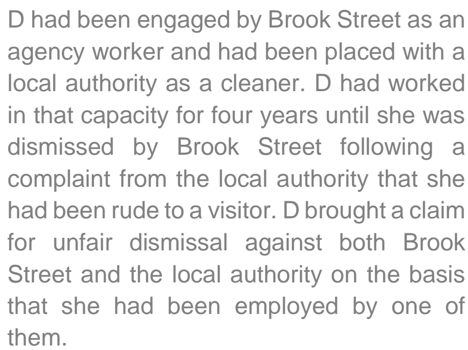
The answer to this question depends on whether the worker is considered to be an employee of either the agency or the hirer which will depend on all the details of the relationship between the parties (particularly the terms of the contract). Employment status must be determined from full consideration of all the evidence: not only any relevant documents but also all the relevant evidence about the dynamics of the working relationship between the parties, including what was said and done.

What does the case law tell us about the approach to be taken in establishing whether an agency 'worker' is in fact an employee?

Liability-The Agency or the Hirer?

The main authorities in this area are *Dacas v Brook Street Bureau (UK) Ltd* [2004] EWCA Civ 217 and *Bunce v Portsworth Ltd (t/a Skyblue)* [2005] EWCA Civ 490.

Dacas, concerned the well-known agency, Brook Street, who were appealing against a decision of the Employment Tribunal that an agency worker (D) was its employee.



D had been engaged by Brook Street as an agency worker and had been placed with a local authority as a cleaner. D had worked in that capacity for four years until she was dismissed by Brook Street following a complaint from the local authority that she had been rude to a visitor. D brought a claim for unfair dismissal against both Brook Street and the local authority on the basis that she had been employed by one of them.

The Employment Tribunal at first instance, found that D's contract with Brook Street was not a contract of service and that she had no contract with the local authority. D then appealed and the Employment Appeal Tribunal held that the first instance tribunal had erred in law and that D had been employed by Brook Street because the written contract between Brook Street and D was a contract of service.

However, on appeal from Brook Street, the Court of Appeal found that in triangular arrangements between an applicant, an employment agency and a client, an employment tribunal should not determine the applicant's employment status without also considering the possibility of an implied contract of service between the applicant and the client. Indeed at para 52 Lord Justice Mummery stated:

'This means that, in ascertaining the overall legal effect of the triangular arrangements on the status of Mrs Dacas, the Employment Tribunal should not focus so intently on the express terms of the written contracts entered into by Brook Street with Mrs Dacas and the Council that it is deflected from considering finding facts relevant to a possible implied contract of service between Mrs Dacas and the Council in respect of the work actually done by her exclusively for the Council at its premises and under its control, until it took the initiative in terminating that arrangement. The formal written contracts between Mrs Dacas and Brook Street and between Brook Street and the Council relating to the work to be done by her for the Council may not tell the whole of the story about the legal relationships affecting the work situation. They do not, as a matter of law, necessarily preclude the implication of a contract of service between Mrs Dacas and the Council.'

LJ Mummery went on to say that the objective degree of control over an applicant's work is crucial in determining the existence of an implied contract of service and each case should be determined on its facts. He went on to make the following comments regarding the relationship between D and the council:

'The Council in fact exercised the relevant control over her work and over her. As for mutuality of obligation, (a) the Council was under an obligation to pay for the work that she did for it and she received payment in respect of such work from Brook Street, and (b) Mrs Dacas, while at West Drive, was under an obligation to do what she was told and to attend punctually at stated times. As for dismissal, it was the Council which was entitled to take and in fact took the initiative in bringing to an end work done by her at West Drive.'

However, as D did not appeal the dismissal of her claim against the council, the issue of whether there was in fact an implied contract of service between D and the council was not determined. But LJ Mummery himself noted that these comments should be used for future cases.

LJ Mummery therefore turned his attention to the relationship of Brook Street employment agency and D, of which he said at para 64:

'Brook Street was under no obligation to provide Mrs Dacas with work. She was under no obligation to accept any work offered by Brook Street to her. It did not exercise any relevant day to day control over her or her work at West Drive. That control was exercised by the Council, which supplied her clothing and materials and for whom she did the work. The fact that Brook Street agreed to do some things that an employer would normally do (payment) does not make it the employer.'

As such it was held that, the role of Brook Street was not that of an employer of Mrs Dacas. Rather it was that of an agency finding suitable work assignments for her and, so far as the Council was concerned, performing the task of staff supplier and administrator of staff services. This decision was followed shortly by *Bunce*, which involved Skyblue, an employment agency and Carillion Rail, an associated company whose business was railway maintenance and civil engineering. The appellant (B) was a welder, who entered into an agreement with Skyblue, as a result of which he was sent on a regular basis to carry out welding work for Carillion Rail and other companies. As in *Dacas,* B was not entitled to receive work and could refuse assignments offered to him by the agency.

In the 52 weeks before his engagement was ended by Skyblue on, the appellant worked on 142 assignments, mostly for Carillion Rail but on 39 of them for other companies engaged in railway maintenance. He worked for all or part of each of those 52 weeks. When B was dismissed he attempted to bring a claim for unfair dismissal against both Skyblue and Carillion. However, the Employment Tribunal at first instance concluded that he was not an employee of either Skyblue or Carillion Rail and that in consequence it had no jurisdiction to hear his unfair dismissal claim.

No appeal was lodged against the decision of whether or not he was an employee of Carillion Rail but instead B appealed to the Employment Appeal Tribunal (EAT) concerning the decision of his employment status with Skyblue. The EAT upheld the decision on that issue by the employment tribunal on two grounds: first, that there was an absence of mutuality of obligation between the appellant and Skyblue, and secondly that on the facts, particularly the minimal control exercised by Skyblue (as opposed to Carillion), the tribunal had been entitled to conclude that there was no contract of service with Skyblue.

B appealed once more to the Court of Appeal in which Lord Justice Keene gave judgment. As in *Dacas,* he pointed out the lack of control that Skyblue, as the employment agency, exercised over B. He stated at para 25:

'*The importance of control as a feature of contracts of service and in particular control not only over what the worker does but how he does it is long-established. In the vicarious liability case of Mersey Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd [1947] A.C. 1, Lord Porter in a well-known passage at page 17 emphasised that what matters is the ability to control the method of performing the task. He added:*

"It is true that in most cases no orders as to how a job should be done are given or required: the man is left to do his own work in his own way. But the ultimate question is not what specific orders, or whether any specific orders, were given but who is entitled to give the orders as to how the work should be done.'"

The appellant submitted that the ability of Carillion to control his work was delegated by their agreement with Skyblue and as such it was Skyblue who exercised true control over the appellant. LJ Keene acknowledged that this had never been considered by the court before, however, he did not accept this argument and stated at para 29:

'I cannot, however, accept that the mere fact that the client's day-to-day control originates, so far as the appellant's obligation is concerned, in a term of the contract between Skyblue and the appellant is enough to satisfy the requirement for control by Skyblue. The law has always been concerned with who in reality has the power to control what the worker does and how he does it. In the present case, during the periods when the appellant was working on an assignment, it was the client, the end-user, who had the power to direct and control what he did and how he did it. That is not in dispute. Skyblue could not exercise such control over the appellant. Nothing before us in the evidence indicates that Skyblue retained any such power'.

This, it was found, was fatal to the case, if there could be no control by Skyblue established then it was not possible to establish a relationship of employment between Skyblue and B. As such B's appeal failed and as in *Dacas,* the court were unable to make a determination about B's employment status with Carillion and other companies as this part of the original decision of the Employment Tribunal had not been challenged.

There are many more authorities in this area, however, the cases of *Bunce* and *Dacas,* highlight sufficiently, the importance that the element of day-to-day control has in determining whether an agency worker is an employee.

Conclusion

It is clear that the nature of the UK workforce is changing. We have been seeing an increasing trend in temporary agency workers over the last decade or more. The research suggests that this trend will continue as employers are more attracted to flexible working arrangements with their employees.

The issue of who is the employer in the context of EL and disease claims is likely to also increase.

A central theme in determining who is responsible for any injuries suffered by agency workers is that of control. Some of the elements of control which have been said to indicate an employee/employer relationship include, who provides remuneration, who is entitled to give orders about how the work is to be done, who provided the materials for work and who has the ability to terminate the work.

These factors should be considered on a case by case basis and are fact specific.

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Disclaimer

This newsletter does not present a complete or comprehensive statement of the law, nor does it constitute legal advice. It is intended only to provide an update on issues that may be of interest to those handling occupational disease claims. Specialist legal advice should always be sought in any particular case.

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