

YOUR WEEKLY BULLETIN OF WIT AND WONDER



## NEITHER HATCHED NOR DESPATEDCHED

The curious case of the uneaten egg



## THE WORKER/NON WORKER HOKEY-COKEY DANCES ON

Just when you thought you knew what a worker was/wasn't... you don't.



## FORGET MOTHER'S DAY AND FATHER'S DAY... IT'S ADMIN PRO DAY!

The best excuse for cake you'll get this week...

## EGGING ON

Have you got any Easter eggs left over? Have they all gone? After all - it's been three days since the end of the Easter bank holiday.

How you reply to this speaks volumes about you as a person.

There are two types of egg eaters, I find. The STUFF IT NOW variety or the HOW LOVELY, LET'S ENJOY THESE, 20 GRAMS A DAY, UNTIL AUGUST variety.

I have to say, I think the latter type is fundamentally weird. Seriously? What's *wrong* with you?! Don't tell me it's unhealthy to eat them all at once. Everyone knows we *must* clear any surplus before the Tuesday so we can embark on our beach body diet plan afresh, with no ovate confectionery singing to us from the fridge.



BUT... this week, even those of you in the Freaky Chocolate Saving Brigade have been eclipsed by news, via BBC Radio Wales, that *someone* has resisted eating their Easter Egg for 70 YEARS!

Sally Evans, 83, from Newport, was bought a luxury Easter Egg in 1951 by her brother, when she was 11. But her mum wouldn't let her eat it. Or even hold it!

'It was just too valuable to eat,' Sally told BBC Wales, explaining that rationing was still very much a thing in 1951.

So after being admired and sniffed at, it was hidden. It was extracted from the wardrobe and marvelled at occasionally over the years - but *never even unwrapped*. When Sally's mum died, the egg was passed to her but she couldn't bring herself to eat it.

It might turn out to be worth hanging onto, still unwrapped, as an uneaten Easter egg from 1924 recently sold for £1,040. Yum!

*Have you hung on to any confectionery for sentimental reasons? We'd love to know - and to see a picture of it, over on the Facebook page - [HERE](#).*

## WORKER-NOT WORKER-WORKER

And speaking of having your egg and not eating it brings me to yet another case - *Nursing and Midwifery Council v Somerville 2022* - on the tricky topic of whether a contractor is actually a worker... and therefore entitled to employee benefits.

Mr Somerville was appointed as a panel member of the Nursing and Midwifery Council's Fitness to Practise Committee for two terms. When he was appointed he signed a Services Agreement which stated he would be an independent contractor. Under this Agreement the Council was not obliged to offer work to Mr Somerville on the panel and if did offer work, Mr Somerville was not obliged to accept. If he accepted an assignment he could cancel without giving a reason and without penalty. The agreement also imposed obligations on Mr Somerville including that he would abide by the Council's Code of Conduct and Service Standards, and attend meetings at the "reasonable request of the Council".

In July 2018 Mr Somerville filed a claim in the Employment Tribunal for unpaid holiday pay on the ground that he was an employee or a worker. The ET found that the signed agreement was an "overreaching contract governing [Mr Somerville's] period of appointment" to the panel, but that separate individual contracts were also created each time Mr Somerville accepted an assignment. The ET found that in both the overarching contract and the individual contracts there was "insufficient mutuality of obligations to give rise to a contract of employment" and so Mr Somerville was not an employee.

However, the ET did not consider "the absence of mutual obligations to offer/accept a minimum amount of work to be incompatible with worker status". The ET examined the definition of worker under the Working Time Regulations. First, there must be a contract between the parties. The contract must include an obligation on the individual to undertake work or perform services "personally." Finally, the other party must not be a client or customer of the individual. The ET reasoned that each time Mr Somerville accepted an assignment from the Council, this created a contract whereby he agreed to perform services personally. The ET also did not consider the Council to be a client or customer of Mr Somerville because Mr Somerville was significantly integrated into the business, the Council set the fees it paid him for his services, and it had a significant degree of control over how he performed his services. The ET concluded that Mr Somerville was therefore a worker.

The Council appealed to the Employment Appeal Tribunal against the finding that Mr Somerville was a worker. It argued "the mutuality of obligation required for worker status was not present as [Mr Somerville] was not under a contractual obligation to do or perform any work and the Council was not under any obligation to provide work". The EAT dismissed the appeal holding that an "irreducible minimum of obligation ... was not a prerequisite for establishing worker status." The Council appealed to the Court of Appeal.

The CoA accepted with ET's conclusion that each time Mr Somerville was offered and accepted an assignment, this created an individual contract between the Council and Mr Somerville whereby Mr Somerville agreed to perform services personally. The CoA was also satisfied that the Council was not a client or customer of Mr Somerville and found that the ET had been entitled to find that Mr Somerville was a worker, concluding that "there is no need, and no purpose served, in seeking to introduce the concept of an irreducible minimum of obligation in the way defined by the [Council]." The Council's appeal was therefore dismissed.

Mr Somerville succeeded in establishing that he was a worker, meaning he was entitled to certain rights including paid holiday and the minimum wage.

This case establishes that there is no minimum amount of work an individual must accept to achieve worker status. A person may still be classified as a worker in circumstances where there is no obligation on the business to offer work and no obligation on the individual to accept. Even where the individual is allowed to withdraw from an assignment they had previously accepted without penalty, this will not be fatal to the claim that they are a worker. When deciding whether an individual is a worker or self-employed, the tribunal will pay more attention to whether they have to perform the work personally, and whether the business appears to be a client or customer of the individual who is in business on their own account.

EVENTS SEASON

2021

APR 28

HR Hangout -  
Managing Alcohol and  
Drug Misuse

JUL 19

Practice Makes Perfect  
Masterclass

OCT 6

Settlement Agreement  
Masterclass

NOV 23

Litigation Lessons  
Masterclass



# SCHEDULE YOUR SHINDIG, ADMIN PRO!



If you happen to be a secretary, PA or other administrative professional, then DEMAND CAKE! Because on this very day, 70 years ago, **SECRETARIES' DAY** was founded.

Now called Administrative Professionals' Day (try saying *that* after three Martinis) the first one was celebrated in the US on April 21, 1952. Sure, it's American - but everything American comes to England sooner or later. It's about time.

A P Day has become a moveable feast, celebrated on every Wednesday in the last full week of April.

So there's still time to inform your colleagues and give them a few days to organise a fitting tribute to you.

That said, if you're worth your administrative salt, you'll have it in everyone's diaries, with a daily countdown reminder, between now and April 27. If budget allows, you can probably order your own three-tiered cake, wine, party blowers and visiting close-up magician, not forgetting to book the boardroom for the two-hour lunchtime bash.

Go get 'em, Admin Pro!\*

\* *WG ET admin pro's name* - We'll need to discuss that close-up magician...

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