

# Ending up in an employment tribunal is avoidable

*What is it about the breakdown of relationships with employees in the charity sector that means employment disputes are often acrimonious? Lucy McLynn discusses.*

**“MOST CHARITIES CANNOT AFFORD THE COMPENSATION PAYMENTS THAT WOULD MAKE EMPLOYMENT DISPUTES GO AWAY”**



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IT IS frequently said that the sector does not generally manage staff well. Poor performance is often tolerated and unchallenged over a sustained period, until patience is suddenly lost (a pattern of “love, love, sack” rather than of “warn, warn, dismiss”, as employment law requires).

In many cases, understandably, this stems from the recognition that staff are working for salaries that are considerably lower than for a comparable job in the for-profit sector. Performance management can appear to demonstrate a lack of gratitude in this context, and action is only taken once the employee continuing in post has become completely untenable – with an absence of prior process that makes an unpleasant dispute probable.

It is also the case that most charities cannot afford the sort of compensation payments that would make employment disputes go away in the private sector. Even if money is available, there will be concerns about whether it is in the charity’s best interests to spend large amounts of it on settlements with departing staff. While it is permissible for a charity to make a payment to an employee under a legally binding settlement agreement without pre-approval from the Charity Commission (as would be the case for a purely ex gratia payment), the payment must be reasonable.

## PERSONAL CONNECTION

In my view, however, there is a more fundamental issue. Employees are often drawn to work for charities because those organisations align with their personal values, interests or experiences. This is particularly the case with disability charities, where personal experience of the disability in question may well be expressly stated as a desirable element in the person specification. Employees who may not have had a connection with their charity at the outset often get drawn into supporting it in a personal capacity – whether through undertaking fundraising activities, or promoting its campaigns outside of work.

This sense of personal connection does make for a harder break-up. When things go wrong, the employee is not only facing losing their job, but also losing a cause in which they have believed. Coupled with this is a frequent perception by

employees that the charity, in treating them badly (as they see it), has betrayed its core values of caring, compassion and making the world a better place. “I did not expect to be treated in this way by a charity” is a common refrain.

It is against this highly-charged backdrop that a lot of employment disputes in the sector are played out. In many cases there is also a desire by the disillusioned ex-employee to expose the charity publicly for its immoral behaviour – and of course an awareness that reputation is all-important in the charity sphere. The stakes are therefore high on both sides and this can lead to an entrenchment of positions, with the absence of any middle ground for a resolution.

## AVOIDING ACRIMONY

What then is to be done to avoid employment disputes in charities becoming so toxic? Early use of processes to manage performance will avoid the shock factor. All managers should be specifically held accountable for the performance of the employees they line manage so that issues are not left unaddressed. Trustees should ensure that there is a clear allocation of responsibility for performance management of the chief executive, with a regular reporting mechanism back to the board.

“Protected” or without-prejudice conversations about possible agreed terms for departure are often a good step, but these legal protections will not always apply. A good rule of thumb is not to say anything off the record that could cause difficulties if it were made public, and always talk in terms of a settlement agreement as one option.

Consideration should be given to non-financial incentives that may be attractive to an outgoing employee. A reference is an obvious example, but an agreed announcement about the employee’s departure can also be useful. This can be an opportunity to recognise the employee’s broader contribution to the charity.

Primarily though, the charity needs to recognise that employment disputes may well be protracted, and enter them with its eyes open. This is not to say that problem employees should not be tackled. Indeed I would say that it is all the more reason to start to address them decisively. ●

