# HR INNER CIRCULAR

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# THE EU (WITHDRAWAL) ACT

HEALTH AND SAFETY
**FOR PREGNANT WORKERS**

MANAGING
**SICKNESS ABSENCE**

**THE 15 THINGS HR SHOULD DO**
(BUT DOESN'T ALWAYS)

ENCLOSED CD
**RELIGIOUS DRESS**

# Daniel's Diary | RECRUITMENT

Employees are a business' most important asset. It is vital to employ the right people. It is also important to recruit for the right reasons, because someone is the best candidate for the job, and not because of any underlying bias. A fair and objective recruitment process helps to protect the business from potential legal claims. It also ensures that you appoint the best available talent.

## LEGAL FRAMEWORK - DISCRIMINATION

Section 39 of the *Equality Act 2010* sets out that an employer must not discriminate or victimise an individual:

- In the arrangements it makes for deciding who to offer employment to;
- The terms on which it offers employment; or
- By not offering employment to someone.

Section 40 also makes it unlawful to harass someone who has applied for employment.

'Arrangements' can cover the entire recruitment process, from start to finish. It includes the information you request in an application form. It covers the criteria in job descriptions and the questions you ask in interviews.

Ensure that your recruitment processes do not affect people who share protected characteristics negatively. If you only conduct interviews in the evenings, a woman with childcare responsibilities might find it difficult to attend. This could be indirect discrimination unless the practice can be objectively justified (not easy, unless the role itself requires evening work). Consider reasonable adjustments for people with disabilities throughout the entire process.

A business will usually be vicariously liable for the acts of its employees while they are working. This includes what your managers do during recruitment exercises. An employer will have a defence if it took 'all reasonable steps' to prevent the discrimination. Adopting best practice and keeping careful notes will help protect the business.

## SO WHAT DOES BEST PRACTICE LOOK LIKE?

Human nature means we make subjective judgements about people all the time. This subjectivity needs to be removed from any recruitment process. People who make recruitment decisions based on assumption or prejudice do not secure the best talent. And they increase the risk of legal claims.

The way to remove subjectivity is to focus on the job requirements. Clear job descriptions and person specifications will help you to create objective recruitment criteria. Properly trained managers should apply those objective criteria fairly and consistently to all applicants.

Training is essential. Managers should know their recruitment policy inside out. They should also have equal opportunities training and guidance about what can happen when things go wrong. Warn managers that they can be individually liable for discrimination. Equip them with the skills and knowledge needed to protect both themselves and the business.

## THE RECRUITMENT PROCESS

It is helpful to have a recruitment policy which sets out the process to be followed in every recruitment exercise. A standard process reduces the risk of subjective recruitment. It focuses attention in the right place – the requirements of the job.

### Job descriptions

A job description should give enough information for applicants to understand what the job entails. It should be up to date and contain only relevant tasks and duties. Try to focus job requirements on outcomes, rather than how the task is performed. You are less likely to put off potential applicants who might achieve the same outcome differently. For example, if the job involves preparing

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reports, don't specify the use of a particular computer package which someone with a visual impairment might not be able to access.

If the job can be done in a flexible way (part time or job share for example), say so. Be prepared to objectively justify a requirement for full time. This can put women with childcare commitments at a disadvantage and form the basis of an indirect discrimination claim.

## Person specifications

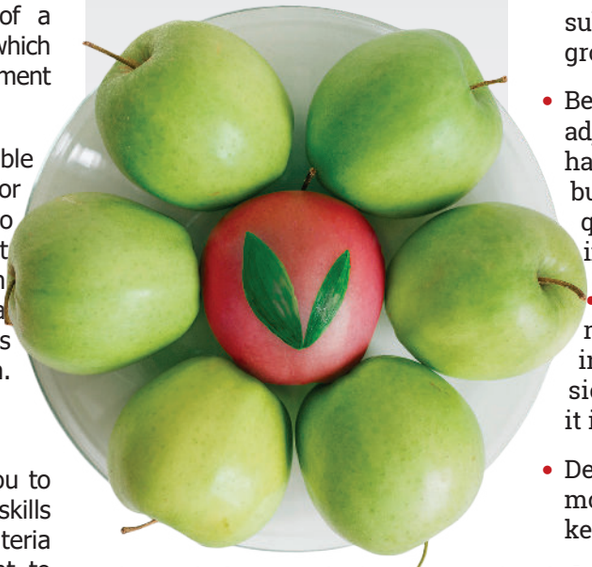
Person specifications can help you to recruit someone with the right skills and experience for the role. All criteria should be objective and relevant to the job. Try to use terms which are measurable in skills or experience, so you can easily assess whether candidates meet the requirements.

Beware of discriminatory language. A requirement for applicants to be under the age of 40 would be direct age discrimination against people over 40. That is easy to spot. Weeding out indirect discrimination can be trickier. A requirement for a certain number of years' experience could be indirectly discriminatory on the grounds of age. Asking for 'continuous experience' could disadvantage women who have taken maternity leave. Both requirements would have to be objectively justified.

Health requirements can be tricky too. It can be indirectly discriminatory to include criteria about health or disability unless the criteria are closely linked with the job. It would have to be objectively justified. The *Equality Act* also prohibits employers from asking health or disability related questions before making a job offer. There are limited exceptions, for example where the question relates to an intrinsic function of the job (for example, you could ask about fitness if the role was a manual handling one).

## Advertising

Sometimes internal advertising is the right call, for example when there is a redundancy situation going on. Remember that external advertisement is good for attracting a wider pool of potential talent. External adverts do not stop an internal candidate applying.



Consider where to place your adverts so you don't miss any particular groups. Cast your net as wide as time and resources allow.

Take care with the wording. Refer to the actual requirements of the job and use gender neutral terms. Beware of using terminology which might impact on particular groups. Requesting someone either 'mature' or 'cool' might give the impression of preferring an older or younger candidate. Get managers to check wording with HR, to be sure.

## Dealing with applications

It is important to have a standard process, such as an application form, to ensure consistent treatment. Shortlisting should be linked to criteria from the job description and person specification. For example, you could ask all candidates to write a few hundred words on how they meet those criteria and then give a mark per criterion met. It would then be fair and objective for the highest scorers to continue in the process.

Best practice tips:

- Have more than one person sifting through application forms;
- Consider redacting names and birth dates to guard against subconscious prejudice on the grounds of race, age or gender;
- Be prepared for reasonable adjustments. You don't have to have application forms in Braille but you should be prepared to act quickly if someone with a visual impairment applies for the job;
- Don't request criminal records or health related information (including sickness absence) unless it is relevant to the job;
- Detach any equal opportunities monitoring form and keep it separately.

## Selection processes

Many businesses do more than just interview potential employees. We've learned that people can be good at interviews without necessarily being good at their job.

## Psychometric and aptitude testing

These tests can be helpful as they are more objective than human judgment. They can be useful in predicting how people will perform in certain jobs. Tests should be well designed and properly linked to the relevant objective criteria for the job.

The same applies for any aptitude test. Make sure it is relevant to the role. You might ask someone applying for a PR role to do a piece of writing or someone applying for a role in finance to do a numerical test.

## Assessment days and interviews

Assessment days draw together theoretical and practical tests. They often include a formal interview. Seeing candidates in a mock up of a real work experience can tell you an awful lot more than a candidate would tell you themselves. Activities can be designed to draw out essential competencies such as team work, leadership and analytical skills. Assessment activities should be carefully tailored to the role so that the relevant criteria are being tested.

Be aware that these selection methods have the potential to put certain

groups at a disadvantage. Consider whether events are scheduled to coincide with religious festivals or observances. If part of the day is 'after work drinks', be aware of how this might impact on someone with childcare responsibilities.

Interviews are the most interpersonal of the selection methods. There is a risk that employers start judging candidates on subjective rather than objective criteria. Ask the same questions of all candidates. Ensure questions are linked to the job requirements. Agree a clear scoring strategy in advance and stick to objective judgements. You're picking the person who is best for the job, not the person you like the most.

## OFFERING THE JOB

Once you have selected the best candidate, make the basis of any offer clear. Is the offer conditional on something else, such as satisfactory references? Avoid any misunderstandings.

Be mindful of potential discrimination in pay. Ensure the pay terms are equal between men and women in the relevant role and ensure that part timers are paid the pro-rated equivalent.

### References

There is generally no legal obligation on a business to provide a reference. If they do though, it should be fair and accurate. It is common these days for employers to have a policy of giving only factual references. Do not let this reflect badly on the candidate.

As always, it is important to treat everyone fairly. Make sure you ask the same questions for all shortlisted applicants and that questions are relevant to the job.

### Right to work in the UK

Employers must undertake certain obligatory checks to ensure an individual has permission to work in the UK. Avoid any arguments about discrimination and ask all new employees for the relevant evidence. Don't make assumptions based on race or national origin.

## WITHDRAWING AN OFFER

Occasionally, an employer may change their mind about recruitment due to an intervening event, such as the loss of a contract. If an offer of employment has been made but not yet accepted, then the offer can be retracted. A binding contract is only reached when an offer of employment has been accepted. A contract of employment can exist even if the employee has not started work. In this situation, an employer would have to serve contractual notice to avoid being in breach of contract.

A new recruit would not have sufficient continuous service bring an ordinary unfair dismissal claim. It is worth remembering that other claims, such as discrimination, do not require any period of continuous employment so do tread carefully and follow a fair procedure.

### Top Tips for safer recruitment

- Focus all stages of the recruitment process on the job description and person specification to ensure an objective rather than subjective process;
- Ensure everyone involved in recruitment is properly trained;
- Ensure any selection process is applied fairly and equally to everyone. Agree a framework of competencies, questions and scoring methods in advance;
- Keep meticulous records at every stage;
- Monitor your recruitment processes to ensure you are providing equal opportunities to everyone, not just paying it lip service.

# THIS MONTH'S CD

## Religious Dress

This month, it's a fireside chat with employment barrister Jason Braier from Field Court Chambers. Jason and Daniel discuss religious dress in the workplace, covering crucifixes and crosses, Islamic dress, and how to justify restricting religious dress on health & safety grounds. We also answer questions on religious dress from Lorna Mapson, Tara Warner, Imogen Edwards and Karon Ayres.

If you currently get the physical CD but would prefer an .mp3 file emailed to you, please contact **jennie.hargrove@hrinnercircle.co.uk** and we'll sort that out for you.

Big Lesson of the Month

# HEALTH AND SAFETY OF PREGNANT WORKERS

An employer has a duty to preserve the health and safety of workers, set out in the *Management of Health and Safety at Work Regulations 1999 (MHSW)*.

These regulations require employers to assess their employees' exposure to workplace risks and to take steps to reduce those risks. As part of that workforce-wide risk assessment, an employer must take account of any specific risks to female employees who are of childbearing age, whether they are pregnant or have recently given birth or not.

This obligation arises even before an employee tells you that she is expecting a baby. At that stage, it is a hypothetical situation: if a pregnant employee were doing this job under these conditions, what risks might she face? You should typically look at the way in which your processes, working conditions, and any chemical or biological agents used at work could harm a new or expectant mother or her baby. A 'new or expectant mother' is someone who is pregnant, has given birth in the last six months, or who is breastfeeding.

Employers do not have to carry out a separate risk assessment for new and expectant mothers, although there is no harm in doing so and it will sometimes be necessary. The better you understand the working environment and the way in which your employees fit into that, the more likely you are to be able to put in place suitable measures to protect your workforce.

The responsibility to safeguard a woman's health and safety crystallises once you have received formal notification that she is a new or expectant mother. When that happens (and you should encourage employees to let you know as early as possible, particularly if risk assessments have brought relevant risks to light), you must take action to avoid associated risks. Does your most recent risk assessment need to be updated to take account of changes at work? Does it deal with all the issues? Has anything been missed?

Once you are satisfied that the assessment is sufficiently thorough and remains applicable (if not, carry out another one with the benefit of having this new or expectant mother in mind), put in place any necessary measures to remove the risk or, if that cannot be done, to control it or reduce it to its lowest acceptable level in one of the following ways:

1. Temporarily adjust the woman's working conditions and/or hours of work, if reasonable to do so. An employee who is on a fixed salary contract should usually maintain the same pay level. In other situations, it may be possible to cut back on elements of her pre-adjustment pay. Take care to avoid subjecting her to a pregnancy-related detriment.
2. If is it not possible to adjust working conditions, offer the employee suitable alternative work on terms that are not substantially less favourable. Her pay should not be lower than that of colleagues who are already doing that job, nor should she be deprived of elements of pay that are connected to her seniority, her length of service, or her qualifications.
3. If suitable alternative work is not available or feasible, or if the employee *reasonably* refuses your offer of suitable alternative work, she should be suspended on full pay for as long as necessary to avoid the risk.

Do not rush to suspend. Consult with the employee about ways of removing or reducing the identified risks, and about suitable alternative roles that she might be able to take on. She has a specific legal right to be offered suitable alternative work (if it is available) before being suspended on maternity grounds.

Even if an alternative job falls some way short of being ideal, you might suggest to the employee that she gives it a go. If it does not work out, the possibility of medical suspension will be the fallback option until such time as she can return to her original job, or a more suitable alternative role becomes available; you should continue to monitor carefully the

exposure to risk, with the aim of her returning to work when safe to do so.

If the employee *unreasonably* refuses a suitable offer of alternative employment, she will forfeit her right to pay during her suspension. This should be made clear to her before she makes her decision. Be prepared for a difference of opinion over the suitability of alternative roles.

Include the employee in the entire risk assessment process. She should also be reassured that during the course of her pregnancy you will continue to consider her exposure to risk. Remember that new risks may develop as the woman works into her pregnancy and beyond.

Is it possible to come unstuck for being too cautious? Yes. An employer whose immediate reaction to news of an employee's pregnancy is to take them off their usual duties, or to suspend them, could be liable for pregnancy or maternity discrimination or pregnancy-related detriment. Any decision relating to the employee's role, duties, or other terms must be justifiable and proportionate, and based on the outcome of a thorough and targeted risk assessment. In *New Southern Railway Ltd v Quinn*, for example, an employer discriminated and subjected an employee to a detriment by moving her to a lower-paid job because she was pregnant. The employer was liable, despite appearing to have the employee's best interests at heart. Managers had said that they would be unable to forgive themselves if something happened to the employee's baby. That, by itself, was not a good enough reason to do what they did.

## WHAT TYPE OF RISKS DO NEW AND EXPECTANT MOTHERS FACE?

The Health and Safety Executive has identified possible risks as including (among other things):

- Movements and postures
- Manual handling
- Shocks and vibrations
- Noise
- Infectious diseases
- Toxic chemicals
- Facilities (including rest rooms)
- Mental and physical fatigue, working hours
- Stress (including post-natal depression)
- Passive smoking
- Temperature
- Working with visual display units (VDUs)
- Working alone
- Working at height
- Travelling
- Violence

Note the mention of rest rooms. A specific duty exists in this respect, under a set of regulations called the *Workplace (Health, Safety and Welfare) Regulations 1992*. These say that an employer must provide suitable rest facilities where pregnant or breastfeeding employees can lie down. More frequent rest breaks should also be provided.

If a new mother wants to continue to breastfeed her child once she has returned to work, she should tell you that before she comes back. That will give you time to make the appropriate adjustments to the working environment, which might include putting rest facilities in place. The obligation is to provide a space in which a pregnant or breastfeeding mother can rest. A fairly basic rest facility will usually be all that is required.

Be aware that a breastfeeding mother may face particular risks in some working environments, including where she might come into contact with certain chemical elements. Consider this as part of your overall risk assessment, and perhaps its own discrete assessment if that would be appropriate (which in some types of workplaces it definitely would be).

## WHERE AN EMPLOYER GETS THINGS WRONG

The most serious potential consequence is harm done to a mother or her baby.

Breach of the MHSW Regulations gives rise to civil liability. It could also pave the way for a discrimination claim under the Equality Act (and remember that workers and apprentices, as well as employees, are covered).

An employer who has not conducted a proper risk assessment, or who has chosen not to recruit a pregnant woman because of concerns that health and safety risks would prevent her from doing the job, could be liable for pregnancy and maternity discrimination. In respect of a breastfeeding mother, it could be sex discrimination. Similar liabilities might apply where an employer has carried out a risk assessment but has not properly applied the outcomes of that assessment to an individual's situation.


# MANAGING SICKNESS ABSENCE

Everyone is ill occasionally. Most employers are pretty good at accommodating the occasional tummy bug or bout of flu. But high sickness absence can place huge pressure on a business. Employers don't want to seem pushy or unsympathetic, but doing nothing doesn't necessarily show you care. In true Goldilocks style, doing too little – or too much - can result in tribunal claims, especially if you don't follow your own procedures.

## GET YOUR POLICY RIGHT

Every employer needs a robust sickness absence policy. It should set out the business's expectations of good attendance and why it is important. It should also contain clear processes for dealing with employees who call in sick and managing their absence. A good policy will usually contain the following:

- A process for calling in sick, to whom, by when and by what method;
- Information about how the employee will be paid whilst off sick;
- A process for keeping in touch whilst on sick leave, seeking medical updates and discussing any workplace adjustments to assist a return to work;
- Arrangements for return to work meetings – these meetings provide an opportunity to discuss absence with employees and can reduce short term absence. They can also help pick up any underlying medical or work issues;
- A structure for what will happen if attendance drops below acceptable standards. This might be by reference to trigger points - a certain number of absences within a set period. Actions might include a series of meetings, targets for improved attendance, the imposition of warnings and/or seeking medical reports to establish a prognosis;
- The formal dismissal process which will apply if absence does not improve to acceptable standards;
- A process for monitoring absence to help identify any patterns so that the business can address them.

## TURNING YOUR POLICY INTO PRACTICE

Policies are only as good as the people applying them. Managers need to be trained properly on the policy, and on how to apply it. Employees need to know the content of the policy and understand that it will be applied fairly and consistently.

Managers should take a sympathetic approach to genuine sickness whilst being inquisitorial enough to dissuade staff from 'pulling a sicky' if they aren't genuinely unwell. Sticking to the policy will ensure you provide care and support to those with genuine reasons for absence. It will also allow you to weed out and deal with those who do not.

## FLEXIBILITY

I am not suggesting that employers should be inflexible. Quite the opposite. If your employees know they can take a late lunch to attend a doctor's appointment, that creates goodwill. You might find people ring in sick less if they know they can take a half day's holiday at short notice to deal with something urgent (subject to business needs of course). The strict application of your sickness absence policy can sit within a more flexible approach to employees' general work-life balance.

## THORNY ISSUES

### Recurring short term sickness absence

If you notice that a pattern of absence has developed, don't be afraid to face it head on. Ask the employee about it during their return to work interview. If someone is regularly off sick on Mondays and Fridays, it might be that their weekend social activities are taking precedence over work. It might also be related to an underlying disability though, or there may be a tricky work issue at play. Ask the employee. Be approachable and receptive to discussion. And deal appropriately with any issues that arise.

## Long term sickness absence

Long periods of absence might be caused by a one-off event, such as a car accident. They might also stem from a physical or mental illness that satisfies the definition of disability under the *Equality Act 2010*. Whatever the cause, having an employee off sick for long periods can take its toll on the business.

Dealing with long term sickness absence can be tricky. Conversations are often difficult. Managers must be trained to deal with these issues sensitively but robustly. The task is much less daunting if you follow your sickness absence policy step by step from the start. If there are no underlying issues such as disability, take appropriate action when trigger points are reached. Give warnings with constructive targets for improvement.

Remember that reasonable workplace adjustments aren't only relevant to disabled employees. You should also consider adjustments to help non-disabled employees back from sick leave. This is an important part of a reasonable process and would be relevant in any unfair dismissal claim. Involve the employee in those discussions. Consider what adjustments you can make to things like the employee's work station, duties or hours of work.

You should also discuss with the employee the impact of their absence on the business, its customers and their colleagues. It puts your efforts to get them back to work into a business context. It shows it isn't personal.

## Disability-related sickness absence

Businesses are required to make reasonable adjustments for employees with disabilities. Failing to do so can result in a tribunal claim. It can also contribute to other discrimination claims, especially if the employee is disciplined or dismissed.

Reasonable adjustments might include changes to the employee's job, hours of work or equipment. You may also need to adjust your sickness absence procedure. Employers may need to accommodate some disability-related absence and allow more generous trigger points.

Having a disability doesn't mean that unlimited absence is acceptable. There will always be a balance between the needs of someone with a disability and the needs of the business. However, if you have made all reasonable adjustments and attendance is still having an unreasonable impact on the business, then you can take action.

Do exercise caution. If you discipline someone for disability related sickness absence, they might bring claims for indirect discrimination or discrimination arising from disability. The business would have to justify any sanction by showing that its actions were a proportionate way of achieving a legitimate aim. The Employment Appeal Tribunal has looked at this issue recently. The case involved a disabled employee who was given a warning for 60 days' absence within a 12-month period.

## O'CONNOR V DL INSURANCE SERVICES

Mrs O'Connor had a disability and high levels of sickness absence over many years. Her employer had dealt with the absence sensitively. They had accommodated significantly more absence than their policy usually allowed. But, in 2016, they issued Mrs O'Connor with a written warning and stopped her company sick pay. She brought a claim for discrimination arising from disability under section 15 of the *Equality Act 2010*. Less favourable treatment under this section can be objectively justified. The employer must show that what they did was a proportionate way of achieving a legitimate aim.

Mrs O'Connor won her discrimination case at tribunal. The employer appealed but the Employment Appeal Tribunal agreed with the tribunal. The employer had the legitimate aims of assuring adequate attendance levels across the workforce and improving Mrs O'Connor's attendance. However, they relied on general assumptions about what a warning might achieve. They didn't look at how it would affect Mrs O'Connor directly or improve her attendance. No one had spoken to Mrs O'Connor's team manager about the impact of her absence, which might have helped justify the employer's actions. The employer had also failed to follow their own policy of referring an employee to occupational health before taking disciplinary action. The warning was not a proportionate way to achieve any of the employer's legitimate aims.

This case is a reminder to employers of the difficulties in dealing with disability related absence. Mrs O'Connor won because the employer couldn't justify how the warning would achieve their stated aims. If they had followed their own procedures, and put forward different justification arguments, the outcome may have been different. In theory, their aims were legitimate. It was the way they went about it that was not proportionate. The employer's failure to enquire about the practical impact of Mrs O'Connor's absence was a contributory factor in losing the case, as was the failure to follow its own sickness absence policy.

## The end of the road

Capability can be a fair reason for dismissal. If you have followed a fair process and there is no improvement in attendance (for recurring short term absence) or the employee cannot say when they will return within a reasonable period (for long term sickness), dismissal may become your best option.

Seek medical evidence from an independent doctor or occupational health specialist before contemplating dismissal. It might provide new information which could assist in the employee's return to work. Alternatively, it may confirm that acceptable attendance within a reasonable period is unlikely. Either way, it can bolster a defence to legal claims which result from any dismissal.

Before you dismiss, consider any ill health retirement or permanent health insurance policies. They may offer a more favourable outcome to everyone involved.

Dismissing an employee is one of the hardest things that a manager will have to do. Make sure they have the training to undertake these tricky conversations appropriately. Keep a detailed paper trail as evidence of your fair procedure should the employee subsequently bring a claim. And take particular care with disabled employees.

## CARROT OR STICK?

A good sickness absence policy should usually be a positive process that secures an employee's improved attendance. Applying the policy carefully and consistently will ensure that you can also use it as a stick if the need arises.

### Top Tips

- Follow your sickness absence policy carefully and consistently in every case;
- Keep careful records of all letters, meetings and actions taken;
- Be inquisitorial in your approach to employees who have been off sick, look for underlying disability or work-related issues that the employee may be reluctant to raise;
- Be flexible in your approach to absences such as doctor and dentist appointments to reduce the likelihood of your employees calling in sick when they are not;
- Take care with employees who are disabled and may require reasonable adjustments to help their attendance reach acceptable levels.

# The 15 things that HR should do (but doesn't always)

by Simon Jones
ariadne-associates.co.uk

Working as I do with small organisations, I'll often read an article about some great new HR initiative or theory and wonder why we make things so complex. It seems to me that we frequently get so caught up in the processes, jargon and big picture stuff that we neglect what we are really all about. Employment is a relationship and we need to be clear about what it is that we are committing to, as our side of the 'deal'.

After giving it some thought, I've distilled it down to 15 points that define what HR should be doing to create a successful relationship (and where there is no HR, what senior managers should make sure they have in place)

1. We'll pay you correctly, on time, and at a rate that is 'felt fair' by both sides.
2. We'll make sure that you have a safe place to work, with the right equipment and any required protective clothing
3. We'll make sure we comply with the law around employment
4. If you apply for a job with us, we'll make sure the process is clear and easy to follow, and keep you informed about your application.
5. If you need training or other support during work, we'll make sure that it is organised for you in a timely way.
6. We'll keep you informed about what's going on in the organisation and how it affects you, and we'll listen to your views
7. If you do something that's not right, we'll make you aware of what it is and why – and do what we can to make sure it doesn't happen again.
8. If you think we've done something wrong, we want you tell us (and feel comfortable about doing so)
9. If we do get something wrong, we'll make sure it is put right (for the future, if we can't correct it now).
10. We recognise that there may be times when what individuals or groups of employees want may not be the same as what the organisation wants. We'll always discuss the best way forward and try to reach a consensus if we can
11. We won't tolerate a culture where individuals are abused, belittled, harassed or insulted – whoever this is by.
12. If we need to end your employment, we'll make sure this is done with respect, professionalism and understanding.
13. We can't promise that every day you work here will be enjoyable. But we'll try to make sure that the unpleasant ones are the exception, not the rule
14. We understand that you may have things going on in your life outside work. We'll do our best to support you and, if we can, accommodate them.
15. Above all, we recognise that you are a person too.

I'm conscious that I might be accused of coming up with a 'best practice' list – anathema to many modern-day HR practitioners. But I prefer to see it as a core set of principles – which can be adapted to virtually any business size, structure or sector.

# OVER 80% FULL

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## KEYNOTE SPEAKERS

**Sue Ingram**
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**Darren Newman**
5 Things Everyone Gets Wrong About TUPE

**Adam Harris & Robert Craven**
The Secrets of Productivity for HR Professionals

**Karen Jackson**
Make Love, Not War

## PLUS BONUS SESSIONS FROM HR INNER CIRCLE MEMBERS
(6 minutes each)

**Bernadette Aleksandrowicz**
Five Fabulous Reasonable Adjustments

**Katie White**
What's the Point of HR?

**Helen Astill**
HR with Attitude

# Q&A

DANIEL BARNETT ANSWERS YOUR QUESTIONS

**We recently conducted a very messy grievance process. It involved a ten-page grievance letter with allegations spanning many years, people and issues. How can we make a stressful, paper heavy process easier for managers to deal with?**

Dealing with a complex grievance takes up a huge amount of company time and resource. It often involves allegations of discrimination, or describes a course of conduct which could lead to a constructive dismissal claim.

There are three main ways in which employers go wrong. They don't pick the right people to deal with the grievance. They don't take control of the process. They fail to gain the employee's trust. Failing in any one of these areas can cause things to spiral out of control.

## PICK THE RIGHT PEOPLE FOR THE JOB

In simple grievances, investigations and hearings can be dealt with by line managers or HR. However, in complex grievances, it is important to choose senior managers who are experienced in handling disputes. They also need to have appropriate training. So, in a discrimination grievance, you should choose a manager who has had equal opportunities training and understands the issues.

That is not enough though. You also need someone with a cool head who can deal sensitively with a distressed employee. They need excellent communication skills to extract evidence from other witnesses. They must be methodical, organised and adept at report writing. What you do at this early stage might affect whether this letter turns into a tribunal claim, so it is worth investing your best people.

In some grievances, it might be less disruptive and time consuming to have one manager to investigate the matter and hear the grievance as well. Remember to keep a similarly well qualified but more senior manager on standby for any appeal. If you are going to have different people investigate and hear the grievance (generally not necessary unless you are living in the 1970s or have a collectively-agreed grievance process which requires that), then plan your managerial hierarchy accordingly.

Finally, have a separate note taker at all meetings or – better still – record the meetings (and get them transcribed using rev.com). This will allow your managers to concentrate on the evidence.

## TAKE CONTROL

Good preparation is the key to taking control of a complicated complaint. Decide which company procedure will provide the framework for your grievance process. Often this will be the grievance procedure but sometimes a whistleblowing or equal opportunities policy might provide a more detailed structure.

The next job is to tackle the paperwork. A ten-page letter might seem daunting, but it will often contain more bark than bite. Read it carefully and extract the factual allegations, including details of who was involved and potential witnesses. If the letter refers to or attaches relevant documents, gather them up and put them into a logical order. Put irrelevant documents to one side.

A ten-page letter will thus become a much smaller beast. It is about breaking the employee's complaint down into bite sized chunks and dealing with them methodically. The grievance should then be as easy to deal with as a single complaint, just more time consuming. Make sure that managers have sufficient time to deal with it properly.

### What about old allegations?

It might be tempting to concentrate only on recent allegations and ignore ones which date back years. That's not a wise move. Continuing acts in discrimination and constructive dismissal claims can link events which span a significant time period. In reality, allegations which are several years old may fall down on the evidence. This might be because witnesses have left the business or memories have faded. Don't rule them out though. Let them stand or fall on the evidence.

### Mediation

It's worth considering mediation before starting a formal process. In some cases, an employee may welcome a more informal approach. They may just want the behaviour about which they are complaining to stop. Bear mediation in mind at the initial meeting but also throughout the process. Remember a grievance is about resolution and not every employee is in it for the fight.

## GAIN THE EMPLOYEE'S TRUST

Once you are prepared, arrange to meet with the employee. Take time to create a rapport and explain the process. Assure them you are taking the matter seriously. It is important for the employee to believe matters are being dealt with properly.

This is the employee's first opportunity to explain their complaint and tell you how they want it to be resolved. If you've done your homework, you should be on the front foot and in control. Let them talk but be prepared to manage them. Show them that you understand the issues. Go through the allegations methodically and agree a list. Ask if there is more evidence to collect or witnesses they think you should talk to.

Agree a timescale for the investigation and adjourn the meeting to allow that investigation to take place. If timescales slip, inform the employee to manage their expectations. An employee's trust in an otherwise fair process can be lost by a simple lack of communication.

## RETAINING CONTROL – COMMON STUMBLING BLOCKS

### Additional complaints

Employers sometimes come unstuck when extra complaints are added to an existing grievance. This can happen when employee and accused still work together. You may need to consider moving one of them to prevent further allegations. An assessment of business needs should help you decide who to move. Guard against moving a complainant though. Detrimental treatment linked to raising allegations might result in a victimisation complaint. Talk to the employee, involve them in the decision.

### Investigation

Complex grievances often involve multiple witnesses, conflicting evidence and lots of paper. Things can feel insurmountable unless care is taken to manage and organise the process. Make sure your investigating manager clearly understands the parameters of the investigation and what their report should contain. Is there a standard report format or can they create their own? Should the report give a view on the allegations or do you want recommendations too? Recommendations can be helpful as they guide the focus away from dispute and towards resolution. They might include formal action like a disciplinary process or informal action like mediation.

Your investigating manager should:

- Plan what evidence needs to be collected and gather it quickly;
- Decide who to interview and in what order;
- Create a list of questions for each witness so all relevant information is gathered;
- Keep documents, evidence and notes in an organised filing system;
- Draft short statements for key witnesses.

The key is to manage the evidence, rather than letting the evidence manage you.

### Investigation report

A good report will make the grievance meeting so much easier to manage. It should set out the aims and parameters of the investigation. It should then document the allegations and the evidence for and against each one. The investigator should say what they believe happened on balance in relation to each allegation. Documents or other evidence can be referenced in the report and either attached to the report or contained in a separate file. The more logical and comprehensive the report, the more likely it is that everyone involved in the process will trust its content.

## FACING THE MUSIC

If you have dealt with the previous stages well, the grievance and appeal meetings which follow should be relatively straightforward. The business will be in control. Your employee's expectations will have been managed and they will trust the process. There will be a comprehensive report which details the allegations and explains what happened based on the evidence. The evidence will be ordered and accessible. The business will be in a much better to position to make an informed and fair decision. And hopefully resolve the matter with the employee.

A final word of warning – don't fudge the outcome. Just because something wasn't witnessed doesn't mean it didn't happen. Don't rely on the absence of independent witnesses as a justification for dismissing the grievance – that goes down badly in tribunals. If things have happened that shouldn't have, admit it. You will lose the employee's trust in the process if you don't. Your credibility in any future legal proceedings will also be affected. Identify the action you will take to make sure those things don't happen again. After all, that's what most employees want – an admission that something went wrong and assurances that things will be put right.

## Top tips for managing complex grievances

- **Organisation** – take control of the process from the outset and prepare properly at every stage;
- **Gain the employee's trust** – if they think you are taking it seriously, they are much more likely to trust in the outcome, even if it goes against them;
- **Communication** – create a timeline and keep the employee informed about progress;
- **Transparency** - be prepared to admit mistakes and take steps to address them;
- **Reflection** – consider whether matters should have been picked up earlier by the employee's managers and identify any training needs.

# THE EU (WITHDRAWAL) ACT

## WHAT DOES IT MEAN FOR EMPLOYMENT LAW?

by Colin Leckey
www.lewissilkin.com

**That's it - we're leaving.** You can Remoan all you want to, but last month was a momentous milestone in the history of Brexit with the EU Withdrawal Bill receiving Royal Assent and becoming the European Union (Withdrawal) Act 2018.

As a result of the Act, it is now law that the UK will leave the European Union at 11pm on 29 March 2019, with the *European Communities Act 1972* being repealed. Only fresh legislation could delay or overturn the UK's departure.

What does this all mean from a legal perspective, particularly for employment law? Here are some of the main takeaways:

Under section 2 of the Act, "*EU-derived domestic legislation*" continues to have effect in domestic law on and after "*exit day*" – that is, 29 March 2019. So it's "as you were" for things like TUPE and the *Working Time Regulations*.

Under section 3, "*direct EU legislation*", so far as operative immediately before exit day, will remain part of domestic law on and after that date. This confirms, for instance, that your General Data Protection Regulation compliance programmes were not in vain and you will continue to have to comply with the GDPR.

Section 5 does away with "*the principle of supremacy of EU law*" insofar as it applies to any law passed on or after exit day. However, that principle continues to apply "*so far as relevant to the interpretation, disapplication or quashing of any enactment or rule of law passed or made before exit day*". This means that if there is an inconsistency between an EU directive and UK domestic legislation implementing that directive, you can still argue that it should be resolved in favour of the directive.

But it gets more complicated. Even though the supremacy of EU law principle is abolished, it can continue to apply "*to a modification made on or after exit day of any enactment or rule of law passed or made before exit day if the application of the principle is consistent with the intention of the modification*". This would seem to mean that if, say, the UK rules on collective redundancies in the Trade Union and Labour Relations (Consolidation) Act are amended post-Brexit, it could still be argued that the revised provisions should be interpreted in line with the Collective Redundancies Directive. This is so long as applying the principle of supremacy would be "*consistent with the intention of the modification*" – whatever that means.

Also under section 5, the EU Charter of Fundamental Rights will not be part of UK law from exit day. So arguments over whether Tony Blair's government did or didn't secure an "opt out" from the Charter back in 2007 become so much ancient history. However, "*fundamental rights or*

*principles which exist irrespective of the Charter*" are retained – the upshot being that you can still run human rights arguments based on other sources, most obviously the European Convention on Human Rights and the common law.

Section 6 enacts the long-held Brexiteer dream of escaping the jurisdiction of the European Court of Justice ("ECJ"). Courts and tribunals will not be bound by any principles laid down, or any decisions made, on or after exit day by the ECJ, and cannot refer any matters to it. But this is then qualified by a series of further, rather baffling provisions.

While not being "*bound*", courts and tribunals may "*have regard to*" anything done on or after exit day by the ECJ (and the EU itself) "*so far as it is relevant to any matter before the court or tribunal*". In other words, if the ECJ issues a decision after exit day which is potentially relevant to determining your dispute on discrimination or agency workers, you can still direct the tribunal or court towards it. The word "relevant" replaced the word "appropriate", which appeared in an earlier draft. This was supposedly to avoid courts and tribunals having to make "policy decisions" on whether or not to follow EU law, although "*may have regard to*" still suggests an element of choice.

It is also provided that any questions as to the meaning of any "*retained EU law*" (covering both ECJ case law and any domestic case law based on EU laws) must be decided, provided the law remains unchanged after exit day, "*in accordance with any retained case law and any retained general principles of EU law*" and "*having regard… to the limits immediately before exit day of EU competences*".

And then a "but" to the "but": the Supreme Court is not to be bound by any retained EU case law, and neither is the High Court when sitting as a court of appeal. Nor indeed is any court or tribunal "*bound by any retained domestic case law that it would not otherwise be bound by*". In deciding whether to depart from retained EU case law, the Supreme Court and High Court must "*apply the same test as it would apply in deciding whether to depart from its own case law*". Current Supreme Court guidance allows a decision to be departed from "when it appears right to do so" – this allows plenty of flexibility and surely increases the likelihood of appeals in any cases with an EU law dimension.

After much debate over 'Henry VIII powers', section 7 of the Act limits the ability of ministers to make changes to retained EU laws without further legislation. However, section 8 allows ministers to make regulations to "*prevent, remedy or mitigate any failure of retained EU law to operate effectively, or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU*". For example, if a retained EU law provides for a referral to an EU entity, this would allow ministers to issue regulations providing for a referral to a replacement UK body instead without the need for additional legislation. These powers are time limited, to two years from exit day.

Under Schedule 3, there is to be no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law. In the employment context, this will most obviously affect causes of action based on the general principles of equal treatment and non-discrimination embodied in the EU Treaty. Schedule 4 abolishes any right in domestic law to damages in accordance with the so-called *Francovich* rule – in other words, there will no longer be any right for UK citizens to argue that the UK Government has caused them loss by failing to implement EU law effectively.

What might yet change, in these turbulent political times? Unquestionably, the new Act provides the legislative basis for a "hard Brexit" - if no further laws are passed, that is where we will end up. But what happens if a withdrawal agreement is reached with the EU? (That is definitely an "if" at the moment, rather than "when"…) In this scenario, there is provision for regulations to be made which would make consequential amendments to the Act, perhaps the most obvious of which would be opting back into the jurisdiction of the ECJ - at least in some respects - until the end of a transitional period ending on 31 December 2020. If there is agreement with the EU under Article 50(3) of the EU Treaty that "exit day" should be changed from 29 March 2019, there is power for a minister to lay regulations before Parliament that would vary this.

Much will depend on the Government's proposals on trade and customs relations with the EU, to be set out in more detail in the coming weeks. Future significant dates include: 31 October 2018, by when the Government must make a statement setting out the steps it has taken to seek to negotiate a customs arrangement with the EU; and 21 January 2019, by when the Government must inform the House of Commons if no agreement has been reached with the EU and set out proposals for how it intends to proceed.

We can expect many twists and turns yet. This is a drama that is set to go to the wire, whether businesses and employers like it or not.

# Q&A

DANIEL BARNETT ANSWERS YOUR QUESTIONS

## Are women entitled to be paid a bonus if they are absent on maternity leave at the time the bonus is paid?

Many an employer, and a lawyer, has grappled with this question. It comes down to what the bonus represents, and the basis on which it may be payable to a particular employee in a particular situation. Avoiding a successful claim hinges on the employer having understood and applied some rather challenging principles.

Women on maternity leave retain certain terms and conditions of employment. Remuneration – wages and salary - falls outside this. A payment that is properly classed as 'remuneration' need not be paid to a woman in respect of her Ordinary Maternity Leave (OML) or her Additional Maternity Leave (AML).

This means that a woman on maternity leave can lawfully be paid less during that period of absence than she earned pre-maternity; less than colleagues; and less than she would be earning were she in work and not at home looking after her baby. She may not be entitled to receive a bonus that she would otherwise have had. However, this will largely be determined by the nature of that bonus and, in particular, whether it counts as remuneration and whether it falls to be paid under her contract.

### REMUNERATION

The usual types of bonuses are almost certainly remuneration, especially those that are paid in recognition of work that employees have already done for you. I would only really expect something like a one-off, random payment to be an exception to that general rule. Imagine a situation in which an employer decides to offer a goodwill gesture of £100 to all staff 'just because'. A woman on maternity leave at the time of payment ought not to be left out.

Those types of bonuses are pretty rare. A standard bonus is more likely to be 'remuneration', but if you are in doubt, look at the purpose of the bonus and the way in which it is paid. Factors that point towards it counting as remuneration include:

- its payment through the payroll
- it being subject to tax and NI
- it being put towards the employee's pension contribution.

Certain bonuses therefore ought to fall outside the entitlement of a woman who is on maternity leave. However, it is not quite that simple. The first two weeks after the birth – the Compulsory Maternity Leave (CML) period – are protected and, if she qualifies for a bonus in all other respects, she should be paid her full bonus entitlement for that two-week period.

Another potential complicating factor is that bonus payments usually reward staff for their performance over a period of time. If a woman worked during some of that period, she may have at least partly contributed to the achievements that are being rewarded.

### CONTRACT

If there is a term in the employee's contract providing for a bonus to be paid then, subject to other qualifying requirements being met, a woman on maternity leave is entitled to be paid it *in full* in respect of the time:

- before she started maternity leave;
- when she is on CML; and
- after her statutory maternity leave has ended.

She will not generally be entitled to a contractual, performance-related bonus during her non-CML maternity leave, but it may be unlawful not to pay her a pro-rated amount (see below).

Some contractual bonuses are easily identifiable. However, where a bonus is expressed to be discretionary, there may be some confusion about its status. If

the bonus is purely discretionary, is not remuneration, and is not regulated by the employee's contract, an employer's refusal to pay it - in whole or in part - could give rise to a claim.

An employee might struggle to convince a tribunal on a number of those points, particularly perhaps when it comes to disassociating a discretionary bonus from her contract. The likely counter-argument would be that the discretionary bonus is derived from the contract; if there were no contract, there would be no discretionary bonus. That argument would have even more force where discretion had consistently been exercised in favour of a payment being made.

## THE PRO RATA RULE

One of the biggest issues in the context of bonuses and maternity leave is where a bonus relates to a period of time during *some of which* the employee was absent on maternity leave. Perhaps the bonus recognises her team's performance between January and December, and she had gone on maternity leave in August.

She should be paid a pro-rated amount. It would not only be illogical but also unlawful to refuse to pay a woman a bonus, or a proportion of that bonus, when it relates to work that she has done. The fact that she is on maternity leave at the time the bonus falls due, or that she was on maternity leave even for the majority of the time to which the bonus relates, does not disentitle her to a share.

Following the development of statute, and of some case law – particularly the European Court of Justice's decision in *Lewen v Denda* - the current position is this:

- If the bonus is retroactive pay for work that the employee has carried out, it must be paid to a woman on maternity leave. However, the employer can apply what has become known as the 'Lewen Principle': the bonus payment may be pro-rated to take account of maternity leave absence. The CML period must not count towards her absence for these purposes; she must get her full bonus for those weeks.
- Where the only condition on receiving a bonus is that the employee is in active service at the time payment is due, an employer who fails to pay an employee who is on maternity leave any bonus at all will not breach equal pay rules.
- In some (rare) cases, a bonus might be paid not to reward past work but purely as an incentive for future performance over a particular period. It therefore does not represent 'retroactive pay' and, particularly where eligibility depends on being in active service at the time the bonus is due, it would not need to be paid to an employee who will be on maternity leave for the whole period to which the incentive is intended to apply. In other words, if an employer pays a bonus as a way of encouraging staff to knuckle down for the next six months, an employee who will be on maternity leave for those six months should not be entitled to the bonus. She should, however, be paid a pro-rated amount for any time within those months that she does actually work. That is in line with the Advocate General's opinion in the *Lewen* case.

In essence, the *Lewen* Principle enables employers to pay a bonus that reflects a new or expectant mother's contribution at work. Despite that sounding inherently fair, an employee might want more; she might argue that you ought not to have reduced her bonus entitlement at all. In that situation, you would need to show the basis on which the reduced payment was calculated (keep good notes) and how that payment discharged your legal duties.

The possibility of that type of argument being raised by an employee means that you should address your mind to the issues around bonus/maternity long before making the payments. It would therefore be worthwhile ensuring that your managers and others involved in issuing bonuses are up to speed on the types of issues that could come into play. One aspect of this would be carefully considering whether or not any of your qualifying criteria for receiving a bonus ought to be adjusted to take account of a woman's maternity leave. If her absence from work has prevented her from hitting a particular target, or achieving a certain goal, the situation might call for a revaluation of the bonus threshold.

An employee's entitlement to a full or partial bonus during her maternity leave will rarely be a foregone conclusion. It is a subject that is nuanced and therefore open to legal arguments on both sides.

Being clear and upfront with employees is a good starting point for employers. A maternity policy and bonus policy that set out your position on payments should help avoid problems. Get to grips with the bonuses you pay and why you pay them, each time asking yourself what exactly the bonus is rewarding, and how that fits with this particular employee. Be clear about whether certain bonus payments are contractual or not and (in your own mind, at least) whether they amount to 'remuneration'. Include in your policies wording that spells out the circumstances in which bonus payments may be pro-rated, and how that will be done.

Finally, send a message to those in charge of allocating bonuses that the more objective they can make their decisions, the better. Denying an employee a full or partial bonus for the wrong reasons (however conscious or sub-conscious the elements of that decision-making process may have been) will inevitably have consequences.

# REDUCING UK HOLIDAY PAY PRINCIPLES TO INDIVIDUAL CONTRACT TERMS

Here is a new case which you think initially might be quite helpful on the calculation of holiday pay, but which then suddenly veers off into the contractual undergrowth, and actually isn't. However, what it does do is administer a sharp lesson about the wisdom of trying to incorporate broad principles into individual employment contracts.

by David Whincup
Squire Patton Boggs

In *Flowers – v – East of England Ambulance Trust* the EAT had to consider whether voluntary overtime should be included in the calculation of holiday pay, i.e. overtime which the employer was not obliged to offer and the employee was under no obligation to do. It had to consider this from two perspectives, the underlying Working Time Directive requirement and the terms of the relevant employment contract. These stated:

*"Pay during annual leave will include regularly paid supplements including…. payments for work outside normal working hours….Pay is calculated on the basis of what the individual would have received had he/she been at work. This would be based on the previous three months at work…"*

Unsurprisingly, the EAT found as a point of principle that voluntary overtime should be included in the calculation of holiday pay if it had been paid over a period of time sufficient for it to become "normal" for Working Time Directive purposes or "regularly paid" as referred to in the employment contract of the staff concerned. This was "a question of fact and degree", said the EAT, little assisted by the obvious but not immediately helpful comment from *Bear Scotland* in 2015 that "normal pay is that which is normally received".

This is hopeless stuff for employers. Except at either extreme of voluntary overtime working (all the time or almost never), who knows whether they are in or out, whether that position varies with each employee or with varying working patterns over the course of a year, or even whether two Tribunals considering the same patterns on the margins could reach different decisions, each equally unappealable?

So now, that principle established, the question will go back to the Employment Tribunal for an assessment of whether the voluntary overtime of each of Mr Flowers and his colleagues was actually "regularly paid" within the meaning of that contract clause. Even then, there may still be a tension between the remaining parts of that clause – what the individual would have received had he/she been at work is not necessarily the same figure as his/her average over the preceding three months. It may be so where there is little fluctuation in demand for overtime working (perhaps in an Ambulance Trust, I don't know), but in workplaces affected by seasonal considerations or peaks and troughs in customer demands, certainly not.

If you apply the three months backwards average in those cases you can come up with some very odd results. Someone who takes holiday when a busy period slackens off will receive credit for overtime which he would not have carried out if he had been at work over the period of his leave. By contrast, someone who takes times off just as it gets busy will see no credit for the voluntary overtime he/she undoubtedly lost out on by going on holiday.

In *Flowers* the EAT decided that the appropriate test was the three month back-average and not the more legally appropriate but possibly harder-to-determine what the employee would have earned if he/she had not been on leave. The effect of that last sentence in the contract term was therefore to take away from the relevant employees the burden of showing that they had actually suffered any loss by going on leave. Instead the assessment of their pay was converted into a simple formula. This makes for easier administration, yes, but since you can't contract out of the *Working Time Directive*, it remains to be seen if that arrangement would withstand a challenge from our second class of employee above, i.e. someone who would have earned more if at work than that formula would provide. Other than by rolling over altogether and including allowance for all overtime, however sporadic, any attempt to convert principles into formulae will always carry that risk.

# ARE YOU MAKING FULL USE OF THE HR INNER CIRCLE?

1. Visit our secret Facebook group for members every day to post your HR questions and see what the rest of the Inner Circle are doing. If you don't have access, email us and we'll get you set up.

2. If you've been a member of the Inner Circle for more than six months, you get one complimentary 1:1 telephone consultation with Daniel each year. Email 999@hrinnercircle.co.uk for your 1:1 consultation, worth £400+VAT.

3. Keep up to date with the monthly CDs. If you'd like to have them on mp3 rather than (or as well as) CD, just email us.

4. Make sure you claim your discounts on attending any of Daniel's seminars or buying his products — plus get substantial discounts when engaging Daniel for tribunal representation or advice in high-profile, high-value or complex employment disputes.

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6. Access all our back content since 2015 on the members' only area of our website (launching September 2018).

7. Come to the Annual Conference on 1 October 2018.

To contact us about Q&As, the Facebook group or anything else, please email

jennie.hargrove@hrinnercircle.co.uk

HR PROFESSIONAL OF THE MONTH

# HELEN ASTILL

**Managing Director, Cherington HR Ltd**

**WHAT IS YOUR BIGGEST CAREER SUCCESS?**

Managing the people aspects of a huge change management project for the UK Atomic Energy Authority so that the JET fusion research facility at Culham continued to function in 2000 following some serious political, legal and financial issues.

**WHAT'S THE BIGGEST CHALLENGE FACING HR PRACTITIONERS AT THE MOMENT, AND HOW WOULD YOU SOLVE IT?**

Cybersecurity – we have spent a lot of time persuading our clients that they need to implement changes to meet the requirements of GDPR but finding the time to implement the requirements ourselves is not easy. We need to think of ourselves as clients and book time to tackle it.

**WHAT WAS YOUR WORST DAY AS AN HR PROFESSIONAL?**

Dealing with my first experience of death in service of an employee. His wife took out all her anger with the world on me, as I tried to help her by sorting out his last salary payment.

**WHAT IS HARDEST TO DEAL WITH IN YOUR JOB?**

Helping employee and employer rebuild a working relationship after a grievance if it hasn't been resolved in the way the employee wanted. It is often a clash of logic and emotion.

**IF YOU COULD CHANGE ONE ASPECT OF EMPLOYMENT LAW, WHAT WOULD IT BE?**

The convoluted rules around shared parental leave are difficult to interpret and to apply. I think they need to be made much, much simpler.

**WHAT IS YOUR MAIN GOAL FOR THE NEXT 12 MONTHS?**

To survive and grow the business further. Cherington HR is now 12 years old and has been nominated for several awards by the local Chamber of Commerce. This includes the category for Excellence in Professional Services. I want to build on that recognition.

**IF YOU WEREN'T IN HR, WHAT WOULD YOUR IDEAL CAREER BE?**

I really enjoy the investigation aspect of the work, so I think I'd be a detective or a psychologist.

**WHO IS YOUR HERO, AND WHY?**

My Dad, because of the care and love he has shown my Mum over the last few years while she has been very poorly. He has even learned to cook!

**WHAT WOULD YOU SAY TO SOMEONE THINKING OF JOINING THE HR INNER CIRCLE?**

I like being able to use the HR Inner Circle Facebook group to ask other members for a second opinion, or for ideas when I get stuck with solving a tricky situation. There's usually someone who has come across the situation before so that aspect is very useful.

**Secret talent:**
Keen (but amateur) sailor!

**Favourite box-set:**
Any Nordic mystery/ murder series

**Favourite book:**
An Instance of the Fingerpost by Iain Pears

**Favourite film:**
The Blues Brothers

**Favourite website:**
www.navionics.com (boat navigation charts)