

**Business Start Ups**



**N**eves Small Business team can assist your business by helping draft your terms and conditions of trading, partnership/shareholder agreement or agency agreement, or by providing you with a contract of employment for any staff you may engage, or by collecting unpaid debts. Perhaps you may be considering renting business premises in which case we will review the terms of the lease and advise you accordingly.

If you offer services over the Internet, Neves can guide you in the legal techniques needed to make contracts electronically. It can also ensure that your website complies with the law.

Also if you purchase goods or services over the internet, our experts can advise you on your contractual rights and obligations.

**Business start ups - make sure you are getting the right legal advice from the outset**  
Contact: [business@nevesllp.co.uk](mailto:business@nevesllp.co.uk)

**Farewell John**

**J**ohn Walsh, a member of our Family Department based at our Luton office, will start his well deserved retirement this April. John has been practising law since 1964 (51 years!).



John started his career as an office junior and trainee costs draftsman at Farrer and Co (solicitors to the Royal Family) and subsequently worked for a number of prestigious solicitors such as Taylor Vintners, Miller and Co and Glover and Co. until joining Neves where he has worked for the last 14 years. John is a Member of the Institute of Legal Executives and has represented clients in all areas of family law including divorce, financial disputes between married and unmarried partners and on issues relating to the residential and contact arrangements for children. We have benefited from his very wide experience of the law and also from his pragmatic common sense informed by those years of experience. A combination of his extensive experience and his wisdom has supported Neves' solution focussed approach to our clients' problems.

John will be greatly missed by his colleagues and his clients. On behalf of everyone at Neves, we would like to wish John a well deserved and relaxing retirement

**What Our Clients Say About Us**

*"Peter was first class, we were always kept informed and up to date on all matters at what was a very stressful time"*  
**A satisfied client of Peter Kelly**

*"Having worked as a lawyer in the City, I believe that Stewart really does explode the myth that you have to appoint a city lawyer to get top quality advice and service".*  
**A satisfied client of Stewart Matthews**



*"I found the service, attention to detail, advice and support of Elizabeth to be of a very high standard. She demonstrated a quick understanding of the details specific to my case, was able to articulate the facts concisely and as a consequence form a strong argument on my behalf."*  
**A satisfied client of Elizabeth McGlone**

*"Hope everything with you is fine and you are keeping nice and busy! You should be as we have recommended you and your firm a few times now to friends and associates and will continue to do so as we were very impressed with all your many efforts hard work on our behalf"*  
**A satisfied client of Simeon Clipstone**

**Harpenden**  
Tollgate House  
69-71 High Street  
Harpenden  
Hertfordshire AL5 4ET  
T: 01582 715234

**Luton**  
8 George Street West  
Luton  
Bedfordshire  
LU1 2DA  
T: 01582 725311

**Milton Keynes**  
Luminar House  
Deltic Avenue  
Rooksley  
Milton Keynes MK13 8LW  
T: 01908 304560

**Northampton**  
Independent House  
Units 1 & 2 Wilks Walk  
Grange Park  
Northampton NN4 5DW  
T: 01604 814500

**When Is A Teacher Not A Teacher?**

**I**n a striking example of an employment relationship being transformed over time by custom and practice, the High Court has ruled on the status of a woman who was taken on as a teacher but later metamorphosed into a full-time union representative (Davies v London Borough of Haringey).

The woman had been employed in 1992 as an assistant teacher at a comprehensive school. However, she had subsequently been released from her teaching duties to take on a new role as a senior representative of the National Union of Teachers. As a result, she had not in fact taught at the school for more than 14 years.



The local authority holding responsibility for the school purported to suspend her for alleged breaches of its

code of conduct and its social media policy. However, the woman argued that it had no right to do so and that, on the basis of her employment contract, only the school's governors had the power to discipline her.

In rejecting the woman's arguments, the Court noted the length of time during which she had been away from the classroom and that her alleged misconduct did not relate in any way to the school or her teaching. The position in which she had originally been employed had in fact long ceased to exist.

The Court found that, even in the absence of formal changes to her written contract, its terms had been varied, either by express agreement or impliedly through the conduct of the parties. The reality was that she was no longer employed as a teacher and there

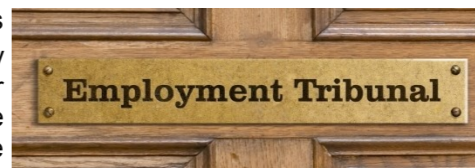
was no legislative provision which had the effect that only the school's governing body could take disciplinary steps against her.

**Employer Not Responsible For Abuse Of Union Activist**

**A** mental health nurse who was subjected to disgraceful abuse by colleagues in the midst of a bitter falling out between rival trade unions has failed to convince the Employment Appeal Tribunal (EAT) that his employer should be held responsible for any disadvantage he suffered (North Essex Partnership NHS Foundation Trust v Bone).

The nurse had taken on the role of representative of a small trade union but had encountered stiff opposition from members of the established union at the hospital where he worked. Amongst other things, he had faced claims that the union was a 'crypto-fascist' organisation; one colleague had described him as 'a bigot' and another had greeted him with the words, 'Hello Adolf'.

He made numerous complaints to his NHS Trust employer that he had been subjected to detriment for taking part in union activities, contrary to the Trade Union and Labour Relations (Consolidation) Act 1992. Four of those claims were upheld by the Employment Tribunal (ET) on the basis that the Trust had shown 'weak and lamentably ineffective' management in failing to protect him. The Trust appealed against the ET's judgment.



The Employment Appeal Tribunal (EAT) stated that 'a specific application of the law to the findings' is required on the part of the ET, rather than generalisations. The ET had erred in its approach and reached erroneous conclusions. The EAT found that the source of the nurse's problems was an attempt by members of the established union to ostracise him. No such aim could be attributed to the Trust, which had taken a neutral stance and was only concerned that there should be no impact on his ability to carry out the role for which he was paid.

The Trust's appeal was therefore upheld.

**Inside this issue:**

When Is A Teacher Not A Teacher?	1
Employer Not Responsible For Abuse Of Union Activist	1
Top 10 FAQ's On Holiday Entitlement.	2
It Only Takes One	3
Overdue VAT? HMRC Can Wind Up Your Company	3
Business Start Ups	4
Neves News	4

**Top 10 FAQ's On Holiday Entitlement.**



**H**oliday pay is a complicated issue for any employer. With the lighter mornings setting in and with employees and employers dreaming of a hotter climate, the need to know what employees are entitled to is important.

**1. Where is an employee's annual leave entitlement detailed?**

It is a requirement of section 1 of the Employment Rights Act 1996 that an employee's annual leave entitlement is set out in their contract of employment/statement of particulars. Some companies also have an annual leave policy within their staff handbook which provides detail of how annual leave can be requested.

**2. When does a holiday leave year run from and to?**

There is no set annual leave year. It is customarily detailed within the contract of employment/statement of particulars or within the staff handbook. If there is no provision for a leave year then the holiday year starts the day an employee commences employment.

**3. How much annual leave is a full-time employee entitled to?**

An employee is entitled to a minimum of 20 days holiday plus 8 days bank holiday, equivalent to 5.6 weeks leave.

**4. How is part-time annual leave calculated?**

There is no 'one way' of calculating annual leave for part-time employees. Some companies simply pro rata the annual leave in accordance with days worked per week, others calculate it on the basis of which days you work and whether your working day would fall on a bank holiday.

**5. Can any restrictions be placed on an employee taking annual leave?**

Yes. An employee can be refused annual leave if it does not suit the needs of the business or is not requested in a timely manner. Employers usually deal with holiday requests on a first come first served basis. Employers can also expect employees to 'save' annual leave for the Christmas closure period with many companies automatically deducting between 2-4 days for the festive period. It is unusual to allow employees to take extensive annual leave during a probationary period.

**6. Does an employee have to take all of their annual leave during the holiday year?**

The aim of annual leave is to allow an employee a rest period away from work. The Working Time Regulations 1998 set down the minimum period of leave that an employee is entitled to and employees are entitled to this right. Employees, if contractually entitled to additional annual leave can, if permitted by their employer, roll untaken leave to the next holiday year or be paid in lieu.

**7. If an employee cannot take annual leave due to sickness can the leave be taken at another time?**

Yes. If an employee is unwell and cannot take their annual leave their entitlement to annual leave is not lost. It can be taken at another time. Annual leave accrues during a period of sickness. Recent European case law has determined that annual leave not exercised as a result of sickness can be carried forward for a maximum period of 15 months (this time limit may be subject to change).

**8. If an employee's employment is terminated are they entitled to payment in lieu of accrued but untaken annual leave?**

Yes. Even if an employee is dismissed without notice for gross misconduct they are still entitled to be paid in lieu of accrued but untaken annual leave. A failure to pay accrued leave is a breach of contract.

**9. Are agency workers entitled to annual leave?**

Yes. Agency workers are entitled to annual leave in the same way that contracted employees are.

**10. How is holiday pay calculated?**

Holiday pay has traditionally been calculated on the basis of basic pay (that is pay without any allowance for benefits). The Advocate General of the Court of Justice of the European Union (CJEU) has now said that employees whose pay is commission based, should be entitled to holiday pay that includes their commission.



**Peter Kelly**  
Partner  
Head of Employment Law and Disputes  
E:Peter.Kelly@nevesllp.co.uk



**Elizabeth McGlone**  
Solicitor  
Employment Law  
E:elizabeth.mcglone@nevesllp.co.uk

**Employment Law - If you need help or assistance contact a member of our team**

**It Only Takes One**

**W**hat happens to a tenancy when the tenant dies or a tenant couple split up has led to many legal cases over the years.

A recent case dealt with a situation in which one of the tenants of a house wished to end the tenancy after splitting up with her husband.

The wife sent a notice to the council to terminate the tenancy. The council accepted it. However, her husband wished to remain in the property and asked the council to transfer the tenancy into his name alone. The council refused and eventually brought proceedings for possession of the property.

The husband argued that the council's action infringed his right to respect for his home under Article 8 of the European Convention on Human Rights, which covers a person's right to a private and family life, and also his right to 'peaceful enjoyment of his possessions' under Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

The dispute went all the way to the Supreme Court, which ruled that the husband could not prevent the council's application for possession of the property.

This case clarifies that it only takes one of a pair of joint tenants to give an effective notice of the termination of the tenancy and that reliance on a human rights argument by a dissenting joint tenant is unlikely to be successful.

It may take two to tango, but it only takes one to break a tenancy.



**James Harvey**  
Solicitor  
Disputes  
E:james.harvey@nevesllp.co.uk

**Overdue VAT? HMRC Can Wind Up Your Company**



**A** decision of the High Court that a provisional liquidator could be appointed following a 'without notice' winding-up application by HM Revenue and Customs (HMRC) should serve as a warning to companies whose VAT affairs are in arrears.

The company in question was in arrears with its VAT and owed more than £7.7 million based on VAT assessments raised for three quarterly periods for which returns had not been made, and another £2 million for a later period. The nub of the argument between the company and HMRC was the quality of the evidence of the company's claims for the deduction of input tax.

The company had appealed to the First-tier Tribunal against the assessments, but at the date of the High Court hearing the appeal had not yet been scheduled.

The Value Added Tax Act 1994 states that where a person 'has failed to make any returns required under this Act...or to keep any documents and afford the facilities necessary to verify such returns or where it appears to the Commissioners that such returns are incomplete or incorrect, they may assess the amount of VAT due from him to the best of their judgment and notify it to him'.

The judge rejected the argument that HMRC should be treated the same way as any other debtor would, commenting, "I do not accept that when petitioning to recover unpaid tax HMRC should be treated like any private litigant. When suing to enforce a claim for unpaid tax HMRC are exercising a public function; they are a public authority bringing a claim in the public interest. Any recovery is for the public benefit since it goes to increase the general revenue without which the modern state cannot function."

Accordingly, the appointment of the provisional liquidator was confirmed, despite the fact that the company's appeal against the VAT assessment had as yet not been heard.

The judgment confirms that HMRC have the power to put companies into liquidation even if there has been no final determination of tax due.



**Stewart Matthews**  
Partner  
Head of Company and Commercial  
E:stewart.matthews@nevesllp.co.uk



**Simeon Clipstone**  
Partner  
Head of Commercial Property  
E:simeon.clipstone@nevesllp.co.uk