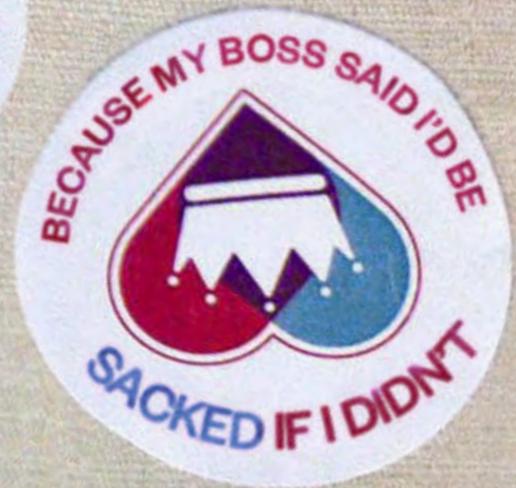
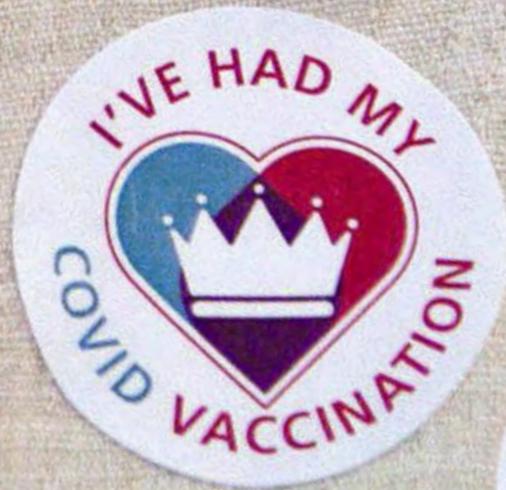


People Management

April/May 2021



The ethics of compulsory jabs – and three other questions HR needs to answer urgently

CIPD

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April/May 2021

HR can't get a moment's respite at the minute. Between ever-changing lockdown restrictions, reporting deadlines, governmental policy changes and significant Supreme Court rulings, there's lots for people professionals to stay on top of – all while still exhausted after a year (and counting) of the pandemic. That's why we've taken four of the biggest dilemmas and explained what they mean for employers.

Eleanor Whitehouse **Acting editor**

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Bata Davidovic
Head of Leadership and Capabilities,
Coca-Cola Hellenic Bottling Company

Sandra Wallace
Partner and Joint Managing Director, DLA Piper LLP,
and Champion of the Year, Social Mobility Awards 2020



Brian Cox,
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Managing during uncertainty



Peter Cheese
Chief executive

The world of work is changing at a rapid rate, with many uncertainties as we emerge from the pandemic. There is much to be understood in dealing with changes in people's expectations and needs, acting on inclusion and understanding new regulations, as well as shifts in migration and changes in our workforces.

the world around them. These are big drivers in engaging with employees and retaining and attracting talent, as well as reputation and brand image.

Operating in uncertain circumstances is difficult – where the immediate future, let alone the longer term, is hard to predict. As Mark Twain reputedly observed, it's difficult to make predictions, especially about the future. Most business leaders like certainty, to be able to control what happens, and to be able to make clear decisions with reasonable assurance of outcomes. But that is not always reality. We all have to learn to live with uncertainty, and still innovate and progress.

It requires the confidence to deal with paradox and conflicting views, and to take risks. To be able to imagine different things, confront the known unknowns, and not just revert to the known past. You can't steer a ship by looking at the wake – we have to learn to work in agile ways, innovate and try things, accept failure as part of learning and learn as we go, while maintaining a strong guiding focus on vision and purpose.

As pressure grows on organisations and leaders in challenging times, the natural tendency is to try to minimise risk, to work with the tried and tested, and to focus on costs in the short term. Issues like inclusion and diversity or new ways of working can be pushed backwards.

Old paradigms are hard to shift, and so many of our ways of working have been with us for generations – the standard five-day working week, the need to be visibly in places of work, a bias towards presenteeism and command and control cultures. However, businesses all operate in a social context. And social change is demanding more transparency, more responsible and ethical business, more fairness and inclusion, and demonstrable action by leaders to show they are listening and responding to what is going on in

The pandemic has acted as a big catalyst and we can't let that pass. People don't stop being people when they come to work. And if businesses and leaders care for the things their people care about, they will care for the things the business cares about. Managers need to understand and show empathy for people's other life commitments, mental and physical wellbeing, feelings of safety, and concerns such as bullying and harassment inside and outside work. But we need to train managers more in these critical aspects of people management. All these have been areas of focus for the CIPD's guidance, and will continue to be for the future.

Perhaps one of the biggest paradigm shifts will be in making hybrid and flexible working more the norm. There are many policy, logistical and cultural issues to be thought through. There is not a manual or rule book, and we will have to trust people and learn as we go. Let us all hope that the progress being made on vaccination programmes and the easing of lockdowns allows some return to normality in the coming weeks. But we will need to be prepared for a period of continued change, adaptation and learning. This will require professional courage and influence, and we can help each other in our community connections, sharing knowledge and experience.



p32



Employers will need to consider various issues to manage the transition to increased flexible and hybrid working

GARY BURCHELL/GETTY IMAGES;
HANNAH J TAYLOR

This month we've learned...

The big lesson



The Supreme Court has ruled predominantly female shopfloor staff can be compared to mostly male distribution workers

{Health & wellbeing}

Half want mandatory Covid jobs

A survey has found that more than half of workers believe coronavirus vaccinations should be made compulsory for employees returning to the office.

The poll of 2,000 workers, conducted by Glasdoor, found that 56 per cent thought there should be a requirement for staff to have had a Covid vaccination before they go back to the office, and one in seven (14 per cent) workers went as far as saying they would hand in their notice if they were required to return before all employees had been vaccinated.

Rachel Suff, senior employment relations adviser at the CIPD, said employers should be doing all they can to encourage their staff to get vaccinated, including being flexible about working hours or offering paid time off for vaccination appointments. But, she said, “the government hasn’t made the vaccine mandatory, so employers shouldn’t either”.

A separate poll by the Chartered Management Institute in the second week of March also found almost three in five (58 per cent) of 1,068 respondents believed businesses should be allowed to make Covid jobs mandatory for staff returning to their regular place of work, compared to just over a third (35 per cent) who did not.

{Employment law}

Asda workers can bring pay claim

In yet another significant decision to come out of the Supreme Court over the last few weeks, judges have ruled that retail store staff for supermarket chain Asda can be compared to distribution workers, paving the way for more employees to bring equal pay claims against the retailer.

The court ruled that predominantly female shopfloor workers are on ‘common terms’ with mostly male distribution centre employees, and experts have warned that the decision could make it easier for shopfloor workers to bring claims against other supermarkets.

The case was initially launched by a number of Asda retail employees who argued that them being paid less than predominantly male colleagues working in the distribution centre amounted to unequal pay. Asda applied to have the claim dismissed on the basis that it didn’t meet this common terms test; however, the initial employment tribunal ruled in favour of the retail workers. This was

upheld by the Court of Appeal, and now the Supreme Court.

“This will undoubtedly alarm other supermarket chains and retailers”

The common terms test is a threshold test that an equal pay claim needs to meet before it can proceed, and is designed to ‘weed out’ claims where the disparity in pay can be explained by geographical factors.

In its judgment, the Supreme Court said when considering whether employees were on

common terms, it did not have to be “feasible” for the retail staff to actually be able to carry out their role from the distribution workers’ site. Instead, it could be envisioned that they were hypothetically working out of a supermarket next door, and vice-versa.

Suzanne Horne, partner at Paul Hastings, said this ruling would “undoubtedly alarm other supermarket chains and retailers”. She estimated that, if the case went on to succeed at an employment tribunal, collectively UK supermarkets risk facing up to £8bn in unequal pay claims.

{Pay & reward}

No NMW for sleep-in shifts

Another landmark ruling from the Supreme Court in recent weeks has drawn a line underneath a long-running dispute with charity Mencap around remuneration for care workers who undertake 'sleep in' shifts as part of their jobs. The court ruled that they are not entitled to the national minimum wage (NMW) while asleep, and should instead receive a set allowance unless they are awake for the purpose of working.

Experts have said employers in the care sector would be relieved with the decision which, if it had fallen in favour of the claimants, could have added millions to staffing costs.

"If this judgment had gone the other way it could have bankrupted many in the care industry," said Sarah Ozanne, employment lawyer at CMS.

Edel Harris, chief executive of Mencap, also told the BBC: "It is no exaggeration to say that, if the ruling had been different, it would have severely impacted on a sector that is already underfunded and stretched to breaking point."

{Inclusion & diversity}

BAME people turned down for more jobs

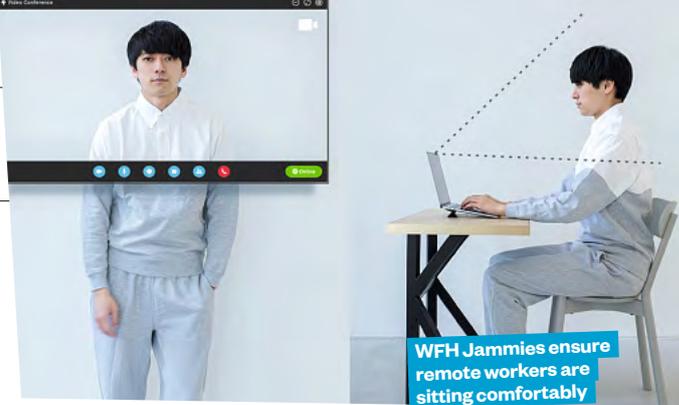
One in three ethnic minority workers say they have been unfairly turned down for a job, compared to just one in five (19 per cent) white workers, according to new research by the TUC.

More ethnic minority workers also report being unfairly overlooked for a pay rise than their white counterparts (29 per cent compared to 22 per cent). Ethnic minority staff are twice as likely to report being on insecure contracts, or being forced to

reapply for their jobs on worse terms and conditions, according to the survey of more than 2,000 workers in November last year.

The TUC is calling on the government to introduce mandatory ethnicity pay gap reporting and make employers publish action plans, and to ban zero-hours contracts and strengthen the rights of insecure workers, which it says will have a positive impact on ethnic minority workers.

Edel Harris (right) believes a different result in the sleep-in shifts case would have damaged the care sector; the TUC's Frances O Grady is calling on the government to bring in mandatory ethnicity pay reporting



{Flexible working}

Comfort is king

In the absence of formal dress codes, the compromise between dressing comfortably while at home and wearing smart clothes for video meetings is one that's plagued many remote staff during the last year.

But at last, a Japanese company appears to have come up with the answer. Enter Whatever Inc and its new WFH Jammies. Described as "business on the top, loungewear on the bottom", the garment resembles a formal collared shirt from the chest up – the

portion that appears in front of a webcam – with the lower half more comfortable.

Designer Taichi Ito came up with the idea when his wife was on a Zoom call. "One day my wife changed into casual office clothes to attend a video meeting," he told the *Guardian*. "I thought 'that's not a good way to enjoy her time working from home', and thought it would be a good idea to have loungewear that was formal only for the part of the body shown on the video screen."

{Inclusion & diversity}

Women quit after kids despite pay

Women in heterosexual relationships are more likely than their male partners to sacrifice paid work after they have a child regardless of who was earning more money before parenthood, a study has found.

The poll of 5,591 heterosexual couples in England, conducted by the Institute for Fiscal Studies (IFS), found that in 13 per cent of

relationships where women earned more than their partners before parenthood, the women left work after having a child. This compared to just 3 per cent of

similar relationships where the lower-paid male partner left work. Alison Andrew, senior research economist at the IFS, said the findings showed that the way parents divide up paid work and childcare could not be "straightforwardly explained by pre-existing differences in their career trajectories".

"Even where the mother was the main earner before having a child, she is more likely to give up work or reduce her hours after becoming a parent than the father," she said.

Lockdown restrictions are starting to ease, but some workers may be struggling to transition to 'normality'



Is a mental health crisis in the offing?

With many workers reporting worse mental health than a year ago and a lack of employer support, the onus is on firms to step up

WORDS LAUREN BROWN

The pandemic has been a major eye opener for many employers on the importance of mental health. The first lockdown back in March last year highlighted how much we all depend on our social networks within our workplaces, and how commuting can carve out much-needed work-life separation. But despite all the rhetoric, not all businesses have made changes to the way they look after their employees' wellbeing.

In March, a poll of 2,000 UK workers by Mental Health First Aid (MHFA) England revealed a quarter (25 per cent) had not received a single mental health check-in since the start of the pandemic. Only a

third (32 per cent) said the mental health and wellbeing support offered by their employer had improved during the pandemic – compared to 43 per cent of respondents who said their support stayed the same or worsened – while 41 per cent said they had less frequent wellbeing check-ins or none at all.

For many, improved support is long overdue. In a separate poll conducted by YouGov on behalf of Indeed, two-fifths (44 per cent) of the 1,039 UK workers who responded reported that their mental health is worse now than it was last spring, suggesting employees are suffering the cumulative strain of

multiple long lockdowns. Just 15 per cent reported better mental health now than this time last year.

MHFA is now calling on employers to provide increased support and regular wellbeing check-ins, and to ensure managers have the right training and resources, all in an effort to remedy what Tom Oxley, workplace mental health strategist and chief trainer at Bamboo Mental Health, terms

a “criminal – almost literally” lack of communication from employers throughout the crisis. “The Health and Safety Executive says you need

“It should be about offering staff as much choice as possible”

to consult and assess risk, wherever your employees work," he says. "With zero wellbeing communication, I would be concerned about the safety strategy and cultural practices of an organisation or a manager that would cast employees adrift."

Andy Bell, deputy chief executive at the Centre for Mental Health, agrees, urging employers to devise and implement long-term wellbeing strategies. While for many the months of restrictions will shortly come to a close, Bell points out that for some – particularly those who have experienced bereavement, been in unsafe homes or for many other reasons have had particularly bad experiences of lockdown – there may be longer-term impacts.

The upside is that employers are well placed to help. Businesses can "make safe spaces for their staff, allow people to come to terms with what they have experienced at their own pace, have open conversations about mental health, positively encourage seeking help, and be flexible about how and when people return to normal working arrangements", he says.

Other research has found employees are split when it comes to whether they want to return to the office or not, suggesting employers could benefit from the flexible approach recommended by Bell. A survey by Personio found one in four workers would resign from their current job if they were forced to return to the office, and the latest *Modern Families Index Spotlight* survey by

Bright Horizons found almost a fifth (18 per cent) of working parents want to work completely remotely after the pandemic.

However, according to the Indeed and YouGov poll, 44 per cent of workers want their work life to return 'largely' to the way it was before, while 31 per cent want it to return exactly to the way it was before the first lockdown last year.

To gauge how their workforce is faring, Emma Mamo, head of workplace wellbeing at Mind, recommends firms send anonymous surveys and, crucially, maintain regular communication. "We've seen more and more employers prioritise staff wellbeing in recent years, but there is still a long way to go, and the current situation has thrown up lots of additional challenges for organisations," she says.

"Employers need to remember that change is difficult for many of us. If a colleague is finding the transition back to 'normality' difficult, speak to them

about the support needed, and create a plan together," says Mamo, adding that, depending on the needs of the business, employers might even ask themselves whether staff need to be based in the workplace going forward. "Regardless, it should be about offering staff as much choice and flexibility as possible," she says.

Nikki Thorpe, director of people and culture at workplace management platform Planday, agrees flexibility goes hand in hand with employee wellbeing. She warns that now businesses

have proven their ability to accommodate flexibility, employees are going to expect it.

Similarly, mental health strategist and consultant Amy McKeown says employers should seize the moment to make worker wellbeing a board-level, strategic issue: "There needs to be an investment in health providers and support and a recognition that employees will need time, space and help to get over the Covid fatigue of the last year."

"Employees will need time, space and help to get over Covid fatigue"

Many employees are keen to continue working remotely after the pandemic



The shoe is on the other Foot

It seems like a pleasing alignment of the universe on the rare occasion someone's name matches their choice of career. But even rarer that it happens twice for the same organisation. Yet the finance boss of footwear retailer Shoe Zone, Peter Foot, has stepped down and been replaced – by Terry Boot.

This isn't Boot's first foray into the footwear industry – he previously held roles at Brantano and Jones Bootmaker.

"Elon and Zach will also maintain their respective positions as CEO and chief financial officer"

Tesla clarifies its top bosses' roles after they changed their job titles to 'technoking' and 'master of coin'

12 PM



is the most popular time for a video meeting during the working day
SOURCE: WHEREBY.COM

The gender pay gap reporting deadline and the rollout of the new off-payroll rules are key dates for HR's diary

Don't forget the other deadlines

While HR has been focused on Covid for the past year, this month brings two other important dates not to be sidelined

WORDS ELIZABETH HOWLETT

There's no doubt people professionals have been rushed off their feet since March last year, and for good reason. The pandemic took over many HR calendars and the ever-changing lockdown restrictions and employment-related hurdles have been a logistical minefield to keep track of. But this April marks an important month for several reasons unrelated to the Covid crisis.

For starters, HR professionals should have had 4 April circled in their diary – this was still technically the deadline for this year's gender pay gap reporting, although the Equality and

Human Rights Commission (EHRC) has suspended enforcement of the reporting rules until 5 October – essentially extending the deadline for six months while employers cope with the fallout of the pandemic.

Although the EHRC put the brakes on enforcement and suspended any action on reporting altogether in 2020, businesses are still expected to report their figures for 2020-21 this year. Kishwer Falkner, chair of the EHRC, says action to reduce the gender pay gap needs to continue. "Starting our legal process in October strikes the right balance between supporting businesses and enforcing

these important regulations," she explains, adding that organisations should still report their data for 2020-21 on time if they can, alongside detailed action plans to reduce the long-term gaps in pay. "Reporting provides an opportunity for employers to demonstrate their commitment to gender equality, which will be more important than ever as the effects of the pandemic continue," says Falkner.

However, experts have raised concerns that the extension and delayed enforcement could send out the wrong message to businesses, especially in light of the disproportionate effects of



Do you want fries with that?

They say there's no such thing as a free lunch, but one Canadian restaurant is trying to make that a reality. Good Fortune Burger has changed the names of several items on its menu to common office supplies to make it easier for customers to expense their lunch.

In a scheme it calls #RECEATS (get it?), its Fortune burger has been rechristened 'basic steel stapler', and its parm fries have become 'CPU wireless mouse'. "We just wanted an opportunity to put a smile on people's faces," says Jon Purdy, director of operations.

"Nobody sat for hours a day unless you were dying"

John Hines, communications director at rebounder manufacturer Bellicon, explains the rationale for trampoline desks

43%

of millennials admit to 'always' checking their work emails when on their phones

SOURCE: MONEY.CO.UK



HMRC has said it will be lenient with firms falling foul of IR35 changes during the first year

Under IR35, if a contractor is deemed to carry out similar or the same work as a permanent staff member, their employer is required to deduct income tax and national insurance contributions as if they were an employee. The legislation was introduced to ensure workers undertaking similar roles paid similar tax regardless of whether they are an employee or a contractor. The changes to IR35 in the private sector will shift the responsibility of assessing which contractors fall into this category on to employers – as has been the

case in the public sector since 2017.

HMRC says it will take a lenient approach with businesses that accidentally fall foul of the changes to private sector rules, and will not issue any fines for the first year – including in cases where the wrong tax determination is made. "We will not charge a penalty if you took reasonable care to apply the off-payroll working rules

correctly but still made a mistake, including making mistakes in status determinations," the guidance says, adding that, unless there was evidence of deliberate non-compliance, HMRC would encourage employers to 'self correct' errors before considering whether it needed to intervene further.

However, despite the 'soft touch' approach promised by the Treasury, Matt Fryer, head of legal services at Brookson Legal, still warns businesses against cutting corners to meet the new deadline. "It is important

to stress that HMRC will be looking to recover any underpaid tax and [national insurance contributions]," says Fryer, adding that, according to conversations with HMRC, he understands that non-compliance would be met with "little sympathy".

"For businesses that have tried to do the right thing but may have made a mistake along the way it will waive any interest and penalties," he says.

* Read the CIPD's guides to gender pay reporting and the implications of IR35 at bit.ly/CIPDGenderPayReporting and bit.ly/CIPDIR35

the pandemic on women. "Now is not the time for employers to take their foot off the pedal when it comes to their commitment to closing the gender pay gap," says Claire McCartney, senior resourcing and inclusion adviser at the CIPD, adding that this year more than ever it is also important for employers to publish an accompanying narrative and action plan alongside their data. "The pandemic will have had an impact on their figures. They will need to understand and explain this, and set out how they plan to improve gender equality and tackle pay gaps where they exist," she says.

In contrast, the anticipated changes to private sector off-payroll rules were still, at time of going to press, planned to be rolled out on 6 April – following their own 12-month delay because of coronavirus – regardless of calls from businesses and the self-employed for a review.

"Failure to comply will be met with little sympathy"

approach promised by the Treasury, Matt Fryer, head of legal services at Brookson Legal, still warns businesses against cutting corners to meet the new deadline. "It is important to stress that HMRC will be looking to recover any underpaid tax and [national insurance contributions]," says Fryer, adding that, according to conversations with HMRC, he understands that non-compliance would be met with "little sympathy".

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Is your organisation prepared for IR35 changes?

Nearly four in 10 (38 per cent) mid-sized employers are not prepared for IR35, according to a survey by Grant Thornton. The accountancy firm surveyed 605 senior decision makers between 28 January and 4 February 2021, ahead of the 6 April deadline.

One in 10 (13 per cent) had done only minimal preparation

or were in the early stages of their planning despite the year's extension, while a further quarter (25 per cent) had been preparing but were still not ready for the deadline. Encouragingly, almost three in five (59 per cent) of the businesses surveyed believed they were ready for the upcoming changes.

Can employers monitor staff while working remotely?

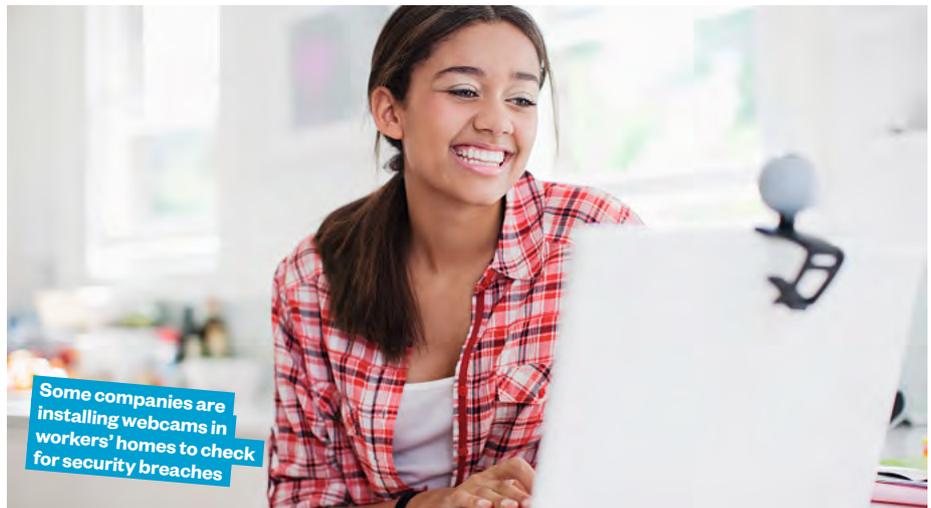
The rollout of AI-powered tracking technology at a call centre operator has reignited the debate over employee surveillance

The move to remote working has been a difficult one for many employers, particularly those without an existing culture of independent working. As such, the increase in employee surveillance has been notable.

But perhaps few businesses have gone as far as call centre company Teleperformance, which reportedly told some members of staff last month that specialist webcams would be fitted in their homes to check for working infractions, including using their phone or eating while on shift. The cameras are powered by artificial intelligence, and will automatically notify a manager of any transgressions, as well as monitor for any security breaches such as unauthorised people sitting at the employee's desk.

The rollout of the technology was reported by the *Guardian*, which claimed to have seen documentation and a training video about the system. Teleperformance told the paper that the remote scanning feature would not be used in the UK, although levels of remote scrutiny would be different in other countries. Instead, the cameras would only be used for meetings, training and scheduled video calls, and the system was intended to “respond to the overwhelming concerns of isolation, lack of team engagement and support”. Nonetheless, the revelation has renewed concerns about businesses’ surveillance of staff inside their homes.

Kate Palmer, HR advice director at Peninsula, warns any employers thinking about monitoring their staff that employees still have an “overarching right to privacy at work” regardless of whether they are working from the home or their office. This doesn’t mean they can’t be



Employee monitoring in the news

Barclays introduced surveillance software in February 2020 that tracked how long employees spent at their desks, but withdrew it a week later after attracting widespread criticism.

PwC came under fire in August 2020 after developing a facial

recognition tool to track when employees are at their desks while working from home, requiring them to provide written reasons for absence, including toilet breaks.

And in February, Amazon announced plans to install cameras in all its delivery vans in the US to track

drivers’ behaviour. According to *Vice*, an unlisted video posted by the firm’s senior manager for last-mile safety explains the new system, which will be able to look out for misdemeanours such as hard braking, speeding, not wearing a seatbelt and even yawning.

monitored, she says, but firms need to make sure that all monitoring measures are communicated to employees in advance. Employers must also have a “fair, proportionate and legitimate reason” to monitor staff, Palmer adds.

The TUC has called for a wider review of the laws around the use of AI at work, warning that without proper protection the use of algorithms and automation in

HR decisions could lead to widespread discrimination. “AI at work could be used to improve productivity and working lives. But it is already being used to make life-changing decisions about people at work – like who gets hired and fired,” says Frances O’Grady, general secretary of the TUC.

“Workplace AI must be harnessed for good – not to set punishing targets and rob workers of their dignity.”

“Everything that was flung at HR we responded to”

Jacqui Jones, HR director of NHS National Services Scotland, reflects on a turbulent 12 months for healthcare people professionals

As director of HR and workforce development at NHS National Services Scotland (NSS) and NHS Louisa Jordan – Scotland’s equivalent of England’s NHS Nightingale, set up to deal with an expected influx of Covid patients – Jacqui Jones’s team has been at the forefront of the country’s response to the pandemic. She found a gap in her full diary to tell *People Management* about her experiences over the past 12 months.

What was your experience of helping set up the Louisa Jordan hospital?

It was challenging and hard work, but an amazing experience. We had an agreement with NHS boards in the west of Scotland that they would supply enough staff for the first 40 beds, and then beyond that we would need to work together to potentially recruit additional staff for 300 beds. We’re not an employer in our own right, so that would have involved enacting the memorandum of understanding we have with each of the health boards in Scotland that they would release some of their staff to us. It involved a lot of conversations with my fellow HR directors about how that would work.

How has NHS Scotland been supporting staff wellbeing throughout Covid?

Each of the 22 Scottish health boards have their own arrangements in place, but the Scottish government also put extra measures in at a national level to supplement that, including hubs and networks around mental wellbeing. But of course it’s the local initiatives that really matter, and space is one of the biggest factors – staff need to be able to get away to rest and have a

break. In the Louisa Jordan hospital, workers would’ve had a lovely breakout area away from the clinical areas, but in hospitals with a finite amount of space that can be more difficult.

How has the pandemic changed people’s perceptions of the HR profession?

From my organisation’s perspective, as our chief executive pointed out, HR has been at the forefront of just about everything. It’s really put a spotlight on how good or not so good we are. I’ve worked very hard transforming HR at NHS NSS and making sure it’s following the CIPD framework, and we were able to respond to Covid at such pace – to set up the national contact tracing centre we’ve recruited,

“The team had to onboard and train people at pace in the middle of a pandemic”

onboarded and trained 1,000 people since June last year. Everything that’s been flung at HR we’ve been able to respond to, and it’s really shown the value of good, straightforward, pragmatic, professional HR advice.

What’s been your biggest people challenge of the last year?

There have been so many, but recruiting into a big programme management service as well as the national contact tracing centre just after starting to deliver HR shared services for public health in Scotland was big. The team had to learn new systems and onboard and train people at scale and pace in the middle of a pandemic, and deliver business as usual while working remotely. It was incredible.

What has made you most proud of your organisation during the pandemic?

The sheer response of people going the extra mile – I’ve seen astonishing things. Lots of people have gone way beyond what was asked of them and have delivered at pace. I’ve not come across one person who said ‘that’s not my job’ or ‘it’s five o’clock, I’m going home’.





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cipd.co.uk/hr-resources/employment-law

EAT upholds claimant's appeal after case dismissed following 'vexatious' attempts

Experts say ruling highlights the need for HR to vet job candidates

A dyspraxic jobseeker whose discrimination case was struck out because of more than 30 previous "vexatious" claims, will have the decision reconsidered, the Employment Appeal Tribunal (EAT) has said.

In 2019, the East London Hearing Centre found Christian Mallon was not discriminated against by infrastructure consultancy firm Aecom when applying for a role there. Mallon had argued that his dyspraxia – a developmental coordination disorder – meant he was unable to complete an online application, and the company failed to make reasonable adjustments for him.

He claimed that he was unable to interact with online forms, password characters and drop-down menus and requested to submit an oral application. Aecom, however, said it asked Mallon to outline what was problematic about the process, but he did not offer details of his disability and insisted on an oral application.

The initial tribunal also heard he had submitted more than 30 other claims against various firms and recruitment agencies between 2017 and 2019 – including one in which he was ordered to pay the employer costs of nearly £4,000.

In his ruling, Judge Burgher said because of the previous claims, which were either

dismissed or withdrawn, this was "one of the rare cases" where the exception to the rule that discrimination claims should not be struck out applied as there was "no credible basis" to maintain them.

However, the EAT said that, despite the numerous other claims, it was not possible without further investigation to determine on a summary basis that Mallon's claim – that he was put at a substantial disadvantage by being asked to complete an online application – was false, nor determine that he already knew the claim was false. Therefore, the EAT ruled that the case would be heard again by a different employment tribunal judge.

Jules Quinn, partner at King & Spalding International, said businesses could avoid finding themselves in similar situations by conducting background checks on potential candidates. "It is very easy for an employer to conduct a background check to determine what, if any, tribunal claims or cases a job applicant has brought against previous employers," she said.

Quinn warned, however, that acting on any findings may risk putting the employer on tricky legal ground. But on the other hand, "careless hiring practices" could leave them exposed and taking any action against a candidate, such as not shortlisting them for an interview, could amount to victimisation.

Uber drivers are workers, Supreme Court rules

Uber drivers are workers and entitled to minimum wage and sick pay, the Supreme Court has ruled, in a judgment that could upend how the gig economy works in the UK.

The court unanimously agreed that the drivers worked for Uber, regardless of the written contract, and therefore the relevant employment legislation applied. The judges said the service provided by drivers was "very tightly defined and controlled by Uber" and they were "in a position of subordination and dependency in relation to Uber".

The ruling confirmed Uber drivers are not only entitled to employment rights, including rest breaks and holiday pay, but that they are in fact working from the time they turn on the app and are ready to accept jobs.

The case was originally brought before an employment tribunal by former Uber drivers James Farrar and Yaseen Aslam, who won the case in October 2016. Uber appealed the decision, but the High Court upheld the judgment in December 2018. The Supreme Court's ruling was the ride hailing app's last appeal.

Paul Jennings, partner at Bates Wells and one of the lawyers acting for the claimants, described the judgment as a "clear and powerful restatement of the importance of basic employment protections", and said it would shape future cases on the gig economy. "The ruling strikes at the heart of Uber's business model. We anticipate there will be a significant class action against Uber," he said. "It will need to reflect very carefully on the implications of the judgment."

Jamie Heywood, the firm's Northern and Eastern Europe general manager, said: "We are committed to doing more and will now consult with every active driver across the UK to understand the changes they want to see."

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Warden fired for 'aggressive' messages was unfairly dismissed

A physics lecturer accused of sending "aggressive" messages to colleagues has been awarded £15,000 for unfair dismissal after an employment tribunal ruled there had not been a proper investigation into the allegations.

Dr Binoy Sobnack had taken up an ancillary role as a warden of a students' hall of residence at Loughborough University. It was in this role that several colleagues raised complaints

about his behaviour. One volunteer sub-warden alleged that Sobnack accused her of trying to delay her start date "to avoid carrying out her duties", while another said he had asked her to work more than her visa allowed and not record it.

Sobnack's communication style was described by one complainant as "aggressive and confrontational". As a result of the "strikingly similar" allegations, he was discharged from his warden role.

In his ruling, Judge Adkinson said "there had not been so much as a beginning of an investigation to ascertain" if the allegations against Sobnack were true, and previous complaints had not resulted in any disciplinary process or sanctions.

Adkinson reduced Sobnack's basic award by 25 per cent because of his own contribution to his dismissal, describing his messages as "brusque, blunt and unnecessarily aggressive in tone".

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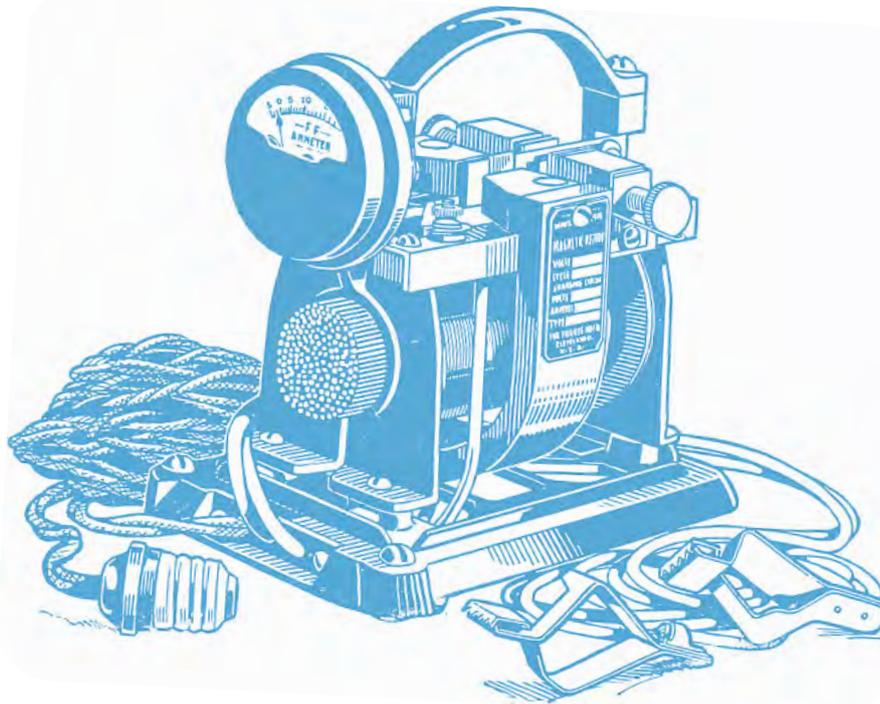
WENDY ASLETT & RACHEL CURRIE

Job sharing in a senior position means we can role model good flexibility

The BBC needs to be a creative, modern organisation delivering value to all audiences. Supporting our employees to work in the best way for them to create the best content is central to our core purpose. For that reason, we set out to transform our approach to flexible working.

Before 2018, we had a textbook policy and good processes to support it. But the culture did nothing to bring that policy to life. So we shifted our approach from passive good practice to proactive engagement, rewriting our policy and setting a target of 100 per cent of roles to be advertised as 'open to flex', supported by showcasing case studies internally. And we've made great progress. Ninety per cent of jobs are now advertised as such; 15 per cent of our workforce are on part-time contracts and many more are on informal arrangements. Seventy-one per cent of employees now say they are supported to work flexibly.

A clear signal that the BBC really meant what it said about flexibility was when we were appointed group HR directors as a job share in November 2019. As the BBC's most senior job share, we feel really proud both to lead the brilliant HR team and to role model flexible working at a senior level.



"We can talk through big decisions and bounce ideas off each other"

It's been fantastic so far, although hasn't turned out as we planned – three months in, Covid restrictions meant we found ourselves based at home in Glasgow and Reading. We haven't physically been together for more than a

year but we're making it work. On a practical level it's straightforward. We both work three days a week, with a crossover day on Wednesdays, have a joint email inbox and do detailed handovers. Broadly we both work across the full job and aim to be interchangeable, but split line management of our direct reports.

Success is based on constant communication, complete trust in each other and backing the decisions we each make. It's not perfect. Sometimes people want both of us, and Wednesdays are

usually frantic with back-to-back meetings, and it's hard to carve out time to focus on our priorities. We occasionally reply to the same email, or miss one. And while it's great for us to work three intense days each, our teams often work five days with us and have no respite.

But the benefits are huge. We can talk through big decisions, bounce ideas off each other and share the responsibility of a pressurised job.

We also have all the rewards of doing a stimulating role in an organisation we love, with time to focus on the other important parts of our lives. And there are clear advantages for the company – combined skills, two individuals bringing their all to one role, and sending a powerful signal to the diverse employees we are trying to attract that the BBC is a place where they can work in a way best suited to their needs.

We're now moving towards a post-Covid world and, like most firms, we're figuring out new ways of working. The BBC's creativity thrives on teams being together, so we're looking forward to bringing people back more regularly. But in a world where the best talent expects to work differently, and where we have proven that flexibility can work, we have a great opportunity to build on that. Our future success depends on it. **PM**

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In practice

Real organisations, real challenges



“You don’t need costly consultants – just a good HR professional”

VisitBritain/VisitEngland

The government body used the hiatus in the tourism sector caused by Covid as a golden opportunity to future proof its workforce strategy

Devising a brand new people strategy is a huge undertaking at the best of times. And it’s even more of a huge undertaking against the backdrop of a global pandemic. But that’s exactly what Debra Lang, director of HR and professional services at national tourism agency VisitBritain/VisitEngland, a government arms-length body, took on during 2020 – a process she describes as “like trying to fly a plane and build it at the same time”. But despite tourism being one of the sectors worst hit by Covid, and the government-funded organisation unable to furlough staff, the timing turned out to be fortuitous.

A self-described “lifetime civil servant” and having previously worked in the Department for Work and Pensions, HMRC and the Cabinet Office, Lang is currently seconded to VisitBritain/VisitEngland from her role as director of people and workplace at the Department for Digital, Culture, Media and Sport, having initially been drafted in January 2020 for a year (now extended to two) to shape and enact the organisation’s vision for a future-proof people strategy.

Lang’s main remit, she says, was to create a more transformational HR function and to develop a people strategy to support the company’s 300 staff, a third of whom are based across 19 countries, with a new approach to engagement and a particular commitment to improving L&D and I&D – two areas a deep dive into staff survey data revealed were lacking. “The team didn’t have the capacity to look further ahead,” she explains. “The people function should be there to curate the people experience, not police it.” After getting the green light to create the new approach, Lang spent a month talking to a cross-section of staff about their experiences, discovering “what they enjoyed and what hacked them off”, as well as commissioning an all-staff engagement survey and becoming “best friends” with the data analysis team to truly understand the results.

From this listening work was borne a host of staff networks, each run by passionate groups of employees to drive the organisation’s work in their particular area. What began as one mental health

network is now eight, including seven in I&D, which have allowed Lang to tap into “latent energy” within the workforce. “As a small organisation, we don’t have much resource centrally, but these groups have found untapped enthusiasm none of us knew was there,” she says.

And although undergoing a significant change project while dealing with a pandemic sounds less than ideal, Lang is adamant the timing has been a bonus. Morale, she explains, has been particularly

low during Covid, with some staff, including Lang herself, even contracting the virus, so the new strategy has “energised” the workforce and given them something to focus on. “Obviously things have been awful, which made me question whether it was the right time,” she says. “But while

you need a people strategy in good times, you need it even more during bad times.”

A particular success of the change work has been VisitBritain/VisitEngland’s youth network creating a virtual week-long work experience programme for more

“You need a people strategy in good times, but you need it even more in bad times”



than 200 students considering a career in the sector – something more than three in five say they're now keen to pursue. As well as benefiting the students, Lang says the scheme was a positive experience for those who organised it. "I wanted to encourage more young people into the sector, and the youth network has blown my mind," she says. "The team got a lot out of working with these young people."

And where some areas of the organisation have seen the "volume turned down" because of Covid, other teams have been able to put that spare capacity to use via a workforce interchange network and shadowing (WINS) portal, where departments can advertise their requirements for short-term help, and staff from elsewhere in the organisation can apply to take it on. "We wanted to utilise all our resource across the globe in a positive way," Lang explains. "Some projects have been started in the US, passed to Europe and then picked up in Australia as the day has gone on."

But despite the limitations of the pandemic, the change work has boosted the organisation's people metrics. Its latest staff survey surpassed each of the Civil Service People Survey's five benchmarks around employee engagement, including a nine percentage point increase in those who say the company inspires colleagues to do their best. And Lang is particularly proud that the initiative has cost nothing. "You don't need to buy in an expensive consultancy for something like this – you just need a good HR professional," she says.

With lockdown measures hopefully being lifted soon and the tourism sector tentatively considering how it will reopen, as well as the organisation itself considering what its model of hybrid working will look like after Covid, Lang is certain it will be in a much stronger place to support the industry as it rebuilds: "The whole company, at one stage or another, has been in total lockdown, and yet we've done this fantastic thing. We've got a great HR team and an engaged workforce who are passionate and committed to working in tourism, and that will be reflected in how they support the sector."

“I showed my vulnerability far more than I usually would at work”

A personal experience of psychological illness led to the organisation driving a better understanding of its employees' wellbeing

For many organisations, Covid has been a catalyst for bringing discussions about mental wellbeing in the workplace to the fore. But for Rachel King, group HR director at Camelot Group – the firm behind the National Lottery, which raises £30m every week for good causes – encouraging conversations about mental health among colleagues began long before the pandemic.

King first became an advocate for destigmatising mental ill-health after her daughter was diagnosed with an eating disorder. “As a parent, discovering that was really tough,” she says. “It made me realise how many of us are struggling with poor mental health, and often those closest to you may have no idea and also no idea how best to support you.”

As a result, King joined the board of Mental Health First Aiders England in June 2018 and became a trained first aider. Through this experience, she realised how little people knew or felt comfortable talking about mental health. “There was such embarrassment and stigma around something that many of us will experience at some point in our lives,” she explains. “The training gave me knowledge and more confidence, and suddenly opened my eyes – I realised how judgemental I had

been, and that talking about mental health was a positive thing.”

King’s experience led her to develop a mental health initiative at Watford-based Camelot, first telling the CEO about her family’s experiences and then her team, which she admits was “not easy at first”, but felt it was important to do as a leader. “Talking about something you are dealing with that is raw shows your vulnerability more than you would normally let people see at work,” she adds. “But if I couldn’t do that, how could we expect anyone else working at Camelot to be able to talk openly about their own challenges?”

And in 2019, Camelot launched its ‘A place to be you’ campaign. The initiative, King explains, is about bringing your whole self to work, and is based on the idea that “if you can’t be yourself at work and you don’t feel like you belong, then you can’t do your best work”. As part of the campaign, staff at Camelot were offered the opportunity to be trained as mental health first aiders, and the company received more than 70 applications for just 15 places on the course – showing there was “real positivity” about the initiative, says King.

One of the project’s main challenges, she says, was balancing those at the top driving and supporting the project with making sure it was lived and believed in by the entire workforce. “It’s no good if it’s just an ‘HR initiative’ or something that people do because they think they have to,” King explains. “So our approach was more around saying ‘this is our belief and it’s fundamental to your working experience at Camelot.’”

But the true success of the campaign, says King, has been thanks to Camelot’s culture. Following its launch, momentum has been maintained by staff across the company through its various employee networks, including those for LGBT+ staff, women and working parents, as well as a culture network and mental health network, which became incredibly valuable when the pandemic

hit – particularly when Camelot saw a case of Covid among its workforce before the first lockdown had even been introduced. “We had to adapt really quickly and make some key decisions as a senior team,” King says. “Right from the beginning we made the health, safety and wellbeing of our people our number one priority.”

“If you can’t be yourself at work and feel you don’t belong, then you can’t do your best work”



A large part of this change was simply talking about mental health. For the first time, King and her executive colleagues were asking each other how they were in virtual meetings – something they would never have done pre-pandemic, she admits. “It really highlighted to us the anxiety people would be feeling,” she adds. “After all, we were suddenly in a global pandemic that no one had anticipated.”

And as the Covid situation developed, the company continued to work closely with its employees to bolster their wellbeing while working remotely. “We recognised that people adapted in different ways,” she explains. “For some, we know it’s been particularly tough, so we’ve done a lot of work throughout the year on communicating how to look after yourself, which has involved ripping up the rule book on structuring your working day.” Alongside offering flexible working, Camelot recognised some of the other ways the restrictions throughout the last year have impacted staff. The company brought in other initiatives such as ‘Giving you time back’, which followed discussions with the working parents network group, offering virtual classes and entertainment for children to give parents a break.

But little did King know how important the firm’s focus on mental health would become when the pandemic started. “When we launched ‘A place to be you’, we had no idea those foundations – a supportive culture and staying connected – would become vital for helping people with their mental health.”

And the success of its work during the last two years is reflected in its staff feedback. As well as boasting an engagement score of 92 per cent, the same proportion of workers say they feel they can be themselves at Camelot, and 89 per cent agree their manager does enough to support their health and wellbeing – a figure King says she is “particularly proud of”.

With the Covid crisis hopefully beginning to taper off over the coming months, next on King’s to-do list is to determine new ways of working: “We’ll be looking at how we can take all the good stuff we’ve learned and adapt our business, as well as considering the purpose of the office and how we collaborate – that’s what we’re looking at in the near future.”

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“We want to show we have opportunities to build a career”

The train operator is working hard to attract more female and ethnic minority drivers

The problem

The rail industry has traditionally been, and still is, a male-dominated sector. But train operator Govia Thameslink Railway (GTR) – one of UK’s largest train companies and operator of the Thameslink, Southern, Great Northern and Gatwick Express services – has been on a mission to change this. “We wanted to challenge the status quo and be more representative of the communities we serve by attracting more diverse talent,” says Zoey Hudson, head of talent, diversity and inclusion at GTR. “Three years ago,

GTR didn’t have a great reputation, so we have also had the challenge of changing people’s perception of us as a business and as a place they want to work,” she says.

So Hudson and her team set out to address this challenge and not only improve the number of female applicants for train driver roles, but also the number of people with ethnic minority backgrounds.

The solution

As part of its wider diversity and inclusion strategy, GTR ran two

recruitment campaigns – one in January 2020 and the second in December 2020 – to encourage more female applicants. It invested in a new recruitment website and has partnered with several platforms that focus on promoting female careers, including Work180, The Female Lead, Young Rail Professionals and Women in Rail, in a bid to diversify the talent pool.

The focus, however, was not just on external recruitment, Hudson explains, but also on developing talent internally. “We’re great advocates of internal career and personal development, and I’m a good example of someone who has worked their way up from the frontline to senior management. It’s about showing people there are opportunities for them to build a career path,” she says.

The outcome

In the latest campaign to recruit trainee drivers, 17 per cent of applicants were female and 34 per cent had ethnic minority backgrounds. Hudson acknowledges that while this number of female applicants is still low in comparison to the number of male applicants, it is much higher than the previous recruitment round, which stood at 11 per cent.

Of GTR’s current drivers, only 8 per cent are female – the industry average is 5 per cent – which Hudson says “demonstrates the importance of putting a focus on female recruitment in this area”. “We haven’t cracked it by any means yet, but we are making progress,” she explains. “We’re working hard with these campaigns to help change the culture and attract more diverse talent across the whole organisation.”

Currently, only a fifth (20 per cent) of GTR staff are female, and its target this year is to get that figure close to 50 per cent.



Paige Lunn was at a career crossroad when she saw the call for more female train drivers and decided to apply

Will Brexit bring a talent exodus?

Three months in and we're yet to see the full effect of life outside the bloc. But for those businesses reliant on overseas staff, it's a different story

WORDS JO FARAGHER

It's a job that pays around £40,000 a year but few people want to do it, and it can't be done by a machine. So when 'chick sexers' – who determine whether young chickens are male or female so they can be sorted for meat or eggs – were added to the skilled worker list set by the Migration Advisory Committee, poultry farmers breathed a sigh of relief. Butchers, bricklayers and deckhands have also been added to the list of shortage occupations for which there are not enough resident workers, offering a smoother route for migrant workers to come to the UK.

Recruitment may be last on the priority list for some industries during the pandemic, but for many organisations – almost five years since the referendum – the reality of bringing in staff from other countries has become more complex. Since the points-based immigration system was introduced on 1 December 2020, and freedom of movement for EU citizens in the UK and vice versa ended from 31 December, any employer relying on workers from EU countries faces a set of hurdles and timescales that could put the brakes on their talent plans. Where demand for roles or skills requirements

can't be met by the domestic labour market, this has led to concerns that businesses could face the double whammy of an exodus of migrants leaving the UK because of the pandemic, and fewer entering the country thanks to the limitations of the immigration system. Data from the Office for National Statistics found there were 795,000 fewer foreign-born workers in Britain in the final quarter of 2020 than a year earlier, and almost a million fewer foreign-born residents over the age of 16.

For many employers though, it's still early days. At Swansea-based translation services company Wolfestone, the fact everyone is still working remotely means the impact of the points-based system has been minimised. "Our translators have always worked remotely across the globe, so our business model was uniquely well-positioned to cope with changes to immigration rules," says managing director Alex Parr. "However, we do anticipate the long-term impact of the points-based





With around 17 per cent of its workforce made up of non-British nationals, the adult social care sector could be hit hard by the new immigration system

Brexit

system to be negative for business in the UK in general. Although we've shifted to remote working, there are also many team members who look forward to returning to the office at least a few days a week, and we want our offices to be a hub for important collaboration and exchanging of ideas. So we are still wanting to hire for positions that are in person, or at least flexible."

Following an employee survey, the firm has decided to offer staff the opportunity to work fully remotely "where this is possible and where tax requirements are met". But Parr is pessimistic about the impact the new system could have on skills. "Our concern is that, given there is already a huge language skills shortage in the UK, we may not be able to fill our in-house roles with talent with native-level European language skills in the future," she says.

To address this, Wolfestone has recently opened an office in Romanian capital Bucharest, where it will have access to multilingual graduates. CEO Anna Bastek worries that many European migrant workers will not meet the required 70 points to work in the UK, and industries will suffer as a result. She says: "If this system had been in place when I arrived in the UK 17 years ago from Poland, it would have been unlikely that I would have met the strict criteria to get a visa. This means our company wouldn't exist and 60 jobs in the UK wouldn't have been created, as well as thousands of freelance roles and two successful acquisitions."

For businesses used to sponsoring employees from non-EU countries, the new system will be no surprise, according to Adam Hoefel, solicitor at immigration law firm Gherson. "But if you've never had to engage with it previously, this can have a huge impact on your recruitment processes, and adds huge costs if you've never previously had to rely on migrant workers," he explains. Employers will need to cover the cost of a sponsor licence, the immigration skills charge and the immigration health surcharge, as well as application fees – likely to top £5,000 before they've even taken the employee's family members into account. Sponsors can ask recruits to pay their own application fees but cannot pass on the immigration skills charge to individuals. In roles where competition for talent is fierce, covering these costs could be the dealmaker.

The requirements of the new system (see box on page 27) are arguably less onerous than they could have been: the salary and skills thresholds were lowered from original proposals, and accommodations have already been made. There is a new graduate visa route, open from 1 July, that will allow firms to bring in foreign citizens who have finished their studies in the UK for up to two years with no minimum wage threshold or skill level, and in any role. "This is huge, especially for smaller businesses," says Jonathan Beech, managing director of Migrate UK. "But organisations will need to think ahead, and if they find graduates they want to retain after two years they'll need to think about sponsoring them under the skilled worker route six months in advance. The graduates themselves will be savvy to this too, asking employers to sponsor them sooner rather than later."

The Home Office also removed the resident labour market test, which required firms to advertise jobs to UK applicants first for at least four weeks and in two media outlets. Another change is that staff on intra-company transfers can change their immigration status 'in country' so they can stay longer and switch employers without having to go through a long cooling-off period. "This changes things massively for mobility," adds Beech. "We see this a lot with tech companies that recruit many staff from India. Previously they would finish a project for an employer, go back overseas and have a cooling off period, not able to return for sponsored employment here for 12 months. Now they can come back immediately under the skilled worker route, for the same employer or for another, filling permanent vacancies that can lead to settlement."

But while the lower skills and salary thresholds (and the addition of around 140 roles to the shortage occupations list) have widened eligibility for visa sponsorship, sectors hiring at relatively lower skills levels and pay rates could face real challenges in filling roles. One welcome announcement has been a trebling in the number of available seasonal worker visas this year to 30,000 to help farming companies harvest produce. According to British Summer Fruits, the industry body for the UK berry

industry, this will be extremely helpful as the sector brings in 29,000 seasonal workers per year. "Until 2019, 99 per cent of seasonal jobs were filled by workers travelling here from the EU and working from spring to early autumn; in 2020 the mix was around 70 per cent EU nationals returning, around 20 per cent non-EU nationals (mostly from Ukraine, Russia and Georgia) on the pilot seasonal workers scheme, and 10 per cent UK residents," explains chairman Nick Marston.

Farms have worked hard to boost local recruitment – for example, offering more flexible shift patterns and helping existing EU workers to gain settled or pre-settled status – but challenges persist. "There is an ever-diminishing number of workers from the EU available for seasonal work as, for instance, the Romanian economy builds and unemployment falls, and this will be a continuing trend," Marston adds. "Recruitment from UK residents has very limited potential with low levels of unemployment, especially in rural areas, and the built-in fact that a seasonal job is less attractive than a permanent

one to anyone who has commitments in the UK such as family, housing or rent."

Covid has complicated matters further, with social distancing measures reducing the number of workers that can be transported on minibuses, for example, and requiring higher levels of supervision

to ensure rules are followed. Restrictions on foreign travel this summer will only exacerbate the situation.

In less 'hands on' roles, organisations are using the switch to home working to reassess their approach to workforce planning and the role of location within that. Tata Consulting Services (TCS), an IT services firm, has "no major plans to recruit from the EU" despite holding a sponsor licence. "TCS's talent strategy in the UK has involved a diverse mix of workforce development, which includes graduate trainees, hiring experienced technology professionals and deputation of employees on international assignments," says Ramkumar Chandrasekaran, head of HR for UK & Ireland. "While the visa changes make it easier to bring in some

"By tapping into local talent we're securing the future of the hospitality industry"



The increase in the number of seasonal worker visas to 30,000 has been welcomed by farming companies

HOW DOES THE POINTS SYSTEM WORK?

The UK opened the points-based immigration system for visa applications on 1 December 2020. The system treats workers from the EU and non-EU countries equally, and requires employers to acquire a sponsor licence to hire eligible employees from outside the UK.

'Eligible' employees are those who can reach a total of 70 points by matching certain criteria set by the government. These include (some are tradeable):

- A job offer from an approved sponsor (20 points)
- Meeting the appropriate skill level (RQF 3 or above, equivalent to A-level) (20 points)
- Speaking English to a certain standard (10 points)
- A salary of £25,600 or above (can be lower in certain cases) (10 points)
- A job in a shortage occupation as set by the Migration Advisory Committee (MAC) (20 points)
- A PhD relevant to the job (more points if it's a STEM subject) (10 or 20 points)

Many employers welcomed the drop in skills level from a degree requirement to A-level, as well as a drop in salary for certain roles. The resident labour market test, which used to

require firms to place a carefully worded job advert for 28 days, has now been removed, shortening hiring times and reducing red tape. The cap on applications was also scrapped.

What's new?

In early March, the Home Office announced a new graduate visa route that would be open to applications from 1 July 2021. Any international student who has completed an eligible course at a UK university can apply, and stay for a maximum of two years (or three for doctoral students). Employers can use that time to plan ahead for acquiring longer-term sponsorship via the skilled worker route.

In 2020, shortly before the pandemic hit, the MAC published a review of how the shortage occupations list works ahead of the introduction of the points-based scheme. One of the recommendations was that the list of roles is reviewed more frequently to respond to the uncertainty created by Covid. Recent additions to the list include senior social care workers, pharmacists and physiotherapists.

What about existing EU staff?

Employees who were living in the UK before the

end of 2020 can apply for the EU settlement scheme until 30 June 2021. People with five years' continuous residence should be granted settled status, while those with shorter residence periods can acquire pre-settled status, and switch to settled after they've reached five years.

What might be on the horizon?

In this spring's budget, the chancellor announced a new 'elite' visa, which is understood to be launching in spring 2022. There is little detail on who will qualify for the route yet, but it is thought it will enable highly skilled migrants in 'scale up' industries such as fintech to gain fast-track access to a visa with no sponsorship or third-party endorsement. The government will also review the innovator visa, which is open to entrepreneurs but has so far had limited uptake.

Spring 2022 could also see the launch of a new visa category known as global business mobility, which covers intra-company transfers and eases the way for overseas businesses to establish a presence in the UK and transfer staff. The MAC is investigating this and is due to deliver its recommendations in October.

Brexit

niche skills, this will only augment our continuing investment in hiring in the UK.”

TCS plans to recruit more than 1,500 UK-based graduate trainees this year, but technology will allow it to access talent from anywhere in the world, he adds. The company has built what it calls the ‘secure borderless workspace’, based on cloud infrastructure, collaboration tools and virtual project management practices. It has also created a virtual ‘talent cloud’, a pool of consultants available for any project in any location as per client demand and project requirement. Flexibility on location and the ability to manage remote workers will be crucial for tech companies like TCS moving forward: research by the Learning and Work Institute has predicted a “catastrophic” digital skills shortage in years to come, while demand for artificial intelligence, cloud and robotics expertise far outstrips supply.

Although it might be slow going for recruitment plans and employee mobility while pandemic travel and working restrictions are in place, that doesn’t mean businesses shouldn’t get their houses in order. “It will be possible to look at each hire on a case-by-case basis, particularly while movement is drastically reduced,” says Natasha Chell, partner and head of risk and compliance at Laura Devine Immigration. “But gone are the days when

“Start applying for a sponsor licence now because it can take weeks to get into place”

workers could go freely between offices in the EU. Now rules will vary depending on state and HR will have to check that, meaning there will be more delays and less flexibility in terms of workforce.”

Hoefel advises firms to anticipate the skills they will require and where they might come from: “If you already have EU staff, ensure their right-to-work checks are up to date and they have applied for settled status before the end of June and, if you foresee the need to recruit from overseas, start the process of acquiring a sponsor licence as this can take weeks to get in place.” Workers who frequently travel to other countries on projects may need a frontier visa worker for each country, he adds, or have to apply for a temporary work permit in each of those countries.

Marja Verbon, chief operating officer of recruitment firm Jump.Work, says most companies are focusing on recruits who already have a right to work in the UK rather than jumping through this new set of hoops. “When businesses do decide to go through with sponsorship it tends to be for higher-paid and more senior roles. Getting the sponsorship licence is still a cost and time investment, as well as a responsibility, meaning that many have not yet taken the jump,” she says. “Once

the labour market becomes tighter and the economy reopens post Covid, I’d expect many more businesses to realise the urgency of going down this route as there are not enough candidates to choose from.”

For many, one of the key strategies will have to be building a domestic pipeline of workers, however slow. Hospitality charity Springboard, for example, plans to train up 10,000 young people ready for work and able to support the sector’s recovery by 2022. CEO Chris Gamm says this needs to be a nationwide effort. “There is so much talent out there and I truly believe the hospitality sector will come back stronger, but this will only happen if there’s great people behind it, trained with the right skills,” he says. “By inspiring and tapping into a pipeline of local talent we’re securing the future of the hospitality industry, and also equipping the next generation. This comes hand in hand with providing the right training, so we can ensure they are able to build long and fulfilling careers.”

In a year that has seen West End musicians retrain as delivery drivers and millions supported by the government’s furlough scheme, the pandemic will clearly influence the supply of UK labour. The truth is, the impact of the immigration system is so inextricably linked to the fallout from Covid that we’re unlikely to see the full picture for some months yet. **PM**

* For guidance on post-Brexit planning and employing foreign nationals, visit the CIPD’s Brexit hub at bit.ly/BrexitHubCIPD

SOCIAL CARE: “WE NEED A PIPELINE OF SENIOR CARERS”

The recent addition of senior social care workers to the Migration Advisory Committee’s shortage occupations list was a welcome one. According to Skills for Care, 17 per cent of the adult social care workforce in 2019 was non-British nationals. The sector has faced a perfect storm this year, with Covid absences meaning teams are spread thinner than ever, and exhaustion threatening an exodus of staff. Approximately 430,000 care workers leave the profession each year, and around 7 per cent of roles are vacant at any one time. “It’s better late than never, but if the decision had been made earlier we could be in a better place,” says Nadra Ahmed, chairman of the National Care Association.

It’s still early days, but Ahmed is hopeful the change will drive an improvement in

recruitment prospects: “We’re unable to fill that level of vacancies in the UK, so we have no option but to go outside, and we need to build up a pipeline of senior carers. But those in the more junior roles will always be needed.”

At care provider Sunrise Senior Living and Gracewell Healthcare, around a fifth of the staff come from the EU, although this is as high as 40 per cent in some homes. Sharon Benson, senior director of HR, has kept a close eye on the new immigration system since it was introduced. “We are taking this into consideration for our recruitment strategies and also modelling how this could affect our attrition rates, particularly at those care homes that employ more team members from the EU,” she says.

“However, we do concentrate many of our efforts on retention to keep talented staff within our homes.”

The organisation offers “sector leading” rates of pay and benefits, and has reduced attrition by 23 per cent year on year. The vast majority of roles it has open are not on the shortage occupations list, but Sunrise and Gracewell will campaign to drive changes. “We’re particularly interested in lobbying for the new visa arrangements to include carers, as the absence of these roles on the shortage list will likely create challenges for the sector,” Benson says.

One potential area of focus is career changers from industries badly hit by the pandemic, such as hospitality. “We have housekeepers who have been instrumental in infection control this past year; we need chefs, nutritionists, entertainment managers and dementia specialists. People don’t always realise the range of jobs available in a care home,” she says.



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Mandatory Covid yes or no

The jury is still out on whether businesses can – and should – make vaccinations compulsory. People Management explores both sides of the argument

WORDS ELIZABETH HOWLETT



Employee health and safety has been a top priority for businesses during the pandemic, but the rollout of the Covid vaccine has, as expected, divided opinion, with some people refusing it for various reasons, including medical conditions, religious beliefs, or just fear and uncertainty. And although the government has not mandated having the jab and is currently only considering doing so for care home workers, some employers have been hitting the headlines by making vaccinations compulsory for current and future employees, potentially landing themselves in legal hot water. With the debate still shrouded in uncertainty, *People Management* has considered the legalities (and moralities) of both sides.

Yes, jabs should be compulsory

The ‘no jab, no job’ policy, as it’s been dubbed, is most prevalent in the care sector, where the risk to elderly or ill patients from Covid is greater than other workplaces, and big industry names Care UK and Barchester Healthcare, among others, have recently announced their staff would be required to have the jab. The policy is being adopted far and wide – even the Vatican has clamped down on employees refusing the vaccine.

Undoubtedly, this hard line when it comes to inoculations has brought both

moral and legal questions to the fore. But for those businesses with the best of intentions at their heart, what benefits does it bring, and are they potentially opening a can of legal worms?

Pimlico Plumbers was one of the first organisations to publicly state its intentions to mandate vaccines, and chief executive Charlie Mullins has been one of the most vocal spokespeople on the issue. For him, having the policy – which he plans to set in motion in two to three months’ time – is a “no brainer” for keeping his workforce and customer base safe. He argues that, without it, he could have issues with recruitment, retention and attendance in the future. “I would have more problems with my staff if I allowed people into work who hadn’t had the jab, and I certainly wouldn’t go into work with people who haven’t had it once the jab is available – why would I?” he tells *People Management*. “If it’s good enough for the Queen, it’s good enough for Pimlico Plumbers,” he says, adding that he didn’t expect the policy to be popular with his workers, but assures they are “delighted”.

When asked about the legalities of ‘no jab, no job’, Mullins says his lawyers have advised that the policy is covered under the Health and Safety Act. “The lawyers said we can do it [mandate vaccinations] in

jabs: or?



new and existing contracts, and they seem to think it can happen under health and safety law,” he explains, although caveats that with: “I’m sure there will be a few [legal] problems initially.”

And indeed, Mullins seems to be on the right track, at least regarding health and safety, says David Sheppard, employment lawyer at Capital Law. “Businesses have a duty of care under common law and health and safety legislation to ensure a safe working environment for employees, but also visitors and customers using their premises,” he explains, adding there are “clear potential benefits” to having a policy in terms of reputation and also commercially, as customers would likely have “more confidence to use those services”.

But when it comes to making exceptions for those who cannot have the vaccine, or concerns about discriminating against those who either cannot or choose to not have the jab, Mullins is clear. “People have their own views and opinions,” he says. “I’ve been told it’s discriminatory or that I’m a dictator, but I’m running a successful business and I want to make sure it continues. If someone doesn’t want to have the jab it is their choice, but they can’t come and work for Pimlico Plumbers.”

No, vaccines should be optional

The commercial and safety benefits of ‘no jab, no job’ policies are compelling, and as a result more businesses are seeking legal advice on the topic. This is the experience of Beverley Sunderland, managing director of Crossland Employment Solicitors, who has been contacted by “a lot” of clients wanting to put a vaccine policy in place.

However, because the vaccine, at time of going to press, is not yet available to those under 40 and not recommended for some groups, including those who are pregnant, Sunderland warns of the potential discrimination claims that could arise from putting a mandatory job policy in place. “Immediately you are discriminating against young people and pregnant women,” she says.

She also points out that people who do not believe in immunisations are likely protected under the philosophical beliefs section of the Equality Act and

potentially under the European Convention of Human Rights too. “Every business is going to have to look at what they are trying to protect and what they are trying to achieve,

and consider each role on a case-by-case basis,” Sunderland says. When asked if there are any benefits to an organisation aside from care homes and hospitals introducing such a policy, she says there are none: “I think it makes them look authoritarian and like they haven’t thought it through.”

It is possible, then, that if businesses take a blanket approach to vaccines, they could land themselves in legal hot water. But what about the moral considerations? According to Claire Cross, HR

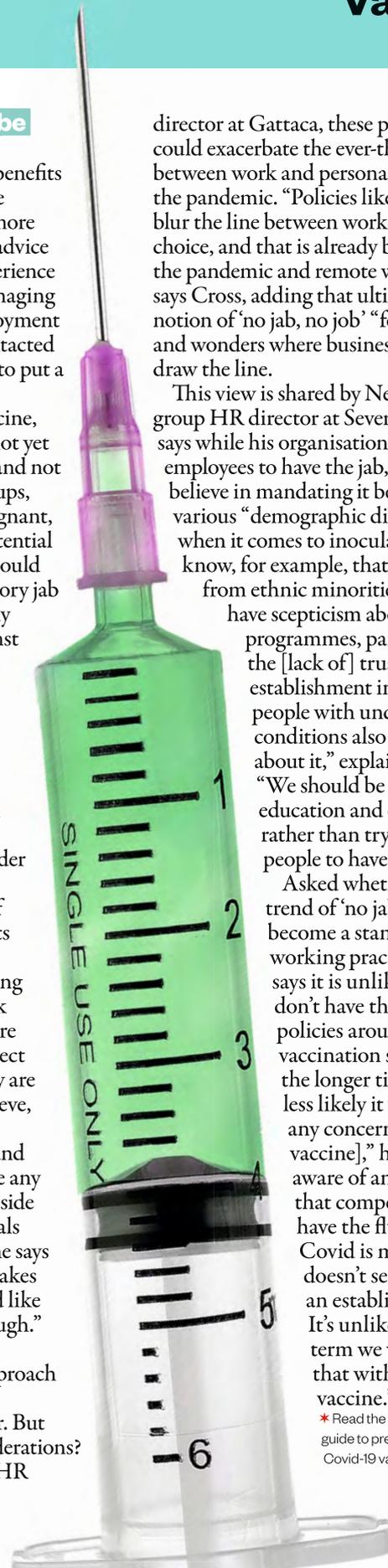
director at Gattaca, these policies could exacerbate the ever-thinning line between work and personal lives during the pandemic. “Policies like this really blur the line between work and personal choice, and that is already blurred with the pandemic and remote working,” says Cross, adding that ultimately the notion of ‘no jab, no job’ “feels extreme” and wonders where businesses will draw the line.

This view is shared by Neil Morrison, group HR director at Severn Trent, who says while his organisation encourages employees to have the jab, it doesn’t believe in mandating it because of various “demographic discomforts” when it comes to inoculations. “We know, for example, that people from ethnic minorities sometimes have scepticism about vaccination programmes, partly to do with the [lack of] trust with the establishment in the UK, and people with underlying health conditions also have concerns about it,” explains Morrison. “We should be encouraging education and explanation rather than trying to compel people to have it.”

Asked whether the sudden trend of ‘no jab, no job’ could become a standard part of working practice, Morrison says it is unlikely. “We don’t have these kinds of policies around any other vaccination so it feels like the longer time goes on the less likely it will be to have any concerns [about the vaccine],” he says. “I’m not aware of an organisation that compels people to have the flu jab and, while Covid is more deadly, it doesn’t seem like that is an established practice. It’s unlikely that longer term we would do that with the Covid vaccine.” **PM**

★ Read the CIPD’s employers’ guide to preparing for the Covid-19 vaccines at bit.ly/CipdVaccineGuide

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“ALL YOU HAVE TO DO IS SIGN THE CONTRACT”

Controversial ‘fire and rehire’ tactics hit the headlines during Covid, but there are less dramatic ways to change conditions en masse

WORDS FRANCIS CHURCHILL

As with myriad other dubious workplace practices, the process of terminating employees’ contracts and re-engaging them on new, often worse, terms – dubbed ‘fire and rehire’ – has been brought to widespread attention during the Covid pandemic as big-name businesses grapple to dampen the economic fallout. Gracing newspaper headlines particularly frequently during 2020 was British Airways, which faced

a backlash after it announced plans to cut 12,000 jobs completely and re-employ the remaining 30,000 staff on less favourable terms following the dramatic drop in passenger numbers caused by the pandemic. The airline’s CEO, Alex Cruz, eventually stood down over the row.

British Gas also faced the threat of strike action from its workers after unions accused the firm of trying to force its 20,000 employees to accept

worse employment contracts or risk losing their jobs.

In January this year, the TUC released research suggesting as many as one in 10 workers had been told during lockdown last year to reapply for their jobs on worse terms and conditions, or face the sack. But as Alex Watson, director at law firm Fieldfisher points out, the use of fire and rehire tactics only makes the news when it’s done badly – which

Fire and rehire

normally happens when businesses are most in distress. It's perhaps no surprise, then, that the economic impact of the pandemic has brought the issue to the fore. But this might also be just the start of a wider increase in the use of such tactics as employers start to think more strategically about the future of their workforces. "Over the next three to four years we're going to see a lot more dismiss and re-engagement-type cases," says Watson. "Instead of just being reactive to coronavirus, with things like Brexit, new ways of working and new cost-saving elements, there are going to be changes across shifting work and changing workplaces. So there will be a lot more of these sorts of schemes."

On the face of it, the concept of fire and rehire is simple. An employer that wants or needs to put employees on a new contract – be it to make their workforce more flexible, move employees to a different location or cut costs by reducing wages, benefits or hours – can terminate their existing contracts and re-engage them on a new one. But the process is risky – and rightly so. "A dismissal in these circumstances is still a dismissal, so it may give rise to the right to claim unfair dismissal if not handled properly," explains Andrew Willis, head of legal at Croner.

Employers also don't have an automatic right to fire and rehire, and need a good business reason to do so – although unlike a more straightforward redundancy, the reason doesn't have to be because of a reduced requirement for work. Under fire and rehire, employers need to be able to show a pressing business need to justify dismissals, often referred to as a SOSR (some other significant reason) dismissal. In practice, this often boils down to a commercial decision for employers, says Willis: "How pressing is the need for change? What is the need for change? The employer may need to take drastic action to avoid redundancies. But it needs to be something pretty pressing, serious and substantive for a tribunal to be satisfied that it was reasonable in the circumstances to go down that route," he explains.

There are also other solutions businesses should consider first. If there are unilateral variation or flexibility clauses in the existing employment contract, an employer can consider leveraging these. However, unilateral changes also carry risk. They need to be proportional, in

good faith and not outside what was envisaged when the clause was drafted, says Willis. "If you're talking about a major change in terms of conditions, one of those clauses almost certainly won't be enough." He adds that tribunals tend to interpret any ambiguity in contracts against whichever party is seeking to rely on it, meaning employers should not hedge any bets on benefiting from any ambiguity in their contracts.

Businesses can also attempt to unilaterally impose new contract terms, but this could be potentially worse than fire and rehire. Not only is it just as legally and reputationally risky, it also creates added uncertainty. "It relies on [the employee] doing nothing," says Watson. That said, Watson still describes fire and rehire as the "nuclear option", only to be used when all else has failed. Generally, businesses are advised to try and come to a negotiated voluntary agreement with as much of the workforce as possible, and reserve fire and rehire for those who, for whatever reason, are still resistant to change. "If you had 30 people who just said no, that's the point at which you'd have to say 'we can't operate 30 people out of 500 on a different type of contract'."

Employers also need to be aware that, even though it's not the same as a traditional redundancy process, if fire and rehire puts 20 or more individuals from the same site at risk of redundancy, then the same collective consultation rules apply. And while the Acas code doesn't apply to these cases, Willis warns that any tribunal will still have it in mind.

But this is also not without risk. For example, in 2019 supermarket chain Asda looked to modernise its contracts, ending paid breaks, making night shifts shorter because they were premium, and allowing for more flexibility with shift patterns. "They weren't the most draconian or onerous changes, and they balanced it by giving a pay rise," says Watson. "And they actually did a really good job in terms of the way they went about a consultation process. But they still got an absolute kicking in the press and had a real PR issue."

Part of the reason for this is that contract negotiations are much more public than they used to be – what Watson describes as a "lack of confidentiality in a technological era". Messaging about contract changes that would, before social media, have been restricted to 20 people in a room, now get amplified and picked up by a public becoming increasingly attuned to issues of workers' rights.

But not everyone agrees that fire and rehire still has a place in modern employment practices. "It's a loophole. It shouldn't be there," says Duncan Brown, principal associate at the Institute for Employment Studies. "If you put people on permanent paying conditions and terms, then you need to stick to those. That's what a contract is. If you've signed a big contract with a supplier, you can't suddenly say to them 'we're going to destroy the contract and put a new one in that pays less'. If you can't do it to suppliers, why should you be able to do it to employees?"

Looking back at some of the major job cuts and restructures employers have gone through in the past, Brown says it's clear the firms turning to fire and rehire are the ones that appear to have wider leadership problems. Centrica, owner of British Gas, for example, announced its second turnaround programme in five years in February, after its earnings fell by more than a third last year. And even before the pandemic, British Airways was facing pilot strikes over a long-running pay dispute and had a number of technical problems, including a glitch in 2019 that cancelled or delayed 500 flights, as well as a data breach in 2018 that resulted in a £183m fine.

In comparison, after the 2008 financial crisis, car manufacturer Jaguar Land Rover managed to negotiate similar temporary cuts, and three years later gave 6 per cent pay awards because the firm's recovery was going so well. "You need decent leadership who have a consultation and negotiation structure in place to be able to sit down with ▶

"Fire and rehire is still a dismissal, so may give rise to a claim of unfair dismissal"



British Airways faced heavy criticism after revealing plans to cut 12,000 jobs completely and rehire its remaining 30,000 staff on less favourable terms

Fire and rehire

employees and their representatives,” says Brown, who also stresses the importance of being transparent about a company’s financial situation. “That’s how Royal Mail and Jaguar Land Rover did it – they kept their employees informed. They understand if there’s a dire situation because of a pandemic or recession then, unless costs are cut, jobs are going to go.”

Summarily cutting employees’ pay or conditions by “essentially holding a gun to their heads” is also unlikely to improve morale, Brown adds. “Even if the people accept the changes because they’re forced to and they want a job, how are you ever going to get high-performance work?”

While for Brown, fire and rehire can never be justified, it is possible to justify a negotiated reduction of terms. What is needed, he says, is a strong case for change and a collective bargaining structure, noting that while Royal Mail had a difficult time with its union when it modernised its contracts, there were benefits to having a collective bargaining structure in place. “I’m sure every union member doesn’t agree with the deal, but collectively the deal has been done. That’s the advantage of trade unions,” he says.

Other considerations such as planning and messaging are key in any contract renegotiations – especially where organisations are taking a more strategic approach to the future of their workforce – and employers need to think about their rationale behind contractual changes and how different groups in the workforce might respond. “If you have to go through these processes quickly because you’re under pressure, for example the alternative is redundancies, then OK,” says Watson. “But if it’s because you’re planning for what five years looks like in your revenue modelling, then giving yourself as much lead in time as possible is crucial.”

To get the planning and messaging right, it’s important to be transparent and approach the workforce – including unions and employee representatives – early. “That machine is quite hard to contain,” says Watson of the internal planning process, adding it can be damaging to negotiations if the other side feels things have already been decided before it comes to the table. “Talk about what your proposals are, even if you’re only saying ‘this is how we think it’s going to go, but we want to give you a heads up’, then at least you can canvass an



When Panasonic had to close one of its plants, it remained open and transparent with staff to ensure it was a positive experience for everyone involved

opinion,” Watson says. “Once the genie’s out the bottle and a bad message has been put out there, it’s hard to bring back,” he adds, urging firms to be mindful of how messaging might be perceived on social media or by wider groups of staff who may not have been in meetings first hand.

When making practical considerations around restructures and contract renegotiations, it is perhaps most important that businesses do not forget their morals. “It boils down to values,” says Danny Kalman, former global head of talent at Panasonic and now CEO of Ella Forums. “Once you’ve established your values, then any kind of reflection you have is around how to frame the decision,” he explains. While Kalman was European HR director at the Japanese tech giant, he oversaw the closure of a major plant in Wales that made televisions, when it became unable to compete on cost as the market became more competitive and rival producers set up in countries with cheaper labour. But what could have been a public relations nightmare ended up being a positive experience for many involved: “Closing that factory could have led to a lot of bad publicity,” he says. “But the reverse happened, and people were saying how wonderful Panasonic had been.”

The key to managing the closure, says Kalman, was transparency and openness with the workforce: workers need to be communicated with in a way that makes them feel respected and looked after. “There was that genuine involvement with them, treating them as equals and intelligent people who can truly

understand the situation,” he says. It also helped to have HR involved early because any big decision about a firm is really about the people who work for it, and the impact it will have on them as individuals, Kalman explains. “Panasonic’s basic business philosophy was very much about looking after the staff,” he says.

“Things will change, but what should never change is your values”

At the time – and to some extent now – the firm had a philosophy of lifetime employment and, if one location closed down, it would move employees to another Panasonic entity. “Of course, that wasn’t the case in Europe, and there

were many examples of closures and redundancies. But what was key was this philosophy of ‘what can we do to support the employees?’”

Businesses are constantly faced with difficult decisions – whether it’s during a global pandemic or in more normal times, there will always be employers that have little choice but to restructure their workforce if they want to continue operating. But ultimately, they do have a choice about how they go about it. “To survive as an organisation, you’ve got to adapt to the situation,” says Kalman. “Technology is going to change, your customers are going to change, the market’s going to change, you’re going to go into international markets, you’re going to adapt to digitalisation and you’re going to adapt to the prevailing circumstances. But the one thing that should never change is your values.” **PM**



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The Supreme Court's recent ruling is set to send shockwaves through the

It's one of the most highly anticipated and closely followed cases of its kind in recent years, but the Supreme Court's ruling in February that Uber's 70,000 UK drivers are workers – and as such entitled to receive minimum wage and benefits including holiday pay and pension contributions – promises to shake up employment status and have vast implications across the labour market.

Since Matthew Taylor published his review of modern working practices in 2017, recommending an improved balance between flexibility and employment rights

for gig economy workers, as well as better security and certainty, employment status has been a hotly contested topic. And with the Supreme Court ruling in the drivers' favour, as well as Just Eat announcing in December it would pay its workers hourly rather than per job and offer benefits, plus a top investment firm reportedly refusing to invest in competitor Deliveroo when it floats on the stock market in early April because of concerns over its treatment of workers, it seems the direction of travel is set. *People Management* asked a panel of employment law and labour market

specialists what ramifications the court's judgment could have for other businesses, and what they should be doing to prepare.

Why is the Supreme Court's decision significant?

Ben Willmott: It shows the ongoing confusion about the issue of employment status. The fact it took more than four years and escalation to the Supreme Court shows what a grey legal area this is, and the fine distinctions that exist in decision making about employment status. It shows this area is in need of further clarification

HR?

labour market. PM's panel of experts delves into the possible consequences

Meet the expert panel



Paida Dube
Employment
solicitor at
DavidsonMorris



Dr Ursula Huws
Director of
Analytica Social
and Economic
Research



Raoul Parekh
Partner at
GQ Littler



Ben Willmott
Head of public
policy at the CIPD

because, although it's clarified the matter for Uber and its drivers, it doesn't help anyone else, as each case will be decided on its own merits.

Paida Dube: It's been significant in terms of the element of control, which is always generally a stumbling block and, in this case, Uber had a lot of control around what drivers could and couldn't do and what they had access to, even down to levels of remuneration, which is dictated by Uber despite drivers choosing how much time they spend working. It was clear they were battling a lot of obstacles around the ►

basics of trying to establish what particular employment status applied to their drivers from the get-go.

Ursula Huws: By far the most significant element to me is that Uber seems to be trying to wriggle out of complying with the bit of the judgment that says the clock starts ticking on minimum wage from the moment they're logged on until the moment they're logged off. The ruling made it very clear that waiting time should be included in the hours for calculating minimum wage.

Raoul Parekh: The term 'landmark ruling' gets thrown around a lot, but this genuinely is one that deserves the moniker. First, the sheer scale of the Uber driver population makes it a significant issue for a lot of people across the country, particularly in London. Second, Uber has a very strong brand and an iconic place as the heart of the gig economy, so everyone's been watching its battles very keenly. And the way the Supreme Court delivered its judgment was much more far reaching and radical than I think a lot of commentators were expecting. For Uber, it won't quite mean ripping up its business model and starting again, but it will mean rethinking it and reconsidering its model and approach in the UK. We've never seen an operator like Uber make this kind of change.

How will this ruling affect other companies?

BW: The ruling certainly reminds businesses to consider carefully how they classify the people that provide work for them and is likely to prompt some organisations, particularly those operating similar business models to Uber, to make changes to how they categorise employment status.

PD: The judgment itself will have a huge impact on other gig economy platforms, such as Deliveroo, which has riders in a similar situation in relation to subordination and control. Where it can be established that there is a significant level of subordination and control, a lot of gig economy platforms will struggle



to carry on as normal. I'm sure there are a number of firms frantically looking to review the current agreements they have in place and assess their level of exposure to potential claims. Some platforms may be thinking it's time to restructure if they want to keep going.

RP: Because the judgment was so radical, any company that operates in a broadly similar way to Uber is going to need to do the same reconsideration of model work that Uber's been undertaking. That's a good thing – it ensures a level playing field and competitiveness between different services. It wouldn't help anyone for the people who are working for these companies to have to continually win the same battles against different companies.

If we look at firms that don't have anything to do with the gig economy but use non-employed workers in some way, they're facing a kind of pincer movement. On the one hand the Uber ruling is causing them to reassess directly engaged contractors, and on the other they've got the government's changes to off-payroll working coming in that are potentially narrowing that method of engaging people. So the window of permissible, safe ways to engage people other than as

employees is narrowing. What this judgment will do, and should cause people to do, is take stock of their use of non-employees, because too many companies are casual about that, and are carrying a lot of risk they don't know they're carrying.

UH: The area of the judgment around waiting time has enormous implications, not just for other platforms like food delivery services, but for any company that employs people in 'on call' contracts, like zero-hours. There is currently a large number of firms that have a business model that depends on having workers basically on demand. And if they all have to start doing their calculations on the basis they're paying for all the time those workers are logged on, that implies a massive change in the business model. That has both upsides and downsides for workers.

How will the decision affect the gig economy and the wider employment spectrum?

BW: It depends on how you define the gig economy. We've had a gig economy of some description for as long as people have done paid work and it's not something that's going to go away, but I think bits

of it will become more formalised and will probably see more people classified as workers. However, there are of course millions of people who are genuinely self-employed and will continue to operate in that way.

UH: I think it will mean companies having fewer workers who will have to be worked much more intensively, which implies moving from a very free, flexible system to more like a shift system. Some platforms already effectively operate shift systems. It will mean that kind of work is available to fewer people because, at the moment, part of the reason conditions are so awful in these online platform labour markets is there are lots of people who are signed up with the platforms who actually only work occasionally.

Research from Analytica suggests a high proportion of people who work for online platforms are doing it as well as another job for top-up income, but these people are less likely to be able to find work through these platforms except during peak demand. It will become much closer to a regular job with people working particular shifts. I suspect there will still be a lot of flexibility in terms of what shifts people choose and how long they are, but during the shifts workers can expect to be fed one job after another to avoid periods of downtime when they're being paid the minimum wage, but not actually doing anything. I think it will be a deterrent to 'multi apping', where workers are signed in to more than one platform at the same time.

"This also has implications for employers that use zero-hours contracts"

PD: Change is probably inevitable in this whole process. The government keeps saying it wants to create this level of protection for those who are employees or workers, so I think it's going to be a trend, and I foresee a need to get more clarity, not just in the gig economy itself but across the board. After the Taylor report was published, the government indicated it would be bringing in proposals to make the framework a lot simpler and clearer, and that it had intentions to legislate and provide that level of clarity, but to date that hasn't been brought about. But the Uber decision is a step in the right direction towards bringing about that change.

RP: The clear direction of travel of most of the decisions in this area has been they're finding in favour of the individuals. One upcoming fork in the road is about employment status, and whether people are workers or employees, and it seems likely that will be the next battleground. The unions have tried to argue for employment rights, not just worker rights, for gig economy and other non-traditional workers and generally haven't succeeded. I wonder whether the Supreme Court judgment will be used in a way that tries to reopen that battleground.

What action would you like to see from the government in this area?

PD: It's hopefully a reminder for the government to move it from the back burner, and it becoming more of a front-loaded conversation around how they're going to do this, because potentially the case will open up a lot of floodgates. It might be better to legislate on the matter rather than leaving it to the courts to work on a case-by-case basis.

RP: There's a question around the government's approach and whether it will think 'this is confusing for both individuals trying to know their rights and companies trying to do the right thing' and therefore it will simplify things. That would be a good thing, in my view, but it's probably unlikely. I think it's more likely it won't find the parliamentary time or the will to do much in this area. This is such a fast-changing area, the recommendations in the Taylor review are now almost stale and probably need to be reassessed in light of what is happening now. It's a shame the government seems to have created the opportunity for action, but then missed its own opportunity.

BW: This ruling highlights the importance of the government following through with its pledge to legislate to improve the clarity of the employment status tests. The CIPD's research suggests an effective way to do this would be to abolish worker status altogether. It wouldn't be a panacea, but it would certainly provide more clarity around employment status, and crucially would align it for employment rights and taxation purposes.

What should businesses be doing in the wake of the Supreme Court's decision?

UH: At the very least they should do a risk assessment and look at anybody they're employing who isn't on a regular employment contract, and take a good look at what basis they're employing them on. If they don't have clearly specified hours in that contract, then they should be looking at changing the model to make it clearer when those workers start work and when they finish work, and check they are getting minimum wage. And if there's a big gap between when they log on and when they stop working, the businesses should look at changing that model. If there are long periods of waiting time that they're not being paid for, there's a risk that the business might be doing something unlawful.

BW: They should be reviewing the employment status of people that provide work for them in light of the ruling and check that the contract accurately reflects the reality of the employment relationship. The CIPD recommends regularly reviewing the working arrangements of atypical workers at least once a year to check that there have not been changes that might have implications for their employment status.

PD: There are some simple, practical steps, like reviewing current agreements and contracts they have in place, and ensuring – if they're going to be looking at trying to assess employment status and argue that someone is genuinely self-employed – that they've got the relevant evidence to support that position. Having an open-door policy and having a rapport with individuals can also mean the difference between someone rushing to lodge a claim and being able to resolve the issue internally.

I think all businesses should be taking on board what this means in terms of getting a bit more clarity around your employees, your workers and your self-employed individuals, where they sit and what that definition means. Clearly it's a fine line, so it's important that companies across the board review their current practices and see where they might be falling short.

* Read the CIPD's employers' factsheet on employment status at bit.ly/CIPDEmploymentStatus



“You’re not failing, you’re just succeeding differently”

WORDS ROB GRAY

In some organisations, failure is actively encouraged. But how can L&D urge the workforce to take more risks, and where should they draw the line?



Learning from failure has become commonplace in business, at least in terms of acceptance of the notion that it's a good thing to do – although it's often easier to talk about than put into practice. While it's a relatively modern way of thinking for companies, the concept itself is nothing new, nor something that should be confined to a particular industry or function. What has come to be known as 'intelligent failure' is a philosophy that can and should be applied across organisations.

Yet while it's been around for a while, in today's fraught climate creativity and innovation have become more vital than ever, and may be the difference between whether a company thrives or dies. Logic dictates, then, that if businesses want to excel at this their people must feel comfortable with experimentation and

failure. But from an L&D perspective this is a difficult state to achieve.

So what exactly does 'intelligent failure' mean? Amy Edmondson, novartis professor of leadership and management at Harvard Business School, defines a culture of intelligent failure as one that "understands that experiments sometimes end in failure, if the experimenters are legitimately pioneering new ground", and that "fosters the kind of experimentation that produces smart failures quickly – and avoids the wasteful failure of conducting experiments at a larger scale than necessary".

Another academic expert in the field – Rita Gunther McGrath, professor at Columbia Business School – typifies intelligent failure as: "That we have a

common understanding of what failures are useful and which are just failures; that we distinguish between bad luck and bad management; and that we have sufficient psychological safety that people can – indeed feel obligated to – bring up failures as they arise, so that they aren't repeated."

McGrath cites Microsoft as a business that embraces intelligent failure, pointing to its launch of AI chatbot Tay as a prime example of this culture in action. Microsoft pulled the plug on Tay in great haste after the bot's interactions with people on Twitter proved embarrassing and offensive. Instead of criticising the team behind Tay, CEO Satya Nadella was supportive and treated it as an important learning experience. "Nadella sent an encouraging note to the team, basically

"Reflection is really crucial in the learning process, and we often miss that"

Mistakes are made in every organisation – but treating them as a learning experience could be key to success



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Rita Gunther McGrath believes Microsoft has embedded a culture of 'intelligent failure'

saying that they

had no way of predicting what Tay would do when let loose in the world, that they've learned something, and that he had their back," says Gunther McGrath, who adds that Microsoft chief people officer Kathleen Hogan is culturally "absolutely at the very centre" of this way of thinking.

Companies such as Nike (in its early days), Netflix and Amazon have also been held up as exemplars of a culture of intelligent failure. Yet organisations steeped in this approach are quite thin on the ground. Liking the principle of intelligent failure is one thing – changing management thinking to make it a reality is quite another.

CIPD head of learning Andy Lancaster says that for intelligent failure to become accepted and effective, organisations must have a culture that is trusting, constructive, highly developmental and reflective. "Often we are just too busy to invest time in stepping back and thinking about how things have gone and how they could be improved. Reflection is really crucial in the learning process, and we often miss that," he says.

So how should L&D go about managing and developing people in the context of intelligent failure? "One of the challenges for learning teams is often we have a very one-size-fits-all approach to supporting people, and with mistakes-based learning we need a more personalised approach that involves peer support," says Lancaster.

Financial services firm Visa, for example, created L&D initiative Visa University (VU), which is key to driving

skills and performance at a company-wide level. VU was set up as an 'internal start-up' to bring together a range of learning functions in an agile and entrepreneurial way. Head of learning for Europe Ian Fordham says VU is designed to reinforce and promote a culture of curiosity and is embedded in the firm's global HR function to ensure it drives a more intelligent way of learning and working across the company. "One of our core leadership principles is 'acting decisively'. This includes challenging the status quo and learning from our mistakes," he explains. "We actively encourage people to take risks and advocate for changes they believe would benefit the organisation. This is proving to be a powerful expectation for all staff and is driving fresh ideas and innovative thinking throughout the entire company."

One of Fordham's priorities is to encourage everyone at Visa to be bold and welcome new ways of thinking. But what happens in the case of repeated failures? "From our experience, the benefits of intelligent failure outweigh the potential pitfalls," asserts Fordham.

Melanie Lepine, EMEA head of L&D at property company CBRE Global Workplace Solutions, says some fail more than others because they're trying many more new things or because they're trying something far more complex: "The key to a culture of intelligent failure is that we learn from those failures and apply that learning to our next attempt. If someone continually fails based on the same issues, then that suggests they are not learning from their mistakes and some action would need to be taken to address that problem."

Packaging company DS Smith is another strong example. It's big on sustainability, having introduced a set of circular design principles – a concept that aims to continually use the same finite resources and eliminate waste – developed in conjunction with the Ellen MacArthur Foundation to ensure circular design features in every one of its products and that the business challenges the status quo. L&D plays a key role in embedding this mindset by encouraging all colleagues to share their ideas and providing opportunities for experimentation.

Head of L&D Ann-Louise Hancock argues that creating a culture that encourages colleagues to contribute to future designs, products and services develops stronger engagement, loyalty and ownership. But how do you make sure ideas are relevant and avoid people being discouraged when they fail? "It's important to set expectations and parameters, and our experience is that, provided these are clear, you liberate rather than constrain people from feeling able to make a contribution," says Hancock. "This is supported by a robust framework of line management and feedback."

Andrew Jacobs, former L&D transformation lead at HMRC and now owner of consultancy Llarn Learning Services, believes intelligent failure works best when organisations understand at a micro and macro level that 'fail' stands for 'first attempt in learning'. "By making people aware of this the expectation is shared across the organisation and self-policed. The best experience I've seen in this was a senior manager who told her team that they could do what they wanted, 'as long as you don't embarrass me'. That created a culture where innovation and experimentation

were encouraged but the limits were established and, if clarification was sought, could be discussed and agreed."

The Kotter change model may be helpful for people professionals thinking about any kind of organisational change. Workplace performance expert Gary

Cookson believes it adapts well to this situation too. Giving employees permission to experiment and try things, actively encouraging them to do that and to tell each other about it would give some kind of sponsorship and ownership to the mindset shift, he argues. "When people succeed, praise them," adds Cookson. "But when they fail, particularly if they own that failure, praise them even more and help them to learn from it – having good knowledge management and good recognition processes is critical here."

Innovation and creativity are often spoken about as if they're purely positive, which is problematic. In reality, making breakthroughs can be messy, hard and

"Praise people when they succeed, but when they fail praise them even more"



Intelligent failure in practice: Virgin Media

“While we’re wired to avoid failure, creating a culture of intelligent failure is about acknowledging that not all failure is bad, and innovation is only made

possible through trying new things, not all of which will work,” says Mel Gloyn, head of learning and development at Virgin Media.

Recognising that failure helps employees learn and develop, Virgin Media encourages a ‘test and learn’ approach that entails testing new ways of working, which provide a fresh approach to problem solving as a means of enhancing performance.

“Our focus is on applying a growth mindset to drive a high-performance culture through ‘team play,’” explains Gloyn. “To us, team play means that we operate as one entity, delivering success and high performance together in a collaborative and inclusive way, which makes trialling new things easier. Our performance and reward schemes have been transformed to support this, with bonus schemes focused on team performance rather than divisional KPIs.”

Overarching this is Virgin Media’s ‘Belonging’ strategy that supports test and learn in practice. One of its key pillars is creating an environment of psychological safety in which everyone feels safe to share their experience and knows their voice will be heard. This inclusive culture helps people feel they are supported to test and learn in a blame-free environment. “Our new performance management process supports a culture of feedback and performance review, which empowers individuals and teams to review unsuccessful projects retrospectively and reflect,” adds Gloyn.

“Instead of bi-annual reviews, we have implemented continuous conversations between managers and team members who work towards real-time goals. These reflect the projects and tasks people are working on and create space for people to trial, change and discuss regularly.

“This always-on feedback helps build trust and promotes a collective growth mindset. Individuals have an understanding of what went well and what could be developed, which can be used to make refinements that deliver better results in future – without the need to repeat past mistakes.”

Innovation is only made possible by trying new things, not all of which work”

stressful. So applying a failure lens to these processes in an appropriate, honest way can be liberating and reassuring for employees. But for that to work, human nature must be addressed. We all have dysfunctional instincts around protecting ourselves when something goes wrong, from denial and defensiveness to blaming others and wanting the situation fixed as quickly as possible without having to think about it. That all sounds like the antithesis of failing well.

Ashley Good, CEO of Fail Forward, a consultancy that helps organisations fail intelligently, says it doesn’t have to be like that, and there’s lots HR and L&D can do to instil a healthy relationship with failure into people. That can begin with steps as simple as job descriptions that make it clear the employer views failure as inevitable, expects its people to learn quickly and considers learning by trying and failing to be integral to its culture. Good is adamant people can be taught to embrace failure and thereby deliver better results: “Can you train for this? Absolutely.” She makes the analogy that there’s a right and wrong way to fall – the right way is to relax into a tuck and roll. Likewise, with failure there’s a good way to do it that minimises the risk of damage.

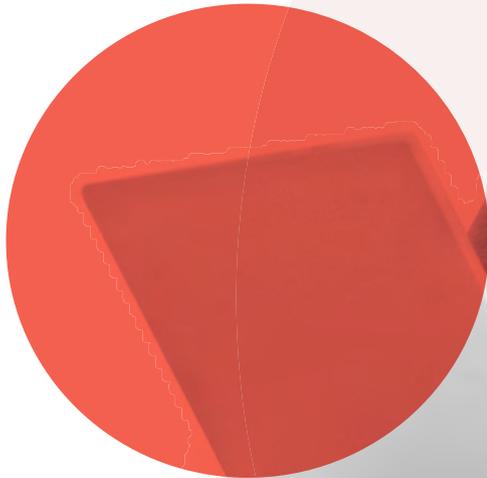
Risk is also a fundamental part of the equation with intelligent failure. Lancaster couches it in terms of ‘risk-appropriate experimentation’ and says there has to be a line so that tragic and serious mistakes with a high cost to the organisation are avoided. Sectors such as healthcare and aviation are hot on this, for obvious reasons. “What we can do is look for brilliant mistakes that have a relatively low cost to the organisation but a massively high benefit,” Lancaster says. “As learning professionals, it’s about spotting the brilliant mistakes that allow someone to learn and develop in a powerful way that couldn’t be achieved through a course.”

This ties in with the shift away from courses to performance support that has become evident in organisational learning. Learning technologies including VR are enabling more people to learn through failure via simulations. Adding this to the mix should equip people to deal with ‘real world’ failures better and help embed an intelligent failure mindset across teams and businesses. **PM**

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Research: Agile teams help boost productivity among home workers

p57

Masterclass

How to measure employee wellbeing



Andrea Vogel
Head of people at the Royal National Institute for Deaf people

For organisations wishing to move forward, especially in the pandemic, good decisions need to be made on employee wellbeing. But those decisions – whether they are on the return to work or a continuation of home working – need to be evidence based and arise from proper data.

Wellbeing is an intangible area of people management and therefore it seems very difficult to measure. So, when attempting to collect data on employee wellbeing, there is a tendency to reduce the measures to just sickness absence and mental health. However, the data that yields has limitations because it doesn't tell a story about the factors affecting wellbeing. Measuring mental health doesn't tell firms what they can do to prevent mental ill-health or how they can improve the support mechanisms put in place. Wellbeing in the workspace is very different to wellbeing in your private life, and HR has



an influence on all the factors at work that affect wellbeing, such as ethical leadership, culture, inclusion and line management.

“If your data doesn't tell a story then it is useless”

If you're not sure where to start with measuring wellbeing, the CIPD offers a holistic framework that highlights the different aspects that make up an employee's wellbeing at work. It helps to break wellbeing down into manageable areas, and enables you to create the right questions, surveys and metrics around them. It can be easy to get overwhelmed with data, so try starting small with one or

two open-ended questions. Once you have identified a few common themes from the responses, you can ask more focused questions around the topics that impact staff the most.

You need someone to analyse the data to identify any trends or commonalities. Often you will find patterns among groups of people that share a particular challenge. For example, we have identified that people living in shared accommodation have struggled with home working during the pandemic, and we are now considering what we can do better to support them. There will be some things you can do to address individual challenges, and others that will form a more collective decision to change policies and practices, but you need to sift through the data.

It's not wellbeing and mental health that you should be looking for when it comes to analysing wellbeing data, but the factors that have impacted on mental health and employee wellbeing. If your data doesn't tell a story then it is useless, and you won't be able to make decisions for the future.

Taking it further

↳ **Read**
Wellbeing at work factsheet by the CIPD
bit.ly/CIPDWorkWellbeing



↳ **Read**
Employee Wellbeing Measurement and Metrics report by BITC
bit.ly/BITCWellbeingMeasurement



↳ **Watch**
HR Essentials – Wellbeing in the Workplace webinar by Moorepay
bit.ly/MoorepayWellbeing

Who I am

Soraya Reid

HR manager for EMEA at LogicMonitor

My HR journey began later in life. I was a customer service representative at a local council and eventually became a union rep, through which I became interested in employee relations and HR. I then went to university and got my qualifications, but I had no formal experience so I started my own consultancy in 2010, offering support to local businesses. From there, I was able to get my first HR role.

We run a number of training sessions when employees are first onboarded. One of them is called 'real talk', and looks at how we provide feedback to each other. It gives staff the tools to have meaningful discussions – whether it's about conflict, their development or just how they're feeling.

HR plays a critical role in keeping employees engaged and attracting and retaining talent. We've created a culture of learning and continuous feedback. Our staff are always engaged with their work, and feel they can approach any leader to talk about their career – even during the pandemic. We also help with health and wellness policies, and we've set up some amazing initiatives during Covid around financial health and medication.

The mental health sessions we run have gone down particularly well during Covid. We hosted a workshop discussing misconceptions and strategies to help attendees support themselves and others. We had more than 100 participants. The speaker gave them the confidence to take breaks, go for a walk or meditate to cope with the stressors of working from home during the pandemic.

My advice for someone entering the HR profession would be to get a mentor – I have mentors both internally and externally – and ask those small questions, because that's how you're going to grow. Previously I wasn't very data driven, but now I focus on it more after speaking to my mentor about what data I should be looking at. If you're not open and don't ask questions, it can be difficult to grow in the profession.

CV

Soraya Reid graduated from London Metropolitan University with a degree in HR management and set up Goldstar HR in 2010. She subsequently worked in several HR roles for Monarch Airlines, the Autotask Corporation and ESI Media, before joining LogicMonitor in 2019 as HR manager. She began her MA in HR and employment management, which includes a CIPD Advanced Level 7 Diploma, in 2018.

“The shocking stats and real-life experiences make this book particularly eye-opening”

Reviews

Pregnant Then Screwed

Joeli Brearley, Simon & Schuster, £14.99/£8.99 e-book

When it comes to the fight against pregnancy and maternity discrimination, there is no more prolific voice than Brearley's. After being sacked from her job four months into her pregnancy with her first child, she subsequently founded campaign organisation Pregnant Then Screwed to raise awareness of discrimination against pregnant women and new mothers, and to support those who become victims.

The first chapter of her book of the same name

could almost be a standalone autobiography in itself. Recalling how she forfeited the opportunity to take her former employer to a tribunal after experiencing pregnancy complications and being told to avoid stress by her doctors, Brearley explains how setting up a basic website with one hand while feeding her son with the other and issuing a callout for stories of maternity discrimination led to an



appearance on the BBC's *Victoria Derbyshire* programme and the proper establishment of Pregnant Then Screwed.

But it's the shocking statistics and real-life experiences that make this book particularly eye-opening. As Brearley admits, even women who have been victims of maternity discrimination are unaware of the scale of the problem; almost 1,400 cases relating to pregnancy and maternity rights were brought against employers between February

2017 and July 2019 alone, yet many are dropped before a ruling can be given, and many more never make it as far as a claim.

As well as each chapter being interspersed with stories from mums who've been there, there's also a helpful practical element – Brearley offers sections of no-nonsense advice around everything from maternity leave and finding suitable childcare, to securing flexible working and what to do if you think you've been a victim of discrimination.



{Book}

The Conversation

Dr Robert Livingston, Penguin Business, £14.99/£9.99 e-book

Since the killing of George Floyd in 2020 and the subsequent Black Lives Matter protests, organisations have opened up to the idea of talking more honestly about racism and the barriers people from ethnic minorities face in all aspects of their lives. But sometimes intention does not lead to action. In this book, Harvard University's Livingston explains the fundamentals of what racism is and where inequalities stem from, as well as how to address them.

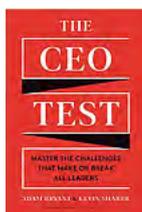


{Book}

Empowering HR

Deborah Wilkes, Panoma Press, £14.99/£4.99 e-book

The Covid crisis has boosted HR's reputation within organisations like never before. But as the saying goes, with great power comes great responsibility. In *Empowering HR*, Wilkes – a fellow of the CIPD with more than 25 years' experience in senior people roles – explores how the profession can continue to establish itself as a key player right up to board level and create valuable strategic partnerships as businesses recover and move forward from the pandemic.

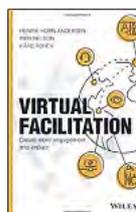


{Book}

The CEO Test

Adam Bryant & Kevin Sharer, Harvard Business Review, £17.99/£12.34 e-book

Management responsibilities are frequently thrust upon employees as they climb the career ladder, and not necessarily because they want them or are any good at them. Helpfully, then, Bryant and Sharer – with decades of leadership experience between them – have uncovered seven key reasons that leaders fail or succeed, and how to overcome them. Whether new manager or new chief executive, there's bound to be advice relevant to any leader.



{Book}

Virtual Facilitation

Henrik Horn Andersen, Iben Nelson & Kåre Ronex, Wiley, £19.99/£14.20 e-book

Love them or hate them, remote meetings have been the backbone of many people's jobs for the past year. But we may not be running them effectively. In *Virtual Facilitation*, Danish trio Andersen, Nelson and Ronex – all part of Copenhagen-headquartered consultancy Implement Consulting Group – explain how facilitation can help a group of people work more efficiently or reach an outcome quicker, and how to translate that into a virtual setting.

What's new

In **Balancing Act**, Dr Andrew Temte, president and global head of corporate learning at Kaplan North America, draws on his decades of experience to look at how leaders in today's fast-paced corporate world can improve their performance in both their professional and personal lives.

Meanwhile, occupational psychologists Dr Christine Grant and Dr Emma Russell explore agile work and its relationship with employee wellbeing in **Agile Working and Well-Being in the Digital Age**, discussing what 'agile' really means and how it can be detrimental to workers' health.

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Your problems



Guest Fixer Dave A Barry tackles your queries

Dave A Barry FCIPD is *People Management*'s new guest HR Fixer. A graduate of University College Cork's postgraduate higher diploma in human resource management, Barry's career as an HR professional spans more than 20 years across sectors including biopharma, cybersecurity, travel and retail. He established consultancy Conexion.ie in 2018, is a prolific keynote speaker and lectures part time at University College Cork.

His replies are written in a personal capacity and do not reflect the views of *People Management* or the CIPD, nor are they a substitute for professional legal advice. Not all queries submitted can be answered, and personal replies are not possible. To pose an anonymous query, visit bit.ly/pmfixer

Should we give casual worker an employment contract?

Two years ago we took on an intern. She then got a part-time role with a different organisation, but we wanted her continued support on a project so offered her a consultancy agreement to work for us one day a week. She's now working with us three days a week, is no longer doing her other job, and we've even put her time in the budget for the next financial year. She's asked if she can be put on a full employment contract instead, but I worry about opening ourselves up to unforeseen issues if we commit to this. Are there any pitfalls to either option that we should consider when deciding whether to switch her over?

Let's examine this scenario from three perspectives: the work itself, consultancy versus employment and

legal considerations. For me, the work is where we need to start to ensure you make an objective business decision on which might be the best resourcing model, and not have it potentially influenced by the outcome your consultant is looking

maintain a likely lower overall cost. On the other hand, employment would secure this consultant's (or potentially an even stronger candidate's) skills longer term, providing them with the benefits and compensation they need to stay committed, etc.

"Consultancy allows more flexibility, while employment secures their skills longer term"

for. Based on what you have outlined, the work has increased from one day a week to three days, and is already in the budget for the next financial year, so appears to be an ongoing business need for which full employment would provide additional stability.

From a consultancy versus employment perspective, consultancy would continue to allow more flexibility should the need ever change, and

Regarding legal considerations, it appears the consultant was first on a direct intern contract and subsequently a consultancy agreement, which hopefully was reissued to reflect the increase from one day a week to three. Permanent employment would only begin from the date that contract is issued, so we should not be dealing with continued service, longer-tenure employment rights, etc.

Bosses won't fund HR tech

I'm an HR manager in an SME with around 200 staff. The company has grown a lot in recent years, but our HR systems are stuck in the dark ages. We have a programme to run payroll, but the rest is largely still done in Office documents and spreadsheets. Any mentions of people management software are dismissed by our directors, saying it's not a necessity, and I can only dream of being able to have people analytics or engagement platforms. How can I make my bosses realise

this kind of tech is standard among people teams now and convince them to upgrade?

I am sure there are many SME HR managers out there who can relate to this conundrum. Particularly in recent years, the strategic benefits of sophisticated people technology have been much validated, but we are often still justifying the spend.

For HR business case purposes, the charter concept of writing down the opportunity, goal and scope of the changes you'd like to see is helpful.

Looking at the opportunity or problem, what is the tangible business 'pain' being experienced right now by each of your employees, people managers, and HR itself? We are likely talking about frustrating access to information, lack of people data and excessive processing or rework time respectively. Do you have robust data on all of those to really help argue your case? If we look at the goal, we are talking the opposite of these – ie delighting employees with online self-service information, managers with insightful data and HR with significant time savings to proactively

engage in more strategically beneficial focuses.

Lastly, scope creep is usual with any business improvement initiative, so clarifying which elements are included, and even more importantly which are not, will be critical to ensure that what is hopefully approved by your directors will not be impacted by additional items. Subsequent robust project management (for example, a phased approach of 'measure, analyse, improve and control', keeping your sponsors and stakeholders informed throughout) will also set this transformation up for success.



People and posts *Who's making HR headlines?*



Caroline Bagshaw, Chartered FCIPD (1), is the new group chief people officer at IQ-EQ. Before joining the global investor services group, Bagshaw was interim head of people at Monese, having also held various senior positions at firms including Mastercard, Standard Chartered and GlaxoSmithKline.

Andrew Busst (2) has moved into the role of training and development manager at Ladders Solicitors. He arrives from automotive supplier Brose, where he was training and development coordinator. Busst also spent 10 years as legal executive at Beynon & Co.

Estelle Hollingsworth (3) has been promoted to chief people officer at Virgin Atlantic. She brings more than 25 years of people experience to the post, most recently as VP for cabin at the airline. She joined Virgin in 2018.

Arti Agrawal (4) is the new director of inclusion, diversity

and involvement at Anthony Nolan. Before joining the charity she worked at the University of Technology Sydney in a dual role as associate professor and director of women in engineering and IT.

Audit, tax and consulting firm RSM has welcomed **Sandra Myers-Edwards, Chartered MCIPD**, as diversity and inclusion manager. She joins from Croydon Health Services NHS Trust, and has also held senior people roles at Barnardo's, King's College London and The British Library.

The Camping and Caravanning Club has appointed **Emma Catterall (5)** as director of finance, HR and business systems. She arrives from Merlin Entertainments, where she was divisional director at Alton Towers.

Hootsuite has promoted **Tara Ataya**, previously VP for people, to chief people and diversity officer. Ataya joined the company in 2020, and has

also worked at Vision Critical, Sierra Systems and Deloitte.

Employment law firm Fox & Partners has recruited **Millie Warner** as senior associate, and **Claire Plumb** as associate. Warner was previously counsel at Weil, Gotshal & Manges, and Plumb was a contract lawyer at RPC.

Julia Litchfield has taken on the role of director of consulting at New Street Consulting Group. She arrives from Aon, where she was global head of talent for the company's risk business.

Sybille Raphael (6) has joined whistleblowing charity Protect as legal director. Raphael previously spent five years as head of legal advice at Working Families.

Georgette Banham, Chartered MCIPD, has been promoted to HR director at Hitachi Zosen Inova. Before her promotion she was director of corporate services, having started at the firm in 2012.

The next step *We help you to help your career*

I've held operational management roles in the hospitality industry for 26 years, and in retail (specifically supermarkets) for the last four. I want to move into HR and believe my skills from three decades of managing people are transferable - I recently quit my job to pursue this change and have completed my Level 5 CIPD qualification. However, I'm finding it difficult to get anywhere because so many employers want experience in an HR environment. I'm not sure which path to take now, and I'm worried I've done my Level 5 in vain.

While it's unfortunate you gave up your previous job to pursue training, please know you have not taken your qualification in vain, says Susy Roberts



(left), founder of Hunter Roberts. It shows you are committed to making the move.

You have lots of things to your advantage, such as transferable skills and a huge amount of experience on the operational side, but to make the most of them your CV needs to reflect your people management and experience.

In terms of seeking an HR role, while the hospitality industry is currently in dire straits, a much more promising avenue, and one you have recent experience in, is supermarkets, which have been thriving throughout the pandemic.

It's always beneficial to have operational and commercial experience to take into any role, but to move forward you will need to gain some HR experience - there are three

ways you can go about this. One is to go to a previous employer and ask if you can take on a more junior HR role. A previous employer will value your experience and could be willing to give you a lower position, or even experience shadowing a manager on a voluntary basis.

Another option is to look into an apprenticeship. It's a common misconception that apprenticeships are just for young people - they can also provide value to someone who wants to switch careers later in life.

A third possibility is to go back into an operational role, build your credibility and then ask for consideration for HR posts.

Networking through organisations like the CIPD can also be really helpful to build contacts within HR functions, which may open some doors for you.



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Research

Strong team agility drives productivity at home

High levels of team agility are key to 80 per cent of people maintaining or improving productivity when working from home, a new study has found.

Research by academics at Alliance Manchester Business School and Cirrus polled 500 people working in large companies before and during Covid to understand how organisational characteristics influence team agility.

It found that team agility drives both team and individual performances and engagement.

The study identified six factors that comprise team agility: multi-skilled teams, iterative planning, customer involvement, team autonomy, team speed and team prioritisation.



Agile teams have helped companies adapt during the Covid pandemic

The research also found that agile teams are more resilient and have helped organisations adapt and change during the pandemic, with respondents stating that maintaining high-quality team interaction

with both supervisors and colleagues is central.

Dr Simon Hayward, CEO of Cirrus and one of the academics behind the research, said: “Team agility drives workplace performance overall and at an individual level, as well

as improving engagement. If leaders can facilitate agile team practices and encourage clear, ongoing dialogue between employees, they can build a strong foundation for success – whether they work from an office location, work remotely or create a hybrid of the two.”

David Holman, professor of organisational psychology at Alliance Manchester Business School, added: “Empowering leadership and strong relationships between senior management and team members both increase team agility, so investing in such leadership capabilities will improve team performance, transform culture and future-proof businesses.”

* bit.ly/TeamAgilityProductivity

CEOs have significant influence on CSR

CEOs have a large influence over firms’ corporate social responsibility (CSR) activities, new research has revealed.

A study into the so-called ‘CEO effect’ by academics at HEC Paris and the University of Antwerp found invested CEOs were responsible for improving the performance of their businesses’ CSR activities by up to 30 per cent.

HEC’s Georg Wernicke said they looked at CSR because policy in this area is voluntary and goes “well beyond what’s mandated by law”. It is also less prone to

influence from factors beyond the CEO’s immediate control, such as the company’s financial performance.

Statistical techniques and data from 1,200 US organisations from 1993 to 2015 were used to analyse the impact of CEO clout and outcomes of CSR-type activities over time.

“Beyond CSR, our findings suggest it is likely that CEOs will exert quite a lot of influence on the firms they run in general,” said Wernicke. Therefore, their views, values, position on climate change and even how they treat employees “matter a great deal” and will influence workplace culture.

* bit.ly/CEOsInfluenceCSR

Many employers unprepared for hybrid working

Only one in five workers feel their employer is prepared to support a hybrid working model after the pandemic, according to a new study.

A survey by Sony Professional Solutions found that two-thirds (65 per cent) expect to work from home at least two days a week, while almost a third (31 per cent) believe that a return to five-day office working will not happen until 2022, if at all.

Where employers had a one-day remote working policy pre-pandemic, nearly three-quarters (72 per cent)

of employees expect to work from home at least one day a week post Covid.

The study also revealed that the shift towards a more hybrid working model is being driven by 18 to 24-year-olds, with three-quarters (75 per cent) saying they expect to work remotely at least two days a week.

Just 13 per cent of those aged 18-24 said they expect to return to working in the office full time, compared to half (51 per cent) of 35 to 54-year-olds.

The firm added that the results of the survey suggest employers need to better plan their “future workplace” and look at how they support remote workers.

One year on: the importance of mental health support

Twelve months since the UK first went into lockdown, it's still essential for employers to look after the wellbeing of their people

Tuesday 23 March marked National Day of Reflection in the UK, an opportunity to commemorate all the lives lost to Covid. While the past year may have been hardest on those who have suffered a bereavement, many others will have also experienced isolation, loneliness, increased work pressures and financial hardship.

The pandemic has unquestionably been a human crisis and the people profession has stepped up to take a leading role in their organisations' responses. At the onset, CIPD/*People Management* research found the most common challenge identified by employers with staff working remotely was to ensure they were staying well, both physically and mentally.

Consequently, we've seen employee health and wellbeing jump to the

top of the business agenda. Employers have stepped up their communications with staff, with one-to-ones in particular taking on more importance. Employees have also been encouraged to practise self-care and organisations have doubled down on promoting their health and wellbeing benefits – and introduced new ones. Managers have also prioritised listening and being empathetic.

The pandemic has also had an impact on the health and wellbeing of many people professionals who have had

to juggle a range of operational, strategic and legal responsibilities. These include getting up to speed with furlough (and its many adjustments), helping people transition to enforced home working, making workplaces Covid secure, helping managers to support their teams remotely and handling redundancies with empathy and dignity.

In recognition of the increased pressures and personal challenges HR is facing, CIPD members have free access to a new wellbeing helpline offering confidential advice to support your personal wellbeing.

However, there is now at least some cause for optimism. As Peter Cheese put it in January's CIPD Community blog: "As the vaccination programmes roll out, the light at the end of the proverbial tunnel will soon become more visible."



Key resources

Mental health support for employees
bit.ly/CIPDMentalHealthSupport

Wellbeing helpline for members
bit.ly/CIPDWellbeingHelpline

CIPD coronavirus hub
bit.ly/CIPDCovidHub

WORDS KRISTIAN ADAMS, NATALIE BAKER AND JONNY GIFFORD

Mick Marchington: in memory



It was with great sadness that we heard of the untimely death of Professor Mick Marchington in February. Mick was an esteemed academic in HR and employment relations, and a longstanding friend and source of inspiration, expertise and support for many at the CIPD.

Over several years he helped develop the CIPD's professional standards, qualifications and academic

membership, and was a lead examiner and quality panel chair accrediting CIPD centres. He championed research skills as part of professional development, and his learned yet practical writing argued for progressive people management that supports better working lives. Mick's textbook, *HRM at Work*, has long been a bestseller. His

numerous contributions led to him being made a Chartered Companion of the CIPD in 2003, and his friendship with and active commitment to the CIPD continued right up to his death.

Mick will be remembered for his insight, gravitas, warmth, humour and undimmed dedication to the HR profession and the world of work. With the support of his family, the CIPD will set up a research grant in Mick's memory. Details of this will be announced in due course.

JAMIE GRILL/GETTY IMAGES

*Chartered
Companions inspire
other leaders to deliver
results and initiate
change within
their vocation*

Help young people secure their future

CIPD members have really stepped up throughout the last 12 months, helping young people, charity workers and SMEs facing adverse circumstances as a result of the pandemic.

Volunteers have supported 77 charity HR professionals to help them navigate their people issues in unfamiliar territory. More than 60 professionals provided critical advice to SMEs as part of the Recovery Advice for Business scheme, and more than 400 people have volunteered to mentor a young person in need of career guidance in the Steps Ahead Mentoring programme. The impact has been remarkable, and the CIPD wants to thank you for your tireless efforts and acts of service.

Are you looking for opportunities to help? As unemployment rates for young people continue to soar, volunteers are needed to develop a careers programme for local secondary schools and colleges. The role of enterprise adviser (run by The Careers & Enterprise Company) involves connecting young people with employers during a time when they have missed vital experiences and guidance.

* If you want to volunteer your skills, find out more at bit.ly/CIPDEnterpriseAdviser

Nominations for Chartered Companions

Nominations are now open for the CIPD's Chartered Companion membership, a prestigious opportunity that rewards ambassadors, advocates and promoters of the CIPD.

Chartered Companions must be exceptional leaders who have had a considerable impact on the people profession throughout their careers. As the CIPD's highest level of recognition, Chartered Companions are role models for the profession – they inspire other leaders to deliver results and initiate change within their vocation.

In 2019, the CIPD launched a new and fairer application procedure, enabling Academic Members, Academic Fellows and all members in a chartered grade to nominate Chartered Fellows. The process now allows CIPD members to recognise their peers and ensure the procedure is driven by the people profession overall. Only CIPD Chartered Fellows or Academic Fellows can be nominated.

Enter your nominations by Monday 17 May 2021.

* bit.ly/CIPDCCNominations

Making membership more sustainable

In 2019 the CIPD was one of the first membership organisations to move to a plastic-free recyclable membership card. To further reduce its impact on the environment, from April 2021, it will only send cards to members who request one. The CIPD estimates this will save around 1.5 tonnes of paper every year, and has developed sustainable ways to demonstrate proof of membership without needing a card.

Find out more at bit.ly/SustainableMembership

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By offering Katherine Parker (right) leadership development or coaching, HR could have made her feel more confident in her role – and less likely to steal Tess McGill's (left) ideas



PICTORIAL PRESS LTD/ALAMY STOCK PHOTO

Could HR solve...?

WORKING GIRL

A secretary takes drastic action to progress her career under an unsupportive boss

The problem

Stockbroker secretary Tess McGill is desperate to climb the corporate ladder and shares a merger idea with her boss, Katherine Parker, who overlooks her potential and then steals her idea. While Parker is on sick leave, McGill assumes her identity and brokers a deal of her own. But how could Parker have been more supportive of her direct report's career aspirations?

The solution

An employee having their great ideas stolen by their boss is a prime example of office politics and a leader lacking confidence, says Nicola Kleinmann (below), co-founder of Your People Associates. "Many of us have experienced this at some point in our careers and it can be totally demotivating, not to mention humiliating," she adds.

The firm's HR department could have supported Parker to feel more comfortable in her own role – and therefore less likely to steal her employees' ideas in the future – with leadership development or executive coaching,



says Kleinmann. This would have enabled her to feel more confident in working collaboratively with her team and to "overcome any imposter syndrome she may have been feeling".

Close collaboration between HR, talent teams and leadership is also key when it comes to understanding individual career goals, she points out: "With this collaborative working in place, HR, talent and leadership are able to create a fantastic employee value proposition that will encompass a solid career development programme, regular employee feedback opportunities and 'think tank' style opportunities to foster all ideas."



Advertising feature

How to beat stress in 10 minutes

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The biggest block to beating stress

Finding wellbeing solutions that actually work becomes hampered when there is a focus on the indicators rather than the root causes of stress.

Nikki J. Owen, Stressbusting Expert has worked with thousands of people over three decades and identified that a major cause to stress is emotional build-up.

The majority of people push down uncomfortable emotions rather than expressing how they feel. This means when met with current challenges, they trigger years of unprocessed emotions which becomes overwhelming.

A cellular lockdown

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This is how long-term stress suppresses your immune system and prevents access to a growth mindset. Unless you change the chemistry of your body, your cells will stay in survival rather than growth mode.



Nikki J. Owen
Stressbusting Expert

Four out of five employees are currently feeling stressed.

CHANCES ARE that you are working with colleagues who are feeling overwhelmed, anxious and worried. When employees feel like this, it's hard to be receptive to solutions that may help them, particularly if those suggestions require effort, willpower, dedication or time to see the results.

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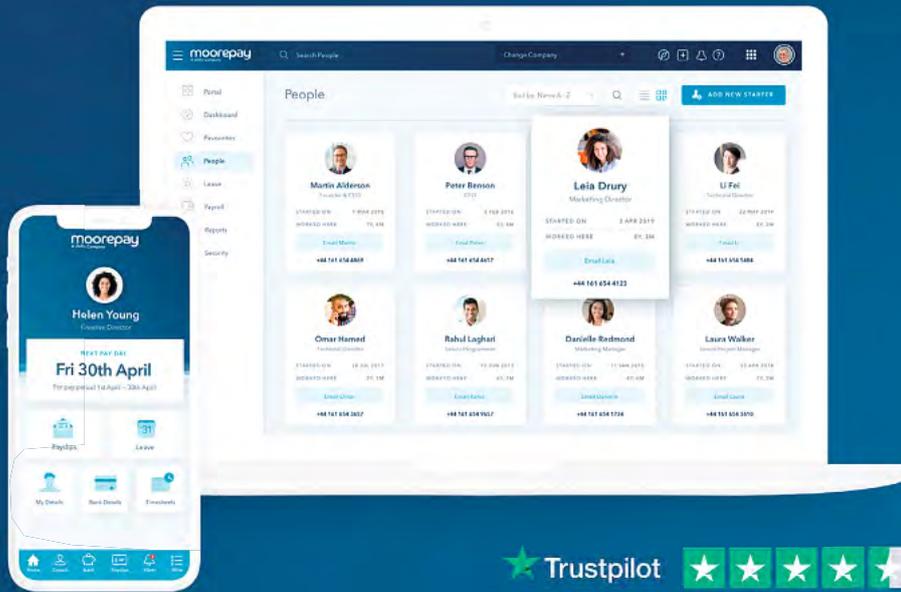
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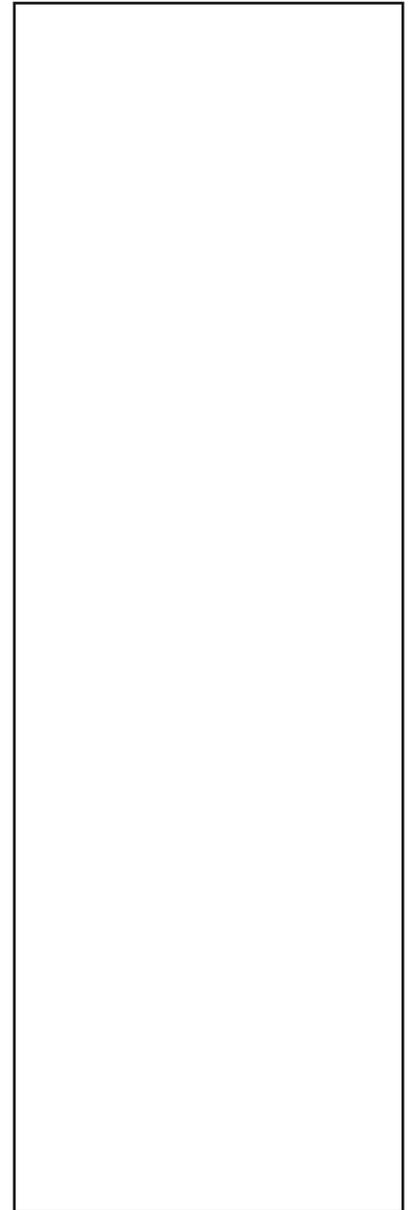
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