

The newsletter of the Healthcare People Management Association

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Passports, customers and surveys

I recently had a bad customer experience that set me thinking about the true value of staff views and the annual staff survey - there is nothing like pain to sharpen the senses!

I was due to fly to the USA on a Friday evening for an important event when disaster struck - my bag and all its contents were stolen... less than 24 hrs before the flight.

Once I'd recovered from the shock (thank you Deborah for the steadying advice!) I set about the task of reclaiming my life in the wake of losing keys, passport, cheque books etc.

At times like these you need a heavy hand of bureaucracy to be kind and supportive, but the body count was depressingly non-customer friendly. The exception was the much maligned Metropolitan Police who were quite wonderful. The Immigration Service, locksmiths and British Airways were just truly awful.

The Immigration Service in particular made a bad situation awful - I couldn't ask how I urgently got a replacement passport because it wasn't on their list of FAQs! But what compounded my misery was the fact that I was asked to complete their

annual customer survey at the end of my call. Yes - being surveyed at 3am after a traumatic evening was high on my priority list...

And then the truth struck me - this is what we expect of some of our own staff, and we are disappointed when the survey results aren't that uplifting. So out of this sorry tale came a stark truth; negative views are borne of negative experiences and listening - truly listening - responding and learning, are skills we lose at our peril as our staff

are our customers in HR. So I'm determined to make the survey results - even those that rankle - a top priority this year.

As for my tale the postscript is don't give up: just when I thought all was lost, my bag was found and returned by a good Samaritan.



Kelvin Cheatle HPMA President
Director of Workforce/Environment, WLMHT

HPMA Talent Management

Look out for the HPMA Talent Management Survey developed with commercial member goodpractice - we want to hear your thoughts on the opportunities available to you for career progression. Members will be invited to take part in coming months so look out for the email invitation - every view counts!

2009

HPMA Excellence in HRM Awards

The Excellence in HRM Awards 2009 judging day took place at sponsor Beachcroft LLP's London offices last week. Our thanks to all the judges (pictured right) who generously took the time to put our finalists through their paces and also to the project teams from across the UK who showcased their good practice so brilliantly - the judges were unanimous in praising the excellent work they heard during the day.



We received over 160 entries to the competition so the places in the finals were really keenly contested. Congratulations to the HR project teams from:

Belfast Health and Social Care Trust	Gwent Healthcare NHS Trust	NHS East Midlands, NHS Institute for Innovation and Improvement and NLIAH	Royal United Hospital NHS Trust
Blackpool Fylde & Wyre NHS Foundation Trust	Heart of England NHS Foundation Trust	NHS North West	South Downs Health NHS Trust
Cambridgeshire and Peterborough NHS Foundation Trust	Imperial College Healthcare NHS Trust	NHS Plymouth	South London Healthcare NHS Trust
Designed for Competence Programme Board on behalf of North Wales Health and Social Care organisations & education providers, Skills for Health & NLIAH	LCCHS (a part of NHS Leicester City)	North West Wales NHS Trust	Surrey PCT
Guy's and St Thomas' NHS Foundation Trust	Mayday Healthcare NHS Trust	Nottingham University Hospitals NHS Trust	The Mid Yorkshire Hospitals NHS Trust
	National Leadership & Innovation Agency for Healthcare (NLIAH)	Papworth Hospital NHS Foundation Trust	Worcestershire Acute Hospitals NHS Trust
	NHS East Lancashire	Royal Bolton Hospitals NHS Foundation Trust	York Hospitals NHS Foundation Trust

More good news to come too as the HR Director and HR Team finalists will be announced later this week.

Awards Ceremony 25 June

The finalists - like you - must wait until June 25, and the awards ceremony at the Royal Garden Hotel Kensington to discover the category winners. Revealed 'Oscars style' the awards ceremony and dinner is a great networking opportunity and celebration of excellence in HR. Every HPMA member is invited to attend, tickets are just £95 +VAT (price held for 4 years!) and you can book online at:

www.eventsforce.net/hpmaawards2009

And finally another thank you to our sponsors - without their support there would not be an awards competition:

Beachcroft LLP
 BMJ Careers
 Capsticks LLP
 Department of Health, England
 Department of Health, Social Services and Public Safety, Northern Ireland
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 Health and Safety Executive
 NHS Employers
 NHS Institute for Innovation and Improvement
 ESR www.esrsolution.co.uk/
 NHS Plus
 Scottish Executive
 SOLACE Enterprises
 UNISON
 Welsh Assembly Government
 West London Mental Health NSH Trust

Right to legal representation at disciplinary hearings

The High Court has confirmed, in *R (on the application of G) v The Governors of X School [2009]*, that in some circumstances an employee has the right to be accompanied to a disciplinary hearing, not just by a workplace colleague or union official, but by a legal representative.

FACTS

The Claimant was a music assistant at a school. He was accused of kissing a 15 year old boy and as a result the school dismissed him following disciplinary proceedings.

On dismissal, the school had a statutory duty under the Education Act 2002 to report the Claimant to the Secretary of State, to consider a direction to put him on a list effectively prohibiting him from working with children in the future. Under this process, the Claimant would not have been entitled to any further oral hearing with legal representation before the Secretary of State made a decision.

Before both the disciplinary and appeal hearings, the Claimant had asked to be represented by his solicitor due to the severe implications on his future career. The school had refused.

The Claimant asked the High Court for a judicial review of the school's refusal to allow his solicitor to represent him at the disciplinary hearing. He argued that the refusal was a breach of his right to a fair trial under Article 6 of the European Convention on Human Rights Act 2003.

DECISION

The High Court held that:

- as there would be no further hearing, the internal disciplinary and appeal procedures were effectively part of the same procedure as the Secretary of State's determination that could prohibit the Claimant from working with children in future;
- a claim for unfair dismissal in the Employment Tribunal would not be an adequate alternative remedy, as it could not suspend or prevent the Secretary of State's procedures. Also, in the circumstances, the Tribunal might not have been able to order reinstatement, as this could have caused the parties to commit a criminal offence; and
- the Claimant was therefore entitled under Article 6 to legal representation at both the disciplinary and appeal hearings.

Should this be a cause for concern for healthcare employers?

Although at first sight this is an alarming decision, it will not be relevant to most disciplinary hearings. The key factor here was the possibility of a decision by the Secretary of State to prevent the Claimant working with children again, without any further oral hearing.

However, it is likely to be relevant for healthcare employers at disciplinary hearings where they are considering a referral to the Independent Safeguarding Authority under POCA or POVA, which is similar to the process under the Education Act. In these circumstances, it will be important to consider on a case by case basis, whether the employee should be entitled to legal representation.

Bevan Brittan 



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DATES FOR YOUR DIARY

- **HPMA Northern Ireland branch conference: *HR in Health & Social Care: Sustaining Excellence* 28-29 May 2009** Hilton Templepatrick, Antrim
- **HPMA awards**
Awards ceremony and black tie dinner 25 June 2009 Royal Garden Hotel, London
Buy your tickets now at www.eventsforce.net/hpmaawards2009
- **Developing talent & engaging your workforce: *Inspirational Case Studies from the Public Sector* 29 June 2009** Bristol
A South West partnership event brought to you in association with Purple House, PPMA, CIPD West of England Public Sector Group and the HPMA South West Branch
- **South East Branch HPMA meeting** Kent & Medway Room, York House*
3 September 2009 09:30-14:00
* Venue is subject to change if expected numbers exceed room capacity
- **NHS Employers annual conference and exhibition 3-5 November 2009** Birmingham ICC

It's the End for the Statutory Disciplinary and Grievance Procedures

Bevan Brittan 



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Much to the disappointment of, well, absolutely no one, and to the delight of everyone involved in human resources or employment law, the notorious statutory disciplinary and grievance procedures are, in tabloid idiom, 'to be axed'. James Gutteridge takes a look at the new ACAS Code of Practice which replaces the dreaded procedures from April 2009.

The Employment Act 2008 repeals the statutory procedures on April 6th 2009, subject to some transitional arrangements.

The ACAS Code of Practice does away with:

- mandatory uplifts in compensation;
- the automatic unfair dismissal sanction; and
- the automatic bar on claims where employees have failed to comply.

The Code will come into force as of 6 April and will have statutory backing. Therefore, while a failure to follow the Code will not in itself make an employer liable to proceedings, Tribunals will take the code into account when considering relevant cases. Where employers or employees fail to comply - unreasonably - with the Code, Tribunals can (although it is not mandatory) adjust compensation by up to 25%. This replaces the current mandatory adjustment of between 10% and 50%.

ACAS have also issued a draft guidance document to accompany the Code. This won't be 'law', but, will be taken into account by Tribunals. A key issue in the guidance is the use of mediation to sort out problems. The Code has rather less emphasis on this aspect. This could be a 'bone of contention' where employees try and allege that the employer has not recognised the Code if it does not attempt to mediate. Lesson for the employer - think about mediation.

Important aspects:

- employers will be expected to attempt to resolve disputes internally, using a neutral mediator where necessary;
- employees are still expected to raise a grievance before making an Employment Tribunal claim, but the penalties for a failure to do so are no longer as harsh;
- the Code does not apply to 'no fault' dismissals, i.e. redundancies (whether collective or individual) and the expiration of fixed term contracts;
- a written record should be kept of disciplinary and grievance procedures;
- grievances and notification of disciplinary issues still need to be put in writing;
- if an employee repeatedly refuses or is unable to attend a meeting, an employer will be entitled to make a decision in their absence.

The, frankly, rather sensible 3-stage disciplinary and grievance steps we have come to know and love under the existing statutory regime will continue.

This means, for employers considering disciplinary issues:

- notify the employee, in writing, of the allegation/issue;
- hold a meeting to deal with the matter; and
- allow the employee to appeal the decision,

and for employees pursuing a grievance:

- set out the grievance in writing for the employer;
- employer holds a meeting to deal with the grievance, which the employee should attend; and
- employer allows the employee to appeal the decision

Overall, these welcome changes could not have come soon enough. It will simplify the process for all concerned, reducing the time, effort and cost involved in dealing with problems both internally and, if things are not resolved, at Tribunal. Common sense has, for once, prevailed.

2009

HPMA Excellence in HRM Awards

June 25, Royal Garden Hotel Kensington

Tickets are just £95 +VAT

Book online at: www.eventsforce.net/hpmaawards2009

Equal Pay Update:

Hartley v Northumbria Healthcare NHS Foundation Trust & Others

SUMMARY

The Newcastle Employment Tribunal has rejected the Hartley challenge to Agenda to Change (AfC) on all key points. The challenge was that AfC was an invalid job evaluation scheme because it discriminates against women in the way job evaluation was carried out and the way the pay of downgraded staff was protected.

The main arguments

There were a large number of arguments explored. So you're more aware of the issues here's what all the debate was about:

- whether there was systematic sex discrimination in the NHS before AfC was implemented and AfC entrenched this historic discrimination because employees were slotted in at the pay point nearest their previous pay.
- whether the arrangements under AfC for pay protection and recruitment and retention premia had the aim of discriminating in favour of men and did so.
- whether there are reasonable grounds for suspecting that the job evaluation scheme in AfC was invalid under the Equal Pay Act (the Act) because it was not an analytical scheme, which is required by the Act, or because the scheme itself and the processing of it was tainted by sex discrimination. The claimants argued that matching a job in the Trust to a national profile is not an actual comparison of the woman's job and the man's job at all. This comparison is again something which the Act requires.
- whether the Act allows the effect of a job evaluation scheme to be backdated. In particular

whether it was lawful to treat an employee as having been evaluated in a particular pay band in October 2004 even though she was not actually rated at the time of her equal pay claim.

- whether pay protection and the rules on assimilation, which also protect pay, were genuine material factor defences to a claim. They were and while not generally needing objective justification the Tribunal also found they were objectively justified.
- whether recruitment and retention premium were a genuine material factor defence, which they were. Again these did not require objective justification but were found to be objectively justified from 1 October 2004 to 31 March 2011. After that, they will need to be reviewed.

What this means for NHS bodies

The case will undoubtedly be appealed given its importance for the 16,000 existing equal pay claims against the NHS. However, it is of great comfort to NHS bodies that AfC has been defended at this stage of the Tribunal process. Had the Tribunal agreed that AfC was discriminatory and flawed, and that pay protection was not a genuine material factor defence and/or not objectively justified, it is likely that thousands more claims would have been issued against NHS bodies.

Our news

We are delighted to announce that from 1 May 2009, Guy Bredenkamp who acted for the Trust in Hartley will be joining the Employment and Pensions Group as a Partner in our Newcastle office.

beachcroft

Further information

For further details of this case or how our specialist national equal pay unit can help you, please contact:



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HPMA webwatch

Effective online recruitment

Screen shot Toolkit publication

Last month NHS Employers and JobCentre Plus published a useful online toolkit publication *How to recruit online: A toolkit for NHS Employers* under the *Employing Healthcare Professionals* title. The 12-page report offers a great introduction to good practice in online recruitment and highlights a number of NHS good practice case studies.

The NHS Jobs website currently receives an incredible 4.5 million visits and 250,000 job applications each

month. But this volume can easily mean attracting unsuitable and time-wasting applications. One solution is carefully composed online advertising copy - written with skill - good copy can even enhance an employing organisation's reputation and more importantly eliminate the risk of discrimination challenge.

Alongside the online publication NHS Employers also brought together expert contributors Enhance Media and Capsticks for two practical training events aimed at the recruitment team members, the team hope that these sell-out events will be repeated in the Autumn. Meanwhile you can still download a copy of the publication at www.health-workforce.com/htm/k20090417.532599.htm.



Flexible Working Rights Extended



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From 6 April 2009 the right to request flexible work arrangements is extended to parents of children up to and including the age of sixteen.

Background

The Government pledged commitment to this change back in May 2008, following an independent review by Imelda Walsh. However at the end of last year it appeared that the proposals might be amongst those put on hold due to the deteriorating economic climate. Any lingering uncertainty has now been dispelled, with regulations being published on 17 March, less than three weeks before their implementation date.

The law

Since 2003, the right to request flexible working has been available to employees with more than six months' service in order to care for a child under the age of six (or 18 if the child is disabled). This right was extended to carers of adults in 2007, although certain relationship criteria must be satisfied in order for the employee to be eligible.

The procedure that workers and employers must follow when a request is made has been criticised for its complexity. In summary, the employee submits a written request which must be followed by a meeting with the employer, the employer must then provide a written response and, if the request is unsuccessful,

allow a right of appeal. There are tight timeframes required at each step and just eight statutory grounds on which an employer may reject a request.

Penalties

The regulations give employment tribunals power to award compensation of up to eight weeks' pay if the procedure is breached. In most cases, however, the greater incentive to take flexible work requests seriously comes in the shape of anti-discrimination legislation. Women still shoulder the bulk of family caring responsibilities; so an unjustified refusal to countenance working arrangements that fit around such responsibilities could lead to a sex discrimination claim. By the same token, a male worker could bring a sex discrimination claim if his flexible work request is received less favourably than it would have been had it come from a woman.

Employer concerns

Some organisations will inevitably be concerned that extending the right to work flexibly to parents of older children may make it more difficult to accommodate flexible working requests. The regulations provide at least some comfort for those employers however. Impact upon colleagues and the business are legitimate considerations which employers are entitled to take account of before deciding whether to agree to a flexible working arrangement.

Immigration: walking the tight rope



Many colleagues are clearly confused about the current immigration rules and the way in which they appear to conflict with European freedom of movement legislation. It seems that if you keep one Government department happy, you will be in trouble with another.

NHS Employers do a great job in keeping recruiters and employers abreast of the changing rules and their interpretation so the first port of call is their website. Meanwhile the BMA is concerned about the impact on medical services of changes in the immigration system. Dr Hamish Meldrum, chairman of BMA Council, wants the Secretary of State to intervene to ensure that the UK does not lose further doctors as a result of recent changes. The changes restrict international medical students, who are studying in the UK, from continuing with their medical training beyond the two-year postgraduate Foundation Programme.

The Home Office in March changed the academic requirement for the Tier 1 immigration category,

that covering highly skilled workers. Doctors applying to Tier 1 now need the minimum of a master's degree to be accepted onto it. A medical degree is classified as a bachelor's degree and as a result many medical students and junior doctors who have been studying in the UK for up to seven years could be lost to the NHS.

The BMA maintains that NHS is already facing understaffed workforce rotas in a range of medical specialties; a problem which the Department of Health has acknowledged was caused, in part, by previous changes to the immigration system. As the shortage of doctors in several specialties is becoming increasingly recognised, the BMA's concerns are likely to be shared by employers - and yet another Government department will be brought into play.

Alison Dunn

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HPMA consultant proposals

With new funding to support branch development work the Association is keen to use the best consultant support available. So this month we are launching a preferred supplier list for consultant services.

The development work will hopefully be interesting and challenging, we expect opportunities to become available across the UK. In principal projects will fill in the gaps for HPMA branch and council officers who have 'day-job' commitments.

To join this list you simple need to complete an application form - questions include areas of specialism, experience, references and confirmation

of professional indemnity insurance. This pool of consultants will then be used for ad-hoc projects, based on a process of matching skills and expertise.

In light of the great work branch and council members already do in their free time, we are asking that any consultant interested in joining the preferred supplier list agrees to offer up to 2 free 'pro bono' days over the 12 month period. **Download the application at www.hpma.org.uk**

We look forward to developing a strong list to help take HPMA branch development to the next level.



Making a Difference

The 2008 NHS Staff Survey

The results of the 2008 NHS staff survey were published in March by the Healthcare Commission and report on 36 key scores, many of which relate to job satisfaction measures

The following summarise some of the findings in relation to how NHS staff feel about their work and how they are treated at work.

- 90% of staff feel that they are making a difference to patients
- 47% of staff felt that there were not enough staff to enable them to do their jobs properly - this figure is down from 51% in 2007
- 80% of staff reported that they had interesting jobs and, encouragingly, 65% had clear objectives
- Only 39% of staff felt that they worked in well structured teams with clear objectives
- Although 64% of staff had an appraisal in 2008, only 27% of all staff felt that their review was "well structured"

- Only 34% of staff said that they received clear feedback on how they were doing
- 95% of staff had had some form of training in the previous 12 months and 80% of staff who had accessed training in the previous year reported that it had helped them to do their job better
- Reported incidents of bullying and harassment by staff had not changed dramatically from recent years.

The 2008 survey introduced new questions such as asking staff if they would recommend their Trust as a place to work. 51% agreed that they would.

The NHS Staff Survey becomes increasingly valuable as an assessment and planning tool for NHS employers in the context of the NHS Next Stage Review and the NHS Constitution, which bring a renewed emphasis upon the NHS as an employer.

Reports on each NHS Trust, as well as the national summary findings are available on the Care Quality Commission's website at www.cqc.org.uk

Sharon Gregory, For Croner
www.sgtd.co.uk

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 Lauren Crawford on 020 8334 4530 or admin@hpma.org.uk for details on your local branch.



Recruitment/secondment opportunities at NHS London

Further to the brief update at the HR for London meeting on the 2nd April highlighting a recruitment drive to fill a large number of vacancies (a mix of permanent, secondee and FRT posts at varying levels of bandings) across the Directorate.

The positions which are at 8a-8c include the following:

- Workforce Transformation Managers (10 positions)
- Medical Workforce SME
- Project Managers for the following projects:
 - Working Time Directive
 - Engagement and Partnership
 - Productivity

The opportunities are open to all, and provide some exciting opportunities for you and or others in your team - whether permanent staff wishing to develop skills and experience in other areas or

apply for higher graded posts, and for agency staff who may wish to apply for a permanent post within NHS London. It could also be a potential opportunity for any displaced staff as a result of re-organisation to mitigate redundancy.

We are seeking to fill these positions as soon as possible so that we can relieve a large number of temporary posts currently filled by interims or temps. Any secondments or short-term contracts would be for approximately 12- 18 months.

All applications for posts will be advertised in the Guardian and HSJ but NHS London are keen to seek secondee applicants. If you have any queries or concerns please do not hesitate to get in contact with Jackie Whitcombe who is coordinating the recruitment processes across POD.

Full details of the positions and the open days are available on www.london.nhs.uk/careers

Attendance Management: Strategies, Innovations, Benefits

HPMA member John Harrison is promoting this attendance management conference to HR colleagues across the association. The event takes place on Monday 15 June 2009 at Brunel University.

Promoting attendance at work has always played an important role in an organisation's success. In today's tough economic climate, however, some might be tempted to question whether indeed people are a company's greatest asset. But in actual fact even closer attention should be paid to staff during a recession. The impact of the recession on the health of the working age population is a concern. In any organisation there will be staff who become ill, there will be staff who are managing long-term health conditions and there will be staff being recruited who may have an illness or disability.

How can we promote the work ability of staff? How can we reduce the numbers who take sick leave, reduce the duration of sickness absence and promote rehabilitation?

The conference will present the latest thinking on promoting attendance at work and will feature a talk by Dr Steve Boorman, who is leading the NHS Health and Wellbeing Review.

Key benefits

- Explore real life examples of innovative ways of promoting attendance
- Learn the latest techniques so that you can change your organisation's culture
- Develop a better knowledge of how to react to issues earlier
- Equip yourself with strategies specifically geared to the economic downturn
- Enhance your understanding of long term rehabilitation management

For more information: www.brunel.ac.uk/about/acad/bbs/executive/conferences/am

Letters and contributions

Network is your membership newsletter so we always welcome comments, articles and news from any of our members.

You can send contributions directly through to the production team (lauren@chamberdunn.co.uk) or call 020 8334 4530 for an informal chat first.

The newsletter is published every month and circulated to all HPMA members so it's a great way to share success, ask for help or get colleagues thinking.