

The newsletter of the Healthcare People Management Association

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Deborah O'Dea
President

Alex O'Grady
Executive Director

Hannah Barnett
HPMA Administrator

HPMA head office
Gothic House, 3 The Green
Richmond TW9 1PL
Tel: 020 8334 4530
Fax: 020 8334 4531
Email: admin@hpma.org.uk

Proud!

HPMA and NHS Partners Excellence in HRM Awards 2007

Recipient of the very first President's Award for outstanding contribution to the HR profession in healthcare, Tracy Myhill, shares her experiences of the HPMA and NHS Partners Excellence in HRM Awards 2007.



Tracy Myhill receives a standing ovation.

What can I say? Being awarded the HPMA President's award for outstanding contribution to healthcare HR management was one of the most amazing surprises and greatest shocks I have ever experienced.

I truly had no idea that this was going to happen. For a very long time my trust - Gwent Healthcare - has achieved success in the annual HPMA Awards and this year we were surpassed by the exceptional winners we saw on the night. Despite the fact that we weren't winning anything I was keen to attend the awards ceremony to support the winners and to cheer very loudly for the Welsh organisations, Bro Morgannwg NHS Trust and the National Leadership and Innovation Agency for Healthcare (NLIAH), making it to the evening.

I nearly didn't make it to the awards as my father is awaiting by-pass surgery and my chairman had called a special Board meeting which clashed with the conference date.

My Chief Executive Martin Turner strongly encouraged me to go to the conference saying that the Board would survive without me for a day! Little did I know that he knew what was going to happen and that he had actually contributed to the write up saying some very positive things

about me. The same goes for my chairman, Brian Willott. Seeing this in print and being circulated to 100's of people was overwhelming.

The awards evening was fantastic and it was great to see the variety of winners and obvious delight on the faces of those making it to the stage.

When Deborah O'Dea explained the new President's Award and started to describe the person who would receive it I was impressed! It was obviously a woman as she had said 'she' and I said to people next to me 'she sounds like a 'top woman' with great qualities', I could relate to this woman!

Imagine the shock when she called out my name!! Within seconds there was a standing ovation and it felt like a mixture of winning the Oscars and the X Factor final - when you hadn't even entered! No time to check the hair and lipstick, straight onto the stage to receive the award amidst flashing photography and film recording. This was accompanied by millions of smiling faces and congratulations from colleagues both new and old.

Watching the filming at the start of the conference the following day brought tears to my eyes.

My children wanted to know if I had been on the 'tele', my partner had left me a congratulations card and gift in the bottom of my case which I received when I returned to my hotel room that night, my parents have sent the write-up to relatives all over the world and to their local newspaper - the *Rhondda Leader*. The award was posted on the Trust intranet the following day and I received text after text of congratulations. Old school friends I have not seen for ages sent me texts of congratulations too - 'a valley's girl come good!' Friends bought me champagne, flowers were delivered to me at work, my e-mail inbox was full of warm wishes and letters were

received too. The Director of HR NHS Wales Ian Stead copied his congratulatory letter to the Director of NHS Wales and the Minister. All these people congratulating Tracy Myhill just didn't seem real.

So you can see, and feel I hope, what a fantastic experience this has been for me - thanks very much to Deborah O'Dea for choosing me, I am eternally grateful.

This award is great for me personally but could never have been achieved by me alone. My Chief Executive has and continues to provide me and all our execs with never ending opportunities to broaden our roles and contribution. He encourages execs to share their agenda to bring fresh perspectives, enhance team working, and continuously develop individuals. This is a model of leadership that brings significant benefits and is one I would strongly encourage.

My HR team is fab-they work very very hard and deliver for me to extra-ordinary lengths. The recent success achieved as Lead Director for Service Improvement and Cost Reduction was enabled by the Finance Director, Andrew Cottom, demonstrating strong leadership in allowing me to lead a significant part of his agenda. At home my partner is always there supporting me to achieve.

The role of the HR function in Service

Improvement and Cost Reduction in Gwent is unique in Wales and possibly the UK and has enabled the HR function to be 'centre-stage' in supporting the Trust to deliver its priorities. It has also resulted in a new relationship between the finance and HR functions with both working as one to deliver significant cultural change and bring about sustainable improvements in service delivery and efficiency throughout the organisation. I would urge HR people to get closer to finance colleagues; it is amazing what can be achieved by working more closely together.

In relation to our Service Improvement and Cost Reduction progress it is fair to say that we are on a journey and whilst we over achieved against our plan last year and have identified a further £12m to add to it this year, the challenges ahead are equally demanding.

The changes we have made I believe have put the organisation in a much better place to continue the improvement and meet the challenges that lie ahead.

My thanks to everyone who has contributed to my achieving this award- it could not have happened without you!!

Tracy Myhill

Personnel Director, Gwent Healthcare NHS Trust



Kwame Kwei-Armah, Awards host.



Overall winner, West London Mental Health NHS Trust.



HR team of the year, Heads of business at Barts & the London NHS Trust.



Guests from Central & NW London MH NHS Trust.

NHS Partner and HPMA Excellence in HRM Awards winners 2007

OVERALL WINNER

Sponsored by Barkers

West London Mental Health NHS Trust: Cultural competency toolkit

HR team of the year

Sponsored by Department of Health England, Welsh Assembly Government, Scottish Executive and the Department of Health, Social Services and Public Safety in Northern Ireland

WINNER

Human resources: Heads of business at Barts & the London NHS Trust

COMMENDED

Organisational development function at Royal Liverpool Children's NHS Trust

Organisational development department at East Lancashire Hospitals NHS Trust

FINALISTS

Care and responsibility instructors at Down Lisburn Health & Social Services Trust

HR directorate at Knowsley Health & Social Care

HR management team at Papworth Hospital NHS Foundation Trust

President's award for outstanding contribution to the HR profession in healthcare

WINNER

Tracy Myhill

Supporting medical staff

Sponsored by Elsevier Healthcare and The Lancet

WINNER

Central & NW London MH NHS Trust: Brent relapse prevention project

RUNNER-UP

National Leadership and Innovation Agency for Healthcare: Care to lead

HIGHLY COMMENDED

University Hospital of North Staffs NHS Trust: Care based team working

Diversity and equality

Sponsored by Beachcroft LLP

CATEGORY WINNER

West London Mental Health NHS Trust: Cultural competency toolkit

RUNNER-UP

Barts & The London NHS Trust: Action for community employment

HIGHLY COMMENDED

St Mary's NHS Trust: Faith at work

Improving staff morale

Sponsored by UNISON

WINNER

South Tees Hospitals NHS Trust: Righting the ship!

RUNNER-UP

The Medway NHS Trust: Let's get engaged

HIGHLY COMMENDED

Bro Morgannwg NHS Trust: Principles and practices of health care delivery

Recruitment and retention

Sponsored by HPMA and NHS Partners

WINNER

Surrey Borders Partnership NHS Trust: Server user focus group

RUNNER-UP

The Princess Alexandra Hospital NHS Trust: Harlow pre-employment project for healthcare assistants

HIGHLY COMMENDED

Knowsley Primary Care Trust: Developing a newly qualified physiotherapy talent pool

Innovation in HR

Sponsored by Capsticks

WINNER

Barts & The London NHS Trust: HR Consult

RUNNER-UP

South and East Belfast Health and Social Services Trust: E-learning for KSF

HIGHLY COMMENDED

The Medway NHS Trust: Nurse talent pool - using NOT losing our newly registered nurses

Organisational development and learning

Sponsored by goodpractice.net

WINNER

Royal Liverpool Children's NHS Trust: Breaking down the barrier

RUNNER-UP

Heart of England NHS Foundation Trust: Moving forward together

HIGHLY COMMENDED

Sandwell Mental Health NHS & Social Care Trust: A strategic approach to leadership & management development

Best management practice in tackling workplace stress

Sponsored by the Health & Safety Executive

WINNER

Portsmouth City PCT: Wellness Focus Group Initiative (WFGI)

RUNNER-UP

Heart of Birmingham Teaching PCT: Stress management

HIGHLY COMMENDED

National Leadership and Innovation Agency for Healthcare (NLIAC): Top leaders development centre

Effective recruitment advertising

Sponsored by Elsevier Healthcare & Hospital Doctor

WINNER

The writing's on the wall Tribal Resourcing with Swindon PCT

RUNNER UP

For us, it's exciting. For you, it's illuminating Euro RSCG Riley with West London Mental Health NHS Trust

HIGHLY COMMENDED

Milton Keynes Council and MK PCT Assistant Director Inclusion and Head of Inclusion Tribal Resourcing with Milton Keynes PCT



HPMA and NHS Partners Excellence in HRM Awards



nhs:partners
HR solutions in health and social care

For a pdf copy of the 2007 awards compendium visit the HPMA website www.hpma.org.uk/html/excellence.php

For more pictures of the awards ceremony and conference visit our flickr site www.flickr.com/photos/hpma



Recruitment and retention winner, Surrey Borders Partnership NHS Trust.



Improving staff morale winner, South Tees Hospitals NHS Trust.



Organisational development and learning winner, Royal Liverpool Children's NHS Trust.



Best management practice in tackling workplace stress winner, Portsmouth City PCT.



HPMA UK Conference



Feedback from some attendees at this year's HPMA UK Conference

First impressions

Attending the HPMA conference held at the Oval in London on 7 and 8 June was very much a first for me; my first conference and my first HPMA conference and as such, I did not know what to expect!

Being able to participate in the 'Your Branch Needs You' HR and NHS themed quiz and games competition on day one was great fun and gave me the opportunity to network and meet colleagues from other London NHS organisations. The speakers' sessions were all interesting and I particularly enjoyed the presentation from Clare Chapman,

Director General of Workforce for the DoH on Winning for Patients and Staff. Greg Aitken's presentation on RBS's organisational strategy for achieving success through people left a lasting impression of the staggering financial impact of staff turnover on an organisation and the importance of keeping staff motivated, engaged and retained.

Overall, it was a very comprehensive programme in a great venue. As a newly initiated delegate I would recommend the next conference to anyone as a great learning experience.

Melanie Woolf, UCLH

Proud trainee refreshed



As I am fast approaching the end of my time on the NHS HR Management training scheme, it seemed a fitting conclusion to attend the HPMA Conference. The theme of the event was 'pride', and I certainly felt proud to be a part of HR in the NHS and to learn about the excellent work being undertaken by HR professionals across healthcare, government and the private sector. The presentation from Greig Aitken (RBS Group) was outstanding, giving a suitably refreshing view of how HR can take a lead in aligning people and business strategies. The two days were packed with informative speakers, challenging questions and interaction which proved to be a recipe for success; I look forward to next year!

Jenni Andrews, HR Management Trainee

Julia Tybura from Zenon Consulting challenged the branches in the your branch needs you competition



Zenon Consulting asked Branch teams to put their 'blue sky thinking hats' on and identify what unforeseen change in the world will bring the biggest opportunity for HR in the UK health sector in 2017.

Half the teams presented their ideas to us - which included the integration of alien beings on earth as part of breaking down the social barriers across the universe, having health care provision on the moon, the impact of the environment on how we will be living in 2017 and the abolition of the NHS as it is today.

Immense bureaucracy remained, unfortunately, but one team cheered us up with their premonition of all NHS Chief Executives dying of bird flu at the NHS Confederation Conference 2017 and all HR Directors taking over as leaders...

If you would like help in creatively managing your HOT people issues, give Julia a call on 020 7921 0577 or email her at juliatybura@zenonconsulting.com



Conference delegates.



HPMA President Deborah O'Dea.



Busy participants at the exhibition.



Health Select Committee debate.



Clare Chapman, Director of Workforce, DoH England.



Greig Aitken, Head of Human Capital Strategy, RBS Group.

A big thank you to ICS Computing for sponsoring this year's HPMA Conference Travel Fund which subsidised travel costs for members in Northern Ireland and Scotland. For further information on ICS Computing contact Trish Whitham on 01635 580802 or trish.whitham@icscomputing.co.uk or download case studies at www.icscomputing.co.uk



Homeworking

**CONSULT
GEE**

**NHS
Human Resources**

Visit us at stand 17 at this year's HPMA UK Conference for a demonstration or email robert.head@thomson.com for more information.

Increasingly employers are willing to consider homeworking for employees on an as and when required flexible basis. Whilst some requests for homeworking are made under the remit of the flexible working provisions laid down in the Employment Rights Act and subsequently are subject to the statutory procedure for consideration - it is becoming increasingly common for employers to make informal arrangements made on the basis of sound business principles i.e. if the employee has full access to the internet and can make use of a virtual private network then it can be beneficial to allow a homeworking day on an occasional basis. The lack of travel time and workplace interruptions can often lead to far greater productivity from employees. However, I have detailed below a checklist of matters which employers have a statutory duty to consider, reach decisions upon and document in relation to homeworking employees;

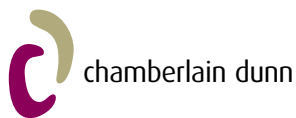
- Health and Safety - all of the legislation relating to office based staff applies in the home base and employers have a right to access employees' homes in order to ensure compliance.
- Smoking Ban - employees must comply with the legislation which comes into effect on 1 July 2007.
- Insurance - if the employee is using your equipment in their home decisions need to be made about duties and liabilities in relation to security of equipment in the home and liabilities should equipment be damaged, lost or stolen.

- Confidentiality - employees accessing confidential employer records and computerised files from home must ensure that other users including visitors and other members of the household cannot access confidential information.
- Performance management - employees without supervision need even better lines of communication with those responsible for agreeing work objectives, deadlines and measures of success in a role.
- Learning and development - employers must establish clear rules regarding workplace training.
- When things go wrong - employers need to agree with the employee that if the arrangement does not work that they may be required to terminate the arrangement and return to the workplace full time.

None of this negates the benefits of homeworking in terms of increased productivity and the retention of key employees who without this benefit may look for jobs elsewhere. I would not underestimate the power of homeworking as a retention method - the employee who is able to take their children to school and be at their desk working by 9am is often one of your most productive and satisfied employees!

Sharon Gregory, www.sgtd.co.uk for Consult GEE NHS

How many more midwives do we need?



The midwifery workforce has largely stayed outside the boom and bust style of workforce planning that, according to the Commons Health Select Committee, characterises most of the NHS. But as Dame Karlene Davis, RCM general secretary, put it recently: 'Midwifery always seems to be last in line for funds and first in line for cuts.'

Our latest *Employing Nurses & Midwives* report focuses wholly on the midwifery workforce, covering training numbers, skill mix, the Government's new strategy Maternity Matters and safety of services. The centre piece by Professor James Buchan examines just how short of midwives we are, pointing out that from 1997 to 2006 the actual growth in registered midwives working in the NHS in England was only 809 whole time equivalents.

He contrasts this with the rapid growth in the numbers of nurses employed in the NHS. He comments: '...the golden years of plenty are over and any additional staffing growth will be within an increasingly constrained funding envelope. Not what could be called a good scenario for those arguing for big increases in the numbers of midwives.'

To sign up for regular free news updates and for subscription details of all our healthcare employment reports go to www.health-workforce.com Each report is now available for purchase separately at £19.95.

Alison Dunn
Editor in chief, Chamberlain Dunn employment reports

Passing it on

Dear Ali,

As another request from a fellow trainee for 'anybody with a good policy on...' pops into my inbox I wonder whether too much time is being spent reinventing the wheel in HR departments.

This may be a naive question but that is where your help comes in!

At times I have been struck by the lack of knowledge being shared across HR departments. The repeated requests for policies (myself included) or, for example, queries about how to use NHS Jobs for recruiting medical staff having already seen it in action months ago made me acutely aware of this. How many HR departments are currently spending time updating the same policies?

Is it inconceivable to imagine a single policy for Managing Change, Managing Absence, etc being issued across the whole of the NHS? There are certainly resources available to help all of us and share good practice, and we have our own networks that are invaluable but are these the best techniques we have?

I can already see the difficulties and arguments against - the difficulty in gaining a consensus for example. The fact this would take away the ability of each Trust to differentiate themselves through including their own innovative and valuable ideas. However, in light of the current drive for improved efficiency and productivity in the NHS as a whole is this the most effective use of our time?

I would be interested to hear where you stand on this, and if you could help me gain a better picture of what the key issues are regarding the sharing of resources, knowledge and experiences across all of the HR departments within the NHS. I look forward to hearing from you,

Regards

Bill Davies, HR Project Officer, NHS HR Management Trainee, Westminster Primary Care Trust

Dear Bill

Of course you are right... but, in my view, only to a point.

There is no doubt that someone somewhere has got that 'perfect' policy... or have they? I do agree that standardising the employment policy framework could save a lot of time and effort. Reducing costs on lawyers, auditors and others there to assist us could probably save even more.

However, we also have to be aware of context and culture and how rapidly it changes.

Perhaps it is possible to get one disciplinary policy appropriate to all PCTs or acute Trusts for example? I suspect however that the nuances of organisational culture could be lost. For example, if someone does something wrong, they could face a range of responses depending on the culture in place in their organisation - despite the rules (policy) being seemingly the same. It all depends on what you want to get out of a situation, what message you want to send and whether you wish to make a point or an example of someone.

So yes, let's try and get more common policy structures which ensure that all the key points are covered in a legally sound but pragmatic way, but allow enough room in the narrative for leadership teams to set the culture they wish to see.

Could this be something that we actually pick up and run with... or... a project for next years trainees... or... simply a juicy dissertation...!

Best wishes

Ali Mohammed, Director of Human Resources, The Medway NHS Trust



Bill Davies, HR management trainee, Sydney, Australia.



Ali Mohammed, reigning HR Director of the Year.

Are your HPMA colleagues getting eNetwork?

If you or any of your colleagues have experienced problems downloading, viewing or receiving the latest issues of the electronic newsletter please email

Lauren@chamberdunn.co.uk
at Chamberlain Dunn Associates.

BRANCH MEETINGS

Meetings at branch level take place usually on a bi-monthly or quarterly basis. They typically include speakers, presentations, social gatherings, workshops or educational activity and many branches run regular employment law updates.

Contact HPMA administrator Hannah Barnett on 020 8334 4530 or admin@hpm.org.uk for details on your local branch.

“On or off the record” - the without prejudice rule

MILLS
— & —
REEVE

The without prejudice rule, otherwise known as litigation privilege, is an essential tool for resolving all types of disputes, because if it applies nothing that is said or written in the negotiation process can be referred to if the dispute reaches court, unless both parties agree. Concessions and admissions can therefore be made which might help settlement which a party might not otherwise make. But to what extent does this apply to negotiations conducted between employer and employee, typically in an attempt to reach agreement on a settlement package as an alternative to dismissal? This has recently been considered by the Court of Appeal in two cases; Framlington Group Limited and Axa Framlington Group Limited v Barnettson and Brunel University & another v Vaseghi & Webster.

The most obvious point to make is that there must be a genuine dispute. That point was illustrated in a case involving a senior banking executive, Ms Mezzotero, who raised a grievance about her treatment following her return from maternity leave. Rather than address the issues raised the bank suggested at the grievance meeting that she leave in return for a “redundancy package”. The Employment Appeal Tribunal ruled that

Ms Mezzotero could use what the bank had said to her as evidence in support of the claim she subsequently brought for sex discrimination, despite the fact that the bank had told her that it was making the offer on a without prejudice basis.

The main reason for the EAT’s conclusion was that at the time the offer was made the parties were not in dispute, though the EAT’s obvious distaste for the bank’s behaviour may have influenced it too. But the fact that the offer was made a considerable time before proceedings were issued was not a

problem. A recent Court of Appeal decision involving another employee in the City, this time at a leading fund management company, confirms that if there is a dispute which the parties are trying to resolve, the protection of the rule is not lost even though negotiations take place months or even years before proceedings are issued.

Another recent Court of Appeal decision, this time involving a university academic, illustrates another limitation of the rule: the protection of the rule can be lost or “waived” if what has been said is “opened” by one party, and the other party does not object. In that case this happened when what was said in negotiations leading to the settlement of a discrimination claim against the university was referred to by both sides in grievance proceedings about a subsequent victimisation claim.

These cases illustrate that the timing of without prejudice negotiations must be considered carefully. While there is no problem in initiating discussions before the contract of employment is terminated, an employer should make sure that the negotiations are about resolving a genuine dispute. For that reason, it is probably better to conduct the negotiations in parallel with the formal grievance or disciplinary process, particularly given the employer’s obligations under the statutory dispute resolution procedures. In addition, the temptation to refer to the negotiations in normal dealings with the employee, however strong, must be resisted unless the employer is prepared for all that has been said to be revealed to the court.

Stuart Craig
Associate, for Mills & Reeve LLP

HPMA is the only professional association designed for you and your HR team

We are the professional voice of HR in healthcare. Our purpose is to maintain and develop the people management contribution to healthcare in the UK.

If you or your organisation are not currently HPMA members but you would like to learn more about the benefits of membership, visit www.hpma.org.uk/html/how_to_join.php and download a membership form or call Lauren Crawford on 020 8334 4530 for further details.

Ask the experts

The HPMA has introduced a new feature into *Network*; Ask the Experts. This will give our membership the opportunity to pose any HR and legal questions to health sector employment specialists at Beachcroft LLP and our panel of HR professionals.

If you have any questions you would like to pose to the experts whether they be about legal issues such as restructuring, organisational issues or even careers advice please e-mail lauren@chamberdunn.co.uk or rheenan@beachcroft.co.uk. These questions will be responded to in *Network* and on the HPMA website on an anonymous basis.

QUESTION: I've read about the Government's recent proposals on discrimination law? What is involved?

Rachael Heenan, Health Employment Partner at Beachcroft LLP replies:

The Government finally published its Discrimination Law Review on 12th June. It entails the most extensive review of equality law in Britain for over 30 years. The long wait has led to high expectations, but whether those expectations will be met is already the subject of debate, with some expressions of disappointment at the scope of the government's proposals.

The review consists principally of a lengthy and wide ranging consultation document on proposed changes to the law. Of the many issues raised, what is likely to be of most significance for employers and their staff? At this stage it is rather difficult to tell - there are many more questions raised than there are answers provided.

Running to 189 pages the document is split into three parts, dealing with:

- harmonising and simplifying the law;
- making more effective law, through a Single Equality Act; and
- modernising the law in the process.

The issues for consultation include the technical and difficult issue of whether and how definitions and tests under discrimination law should be revised. For example, should there be a single definition of disability discrimination and a single objective justification test for all strands of discrimination law? The answer to these questions might seem obvious (yes). But achieving these apparently simple changes will not be as straightforward as it first appears.

The paper also raises questions about a harmonised approach to discrimination in the provision of goods, facilities and services and about how to how to simplify equal pay legislation or make it easier to work in practice - a key issue, particularly for the public sector.

It is difficult to predict what the Single Equality Act will encompass, when it is finally produced. At the very least it should tackle issues such as how direct discrimination is defined and how comparators are used in assessing less favourable treatment and consistency in how and when discrimination may be justified and what exceptions should be allowed.

The consultation paper is accompanied by a response form which poses no less than 85 questions. Those who have the patience to pick through what is pertinent, and to answer those questions of most interest and relevance to their organisations, may influence the shape of the legislation to come. This is only the first stage in what will inevitably be a lengthy and difficult process in simplifying the law, without diluting it.

If you have any queries arising out of this issue, please contact **Rachael Heenan** on 0113 251 4714 or rheenan@beachcroft.co.uk.

beachcroft

DATES FOR YOUR DIARY

- **NHS Employers annual conference and exhibition 2007**
Leading workforce thinking
9-11 October ICC, Birmingham www.nhsemployers.org/2007
- **ESR Benefits Realisation events** Bristol (17 July), Birmingham (18 July), London (14 September), Bolton (3 October) & York (5 October)

See www.hpma.org.uk for latest association event details.

In the news:

Personnel today

The NHS is targeting teenagers with the launch of a new careers website this week. www.stepintothens.nhs.uk is designed to inform 14-19 year olds about the breadth of jobs in the NHS - anything from clinical psychologists or paediatric nurses to electricians and dietitians.

It also wants young people to think about ways in which their talents and skills could have a positive impact on the future of the NHS.

The NHS is increasingly competing with other large employers for new recruits. The new website marks the first time it has produced a service aimed specifically at engaging young people.

Foluke Ajayi, head of NHS Careers, the information service for careers in the health service, said: "When the original NHS Careers service launched in 1999, the focus was on increasing the numbers of people entering nurse training.

"But we are working in a very different environment today, and we're in tough competition with other large employers. Step into the NHS is not about filling training places or vacancies now; instead we are focusing on maintaining the quality and quantity of the NHS workforce far into the future."

The site also includes an interactive 'career mapper', to find out which specific careers would suit their individual skills the best, and short films featuring real NHS staff.

The NHS must provide more flexible working as the service continues to attract more female doctors, the British Medical Association (BMA) has said.

A group of 435 doctors who graduated from UK medical schools in 2006 will be surveyed by the BMA for the next 10 years. Almost three in five (58%) are female, compared with 51% in 1995, when the BMA launched a similar study of medical graduates.

The survey found that one in five female doctors anticipated working part-time for the majority of

their career, compared with just one in 25 men.

Almost half said they wanted to train less than full-time at some point, compared with 15% of men.

Two-thirds of all the doctors surveyed expected to take a career break at some point.

Dr Jo Hilborne, chairman of the BMA Junior Doctors Committee, said: "The medical workforce is changing rapidly and the NHS needs to wake up to the needs of its staff. It's not just the fact that more and more women are entering medicine - all staff should have the right to work-life balance."

The House of Commons Public Accounts Committee has accused government departments of forking out nearly £3bn annually for external consultants without monitoring their effectiveness.

A report by the committee said departments were appointing consultants before checking whether their own in-house staff had the skills to do the job. It added that departments and the Office of Government Commerce (OGC) did not know how much was being spent on consultancy and therefore could not assess whether the benefits justified the cost.

Committee chairman Edward Leigh said central government alone was paying nearly £2bn a year for consultants.

"It is impossible to believe that the public are receiving anything like full value for money from this expenditure. In fact, a good proportion of it looks like sheer profligacy," he said.

"Departments routinely do not agree with the consultants any measurable benefits to be expected from the contracts. And consultants are often paid simply on the basis of the amount of time worked and not on what the work has achieved," he added.

Leigh said efficiency savings of more than £500m a year were possible.

"Departments must become commercially much sharper in procuring consultants and in drawing up fixed price contracts or ones containing incentives for achieving the desired outputs."

In the past three years public sector spending on consultants has risen by one third, from £2.1bn in 2003-04 to £2.8bn in 2005-06, largely due to increases in spending by the NHS.

Caselaw and legislation developments

This week there is a summary of recent caselaw and legislation developments, which are likely to impact upon healthcare organisations in particular.

Workers or employees?

There has been a raft of cases recently where the Tribunals have had to consider the status of agency workers in the triangular relationship of agency/worker/end-user. Trying to reach a definitive view has proved difficult, but some comfort can be gained from the helpful guidance recently provided by the EAT in the case of *Astbury v Gist*.

The EAT stated that, when analysing the true nature of the relationship:

- The requirement for a contract of employment to be based upon the fundamental bedrock of mutuality of obligation and control still remains;
- The worker may have a contract with (1) the end-user, (2) the agency, or (3) the agency and the end-user jointly exercising the functions of an employer;
- The Tribunal must consider whether there is an implied contract between the worker and the end-user;
- The Tribunal must consider the facts of the situation to establish what has happened in practice before moving onto the legal analysis of situations.

Given that the status of the worker will denote what level of employment law protection is afforded to the individual, and who is responsible for employment-related liabilities, it is important that clear arrangements are in place with agencies.

Action: review existing contracts with employment agencies and try to ensure that your organisation is indemnified by the agency for any employment-related claims brought by the agency worker.

Procedural Unfairness

Traditionally, compensation in unfair dismissal cases could be reduced by a percentage to reflect the fact that, despite any procedural defects rendering the dismissal unfair, the employee was likely to have been dismissed in any event. Recently, the law changed so that, providing certain minimum statutory procedures were followed, a dismissal could still be fair despite a procedural irregularity.

Useful guidance has now been provided in the recent case of *Software 2000 Ltd v Andrews* which describes four possible scenarios:

- The dismissal is fair if the employer can satisfy the tribunal that, on the balance of probabilities (ie more than 50%), the employee would have been dismissed notwithstanding the procedural irregularity;

- If there was a less than 50% chance of dismissal, the dismissal is unfair but compensation should be reduced to reflect the relevant percentage chance;
- If the employment would have continued but for a limited fixed period, compensation should be limited to the fixed period
- If employment would have continued indefinitely, the dismissal is unfair with compensation not reduced on this basis.

Action: ensure that you follow both the minimum statutory procedures and your own internal policies when dealing with issues that could lead to dismissal. Remember that expiry of a fixed-term contract constitutes a dismissal and the minimum statutory procedures must be followed in relation to the non-renewal, otherwise it will be automatically unfair.

New smoking regulations

As you are probably aware, from 1 July 2007, the new smoking regulations will come into force making it a criminal offence (which may attract fines of up to £2,500) for employers to permit their employees to smoke within all indoor workplaces. This extends to vehicles used by employers and indoor smoking rooms will no longer be permitted, subject to limited exemptions.

Action: ensure that your smoke-free policies are reviewed in line with the new regulations to ensure compliance. There is no requirement for employers to provide employees with suitable outside spaces allocated for smoking but you may wish to consider designating certain areas as such.

Human rights and "Big Brother"

A recent case (*Lynette Copland v UK*) considered whether the monitoring of an employee's e-mails and telephone communications, including logging the telephone numbers called, was a breach of Article 8 of the Human Rights Act (right to respect for private and family life). As the employee had been given no prior notification that her communications would be monitored, she had a reasonable expectation of privacy and the employer had therefore breached Article 8. The public body employer was not able to hide behind legal protection as no domestic law existed at the time to regulate such monitoring.

Action: employees should be made aware of the organisation's policy on such issues.

Capsticks

Andrew Rowland is a Partner at healthcare employment law specialists Capsticks. Andrew welcomes your comments or queries on the issues covered in the update; contact him on 020 8780 4740 or by email at arowland@capsticks.co.uk

A correction this month to figures quoted in the May 2007 update on Equal Pay Claims. Although the settlement terms in the Cumbria case are confidential, the highest net payment was £95,000 and the lowest net payment was £100. The average net payment was £13,700. The Cumbria case was also different in that the period covered was 1991 to 2004, twice as long as the period likely to be covered by the current claims.