

Thank you for joining us.

***Workforce Statuses Webinar* will commence shortly at 1pm.**

If you can not hear anything at the moment, please don't worry. We have muted ourselves until we begin.

Workforce Statuses in Public Leisure

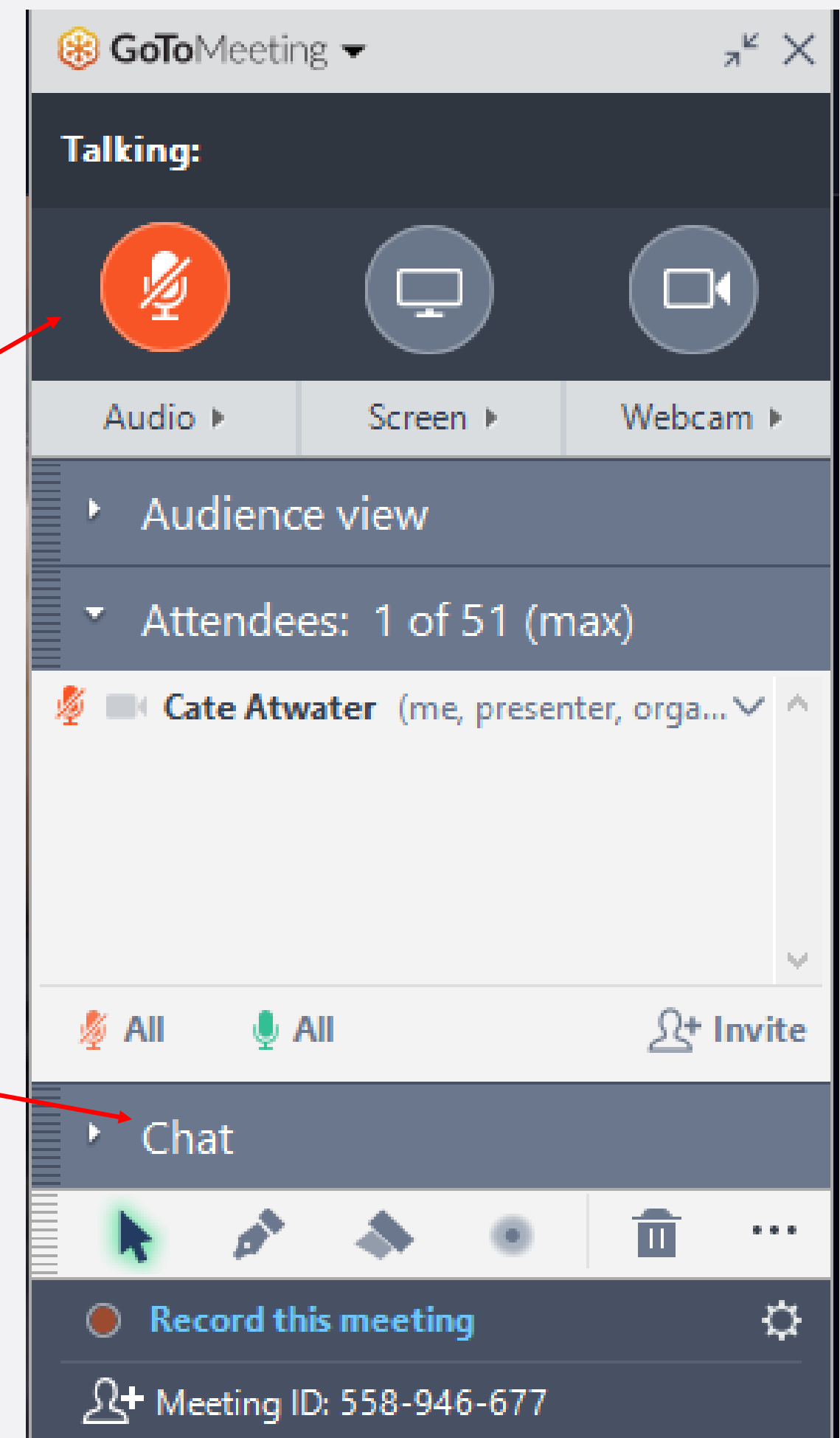
30 August 2019, 1 - 2pm

Hosted by: Kirsty Cumming, Community Leisure UK

Delivered by: Robert Holland and Andrew Wallace, Balfour and Manson Solicitors.

Conference call etiquette

- Please check that your audio is working
 - Your computer speakers are working, or
 - Your headset is working, or
 - You have dialled in using a telephone
- Please mute yourself on the GoToMeeting platform. It helps reduce background noise
- We will manage structured questions and discussions at the end of the presentation
- In addition, and if you have specific questions or points, please use the 'chat' window to 'Kirsty organiser' – and I will pick these up



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Community Leisure UK Webinar

**“Employment status and
potential employer risks”**

Balfour+Manson LLP

Friday 30 August 2019

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Introduction to Balfour+Manson LLP

- National firm
- Legal 500 + Chambers Rated
- Full Service Firm
- Employment team-



Employment status – category?

- Employee
 - Worker
- Self-employed

Employee

Section 230(1) Employment Rights Act 1996

- an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment

Worker

Section 230(3) Employment Rights Act 1996

- an individual who has entered into or works under (or, where the employment has ceased, worked under):
 - (a) a contract of employment, or
 - (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual

Self-employed contractor

- A person running a business for themselves
- A contract “for” services

Employment status – how can you tell the difference?

Degree of control

- Is a uniform required?
- Are they required to adhere to facility rules?
- Are they expected to be in a certain time and place?
- Are they expected to do things in a certain way?

Employment status – how can you tell the difference?

Mutuality of obligations

- Is there an expectancy that work will be offered?
- Is there an expectancy that work will be carried out by an individual?
- Regularity of:
 - times of work
 - place of work
 - payment



Employment status – how can you tell the difference?

Other factors

- Intention between parties
- Ability to substitute personnel
- How are they paid?

Employment status

- Volunteers
- Coaches
- Fitness instructors
- Casual workers
- Zero hours workers
- Funded athletes



Employment Status – the risks to the employer (I)

- Liability for claims of unfair dismissal
- Liability for claim of discrimination
- Holiday pay
- National Minimum Wage



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Employment Status – the risks to the employer (2)

- Naming and shaming of employer
- Vicarious liability
- Employer's Liability Insurance
- Health and Safety requirements
- Tax implications
- GDPR requirements



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Employment status

- SRU launch of the Scottish Rugby Super 6
2019/20: [Robert Holland: Employed or not, that is the question - The Scotsman](#)
- 35 semi-professional players + coaching + support staff
- Legal status?
 - Fixed contracts
 - “Tight control”
- Entitlement to other employment benefits

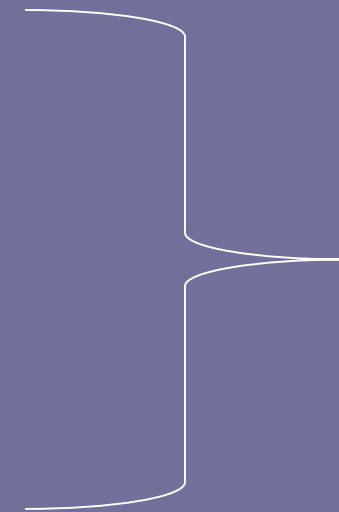


Employment status -The Gym Group

- Policy of signing up “freelance independent personal trainers” as “self-employed”

But requiring:

- notice of holidays
- uniform
- specific shift patterns



Employment status -The Gym Group

- Consideration of substitution
- Contract: “substitutes should be selected from personal trainers already operating their business at the Gym.”
- Work & Pensions committee: “*Placing substantial restrictions on the right to substitution is inconsistent with self employed status*”. (McFarlane v Glasgow City Council)
- The Gym Group changed business model on PTs

Employment status – funded athletes

Employment tribunal

- VARNISH V THE BRITISH CYCLING FEDERATION & OTHER



DISCUSSION

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Questions, comments, thoughts.....?

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