

The newsletter of the Healthcare People Management Association

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## New HPMA president Kelvin Cheadle



Kelvin Cheadle.

Kelvin Cheadle, director of workforce and environment for West London Mental Health Trust, will become the president of the Healthcare People Management Association (HPMA) in December 2008. Kelvin will be taking over from current president Deborah O'Dea, who

will continue in the role of HPMA immediate past president.

Kelvin has a full board voting executive director role that operates Trust-wide with an overarching responsibility for staffing and estates issues, affecting 4,200 staff on 32 sites in Berkshire and West London, and leading a large, multi-disciplinary directorate.

He comments: "It's an enormous honour to be asked to take on the HPMA Presidency. Deborah O'Dea is an impossible act to follow given her standing in the profession, but I hope to bring my experience gained from 12 years as an NHS HR director in a very challenging mental health trust to bear in this role. I am pleased to be flying the flag for mental health but hope to encourage maximum participation in HPMA from all NHS partners passionate about HR issues."

Deborah O'Dea added, "I am delighted to be handing the presidency to Kelvin, he has done

a great deal for his trust, for the HR profession and I believe he will be an excellent president committed to continuing the building of our professional body which goes from strength to strength. It will be a great pleasure to support him in his task."

Kelvin is passionate about organisational development, environment and communications and is particularly involved in developing these aspects of the Trust's work. He also has a keen interest in modernising employee relations and has close working relationships with all the Trust's ten recognised unions, and has spoken at RCN and POA national events in support of this.

He is engaged in a wide range of NHS HR related activities. He is a member of the NHS Employers' assembly; sits as a regular advisor to the NHS Employers' pay branch; and plays an active role in mental health HR networks.

Kelvin and members of his HR team were awarded the title of overall winner in the Association's 2007 Excellence in HRM Awards for their development of a diversity toolkit - an innovative publication and online resource that has been used by health trusts across the UK.

The presidential handover will take place in December at the London branch meeting, where HPMA will also be announcing two recipients of honorary HPMA memberships and welcoming new London branch chair Kevin Croft (Director of HR & OD at North Middlesex University Hospital NHS Trust), who is taking over from David Amos.

## !!STOP PRESS!!

HPMA want to make a big splash at this year's NHS Employers conference at the ICC in Birmingham - and we need your help. Visit our exhibition stand and pick up a special edition HPMA t-shirt. The catch? Well we ask you to agree to wear the t-shirt on one of the conference days in Birmingham! We want to see hundreds of members dress down and support their professional association in style! Hurry though we have limited stocks.



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# Pay protection and equal pay



Shirley Wright, partner,  
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**The Court of Appeal's long awaited ruling on pay protection following the introduction of new pay and grading schemes has important implications for NHS employers.**

## Background

Following job evaluation exercises carried out by both Redcar & Cleveland and Middlesbrough Borough Councils, certain roles performed by a predominantly female workforce were graded as equivalent to various positions carried out mostly by men.

In many cases, those doing 'male' jobs were better paid than female workers doing different, but equivalent, jobs. The higher pay was not, however, supported under the new grading scheme. Rather than attempt to reduce the pay of the (mostly) male workers immediately, the councils agreed to protect their existing pay arrangements for a certain period to give them time to adjust.

A number of female workers brought equal pay claims, arguing that they too should be entitled to higher pay for the same period. In both the Redcar and the Middlesbrough cases, employment tribunals agreed with the claimants that the pay protection arrangements were discriminatory.

## Court of Appeal's ruling

The tribunals' decisions have now been upheld by the Court of Appeal.

The Court of Appeal did not rule that all transitional pay protection will necessarily amount to discrimination, even if the effect is to continue historic discrimination to some extent. The question is whether the employer can show that its decision to deny a woman pay protection is a proportionate means of achieving a legitimate aim.

Unfortunately, the Court of Appeal stopped short of spelling out the circumstances in which pay protection will be acceptable. It did, however, observe that if an employer knows, or suspects, that its existing arrangements are discriminatory, any pay protection arrangements that continue the discrimination will be harder to justify.

## Comment

Later this year, when it hears the NHS equal pay test case, *Hartley v Northumbria Healthcare NHS Foundation Trust*, the Newcastle employment tribunal will be considering the impact of this latest decision on the pay protection arrangements adopted when implementing Agenda for Change.

In the meantime, this latest decision offers little comfort to employers that have attempted to tackle potentially discriminatory pay practices within their organisation.

*Bainbridge and others v Redcar & Cleveland Borough Council and Surtees and others v Middlesbrough Borough Council*, Court of Appeal, 29 July 2008.



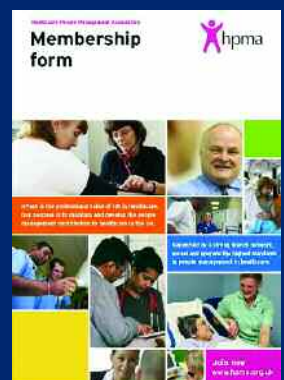
## Autumn HPMA membership offer

**50% discount on NHS corporate membership**  
(covering as many members as you wish)

£175 (under £150 million turnover)

£225 (over £150 million turnover)

**Valid for Membership 2008/09** (ending 1 April 09)



## Branch News: New chair for Northern Ireland branch

The Northern Ireland HPMA branch elected new chair **Jacinta Melaugh** at their AGM on 20 October.

Jacinta Melaugh takes over the position of chair from Billy Bateman, and is joined on the committee by new vice chair Therese McKernan from Belfast HSC Trust.

Jacinta has been the director of human resources in the Northern health and Social Care Trust since it formed in April 2007. Previous to this Jacinta held the position of HR Director in Causeway Trust from September 1998 and various positions in the HR field in Health and Social Care from 1978.



### HPMA NI Branch Committee

**Seated front (Left to right)** Marie Mallon, Committee Member, Belfast HSC Trust, Jacinta Melaugh, Chair, Northern HSC Trust, Therese McKernan, Vice-chair, Belfast HSC Trust, Pat Hannaway, Secretary, Western HSC Trust. **Standing at back (left to right)** Raymond Irvine, Treasurer & Membership Secretary, Western HSC Trust, Damian McAlister, Committee Member, Belfast HSC Trust, Alan Gilbert, Committee Member, Independent Consultant, Julian Crieghton, Committee Member, RQIA.

## Staff development in the health services

Musing on a recent BBC TV *Countryfile* about the stonemasons working on the restoration of Salisbury Cathedral, David Amos sees some lessons for those concerned with staff development in the health services. Writing in the latest issue of *Employing Healthcare Professionals* he comments that the stonemasons are using virtually the same techniques as their predecessors 750 years ago. But, he says, 'Today's stonemasons, like their predecessors, could still do with personal development, even if they know enough to do their job.'

'Great line managers know that they are most likely to be able to deliver on their objectives if they find time, and resources, to develop their staff. Those leaders in the midst of juggling hundreds of demands on their time every day, frustrated by the disproportionate amount of precious time dedicated to dealing with poor

performance, can feel inadequate when they realise how little they have done to coach and mentor their staff,' he writes.

Read our special issue on staff development and training in *Employing Healthcare Professionals* available on [www.health-workforce.com](http://www.health-workforce.com) for £19.95. It includes Jill Maben on achieving high quality nursing care, how one Trust implemented the e-KSF tool, developing doctors as leaders and the new skills framework for physiotherapists.

To sign up for regular free news updates, a free trial and for subscription details of all our healthcare employment reports go to [www.health-workforce.com](http://www.health-workforce.com).

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# Ask the experts

beachcroft.



Rachael Heenan.



Katy Horner.

Welcome to our Ask the Experts feature intended to 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.

**Question 1:** As we come to the end of the year, what is on the horizon and what should we prepare for next year?

**Answer:** There are a number of changes and developments, which are likely to occur in the next year. Here is an at a glance guide.

## Statutory Dispute Resolution Procedures

- The Government's current proposal is for the existing procedures to be repealed in April 2009
- It is likely that following the repeal the pre-2004 position will be re-introduced.
- There will therefore be no "automatically unfair" dismissal for failure to comply with the procedure, instead the Tribunal will assess the issue of fairness in the event of a procedural failure and can increase compensation.
- A revised ACAS Code of Practice on Disciplinary and Grievance Procedures will be introduced. Consultation has taken place on this and the early indications are positive.

## Working Time

- From 1 April 2009 statutory annual leave entitlement will be increased to 28 days (this includes bank holidays).
- From 1 August 2009 the weekly working time limits for doctors in training will be reduced to 48 hours.

## Sickness and Working Time

- Decisions are expected from the European Court of Justice in the cases of *Schultz-Hoff v Deutsche Rentenversicherung* and *Stringer v Her Majesty's Revenue and Customs* (formerly the Ainsworth case).
- These cases concern the issue of whether employees on long term sick leave continue to accrue annual leave, and if so when such leave can be taken or whether a payment in lieu can be made.
- The Advocate-General's opinion was that annual leave did accrue during such periods and could therefore be taken by employees after their return to work. This is onerous for employers so it will be interesting to see whether the ECJ follows their opinion.

## Age Discrimination

- A decision from the European Court of Justice is expected in the *Heyday* case. The Advocate General's opinion is that Heyday's argument is rejected and that a compulsory retirement age of 65 can be justified.
- The European Court's decision is due in early 2009.

## Equal Pay

- The Equal Pay litigation is progressing in the Newcastle Tribunal.
- There are a number of test issues currently working their way through the appeal process.
- This includes the case of *Hovell v Ashford & St Peter's Hospitals NHS Trust*, in which we represent the Trust. The claimant has sought leave to appeal to the Court of Appeal after the EAT upheld the Tribunal's decision that banding does not determine the issues of equal value.

## Single Equality Bill

- The government has announced plans to introduce a Single Equality Act bringing disability, sex, race and other grounds of discrimination within one piece of legislation.
- The proposals for this include some major changes to disability discrimination law.

## Agency Workers

- The Temporary Agency Workers Directive has been adopted by the European Parliament. The Directive must now be implemented into UK law and take effect within three years.
- The provisions are likely to give temporary/agency workers the same rights as permanent employees after 12 weeks.

**Question 2:** What is the current position on age discrimination retirement claims?

**Answer:** There have been a number of recent interesting decisions on age discrimination:

Following *Johns V Solent SD Limited* retirement claims will remain stayed until the ECJ's decision. Regulation 30 of the Employment Equality (Age) Regulations 2006 ("Age Regulations") provides that the dismissal of an employee at or over the age of 65 by reason of retirement will not be unlawful age discrimination (provided the correct procedure is followed). The compatibility of Regulation 30 with the European Equal Treatment Framework Directive is currently awaiting determination by the European Court of Justice (ECJ) in a case brought by Heyday and supported by Age Concern.

Mrs Johns was dismissed by reason of retirement. She accepted that retirement was the reason for her dismissal and also that a fair procedure had been followed. However, she asked for her claim to be stayed pending the outcome of the Heyday case. The Employment Tribunal refused, but the EAT

granted Mrs Johns' application and the Court of Appeal has now endorsed the EAT's decision.

What this means for employers: following the Court of Appeal's decision all retirement-related claims will now be stayed pending the outcome of the Heyday case. We do not expect to have a definitive answer from the ECJ until late 2009. If the ECJ finds Regulation 30 is incompatible with the Framework Directive, it may either:

- quash the Regulation, which would have the effect of rendering it void from the start and leaving all employers vulnerable to claims unless they can objectively justify their retirement ages; or
- issue a declaration of incompatibility, in which event private sector employers will have a defence to claims until such time as the law is corrected by further UK legislation.

Whilst many employers continue to rely on the default retirement age, it would be prudent to consider how retirements might be objectively justified in the event that the law is quashed.

In Plewes v Adams Pork Produce Limited a Tribunal found that dismissal on the day before an employee's 65th birthday was discriminatory.

**S98ZD Employment Rights Act 1996 provides that where an employee:**

- has a normal retirement age of 65 or above
  - is retired on or after the employee's 65th birthday; and
  - the notification procedure is followed
- retirement will be taken to be the reason for dismissal. The employer will then qualify for the exception in Regulation 30 as discussed above. This case shows that the court will interpret this provision strictly. A dismissal on the day before the employee's 65th birthday will not be deemed to be by reason of retirement under section 98ZD.

Mr Plewes' contract of employment contained a clause which provided that his normal retirement date was the day before his 65th birthday and he was retired on that day. Mr Plewes brought a tribunal claim on the basis that his dismissal had been discriminatory on the grounds of age.

The Tribunal held that the default retirement exemption was not relevant as it applies to retirement at, or over, the age of 65, whereas Mr Plewes was made to retire the day before his 65th birthday.

What this means for employers: employers should check both their actual retirement practice to ensure that normal retirement age is on or after any employee's 65th birthday in order to attract the protection of s98ZD. The employer may choose to give the employee the day off, on his birthday, but the employment contract must not terminate before it.

## Used a really good interim manager this year?



Want to recognise their contribution to your organisation? SOLACE Enterprises are delighted to announce the launch

of a new award to recognise the contribution of interim managers to the public sector. **The Public Sector Award** is open to all interim managers used in the NHS and public health service whether sourced through a specialist interim management provider or working as an independent.

If you want to recognise the excellence of an interim manager in your organisation whether they have covered a vacancy, been part of a change management process, delivered a service review and reorganisation or undertaken a special investigation you can nominate them on-line by visiting the SOLACE Enterprises website [www.solaceenterprises.com](http://www.solaceenterprises.com) or by picking up a nomination form at **The Leading Workforce Thinking Conference**.

Nominations are also invited to a Programme and **Project Management Award** which is designed

to recognise the work of interim teams and special projects. Entries will be appraised by an independent panel. **The closing date for entries is 28th November 2008.**

Rita Sammons, SOLACE Enterprises Director responsible for the Health Sector, added: "While SOLACE Enterprises' roots are in local government we have for some years been working across the whole public sector. The provision of interim managers, or flexible resources, as we prefer to call them is at the heart of our business, as is our commitment to support improvement and efficiency throughout public service".

The awards ceremony which will be held at Claridges London on Friday 27th February 2009 aims to celebrate the high quality work of professional interim managers and the benefits they provide their clients. The event, which will take place during the afternoon, has 6 category winners in total and one overall winner. The winner of the overall award will receive a gift and a cheque for £1,500 to be presented to a charity of their choice.



# Is the Business Partner Model effective?



Jane Burtoft.



jane burtoft Ltd

The Business Partner Model has been around for sometime and I have worked in it for the last 16 years from HR manager to HR Director. Ulrich has been writing about it since the 1990s and his model has evolved over that time. To implement the model as the CIPD describes you would need to achieve three things; a shared service to provide the transactional processes such as recruitment; Centres of Excellence with expert teams developing solutions such as training and development or talent management and the strategic partner, the professional who works with the head of the business to deliver not just purely the HR agenda but contribute to the strategy development and proactively work with the business leader to manage key HR performance indicators and support the implementation of the solutions as well as ensure that the overall HR strategies integrate and deliver the business needs.

In my experience the model often doesn't work for a number of reasons. One is that many just change their titles and don't communicate to the

organisation what is going to be different. It is a bit like advertising a tin of beans without a label on the front. If your customer doesn't know what they can get from HR then they won't use it. Another major reason for it not working is that the whole team doesn't understand it. The team have to support the model and look at ways of releasing time to spend on strategic, not operational issues. How much time do we spend with an ineffective line manager who has been like that for the last 10 years and we go on supporting them and don't do anything about it? Our role as HR professionals is to increase the capacity and capability of our organisation to manage its people, not to do it for them.

I have worked with a number of HR teams over the last year to realise the benefits of the model. It is not a quick fix but if we look at what we do and what really adds value, we can change our practice and really add value to our organisations bottom line.

### 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](mailto: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](mailto:admin@hpma.org.uk) for details on your local branch.

## DATES FOR YOUR DIARY

- **NHS Employers Annual Conference and Exhibition**  
4-6 November 2008 International Convention Centre, Birmingham
- **Primary Care LIVE**  
18-19 November 2008 Manchester Central
- **National Association of Medical Personnel Specialists (NAMPS) Annual Conference: Medical Workforce Solutions 2009** 20 November 2008 Royal National Hotel London
- **HPMA London Branch Workshop: Workforce for London - A strategic framework**  
4 December 2008 Education Centre, UCLH, 250 Euston Road (opposite the new hospital)
- **NHS Employers Equality and Diversity conference**  
20 January 2009 Park Plaza Victoria, London
- **HSJ World Class Workforce**  
27-28 January 2009 Holiday Inn, Birmingham

## Revalidation: The role of the new responsible officer

A further aspect of the Health and Social Care Act 2008 is that it will place a statutory requirement upon healthcare organisations to appoint a senior doctor known as a responsible officer. The responsible officer will have specific duties for monitoring the performance and conduct of doctors under the oversight of the organisation, and for liaison with the General Medical Council (GMC) over revalidation and fitness to practice procedures.

Every doctor will be required to relate to a named responsible officer and the organisation of the functions of this responsible officer is currently under consultation via NHS Employers. However a number of key points have already been established as follows;

- Every doctor will relate to a named responsible officer (RO) who may not be employed by the same organisation as the doctor
- Most employers will notify the doctor of their responsible officer but ultimately it is the responsibility of the doctor to ensure they have an RO
- The GMC will hold records of registered doctors and their linked RO
- The RO will not be employed by the GMC, nor will they make decisions on behalf of the GMC - but they will work closely with GMC affiliates covering their geographical area
- ROs will be accountable for the local clinical governance processes in their particular healthcare organisation relating to the conduct and performance of doctors
- ROs will not decide on whether a doctor is relicensed but they will make recommendations to the GMC
- ROs will liaise with the GMC in individual fitness to practice cases where the RO judges that national sanctions may be required
- ROs will ensure that their organisation has effective appraisal systems in place
- The RO will also have a responsibility for ensuring that effective local processes are in place relating to recruitment of medical staff, monitoring indicators of clinical performance, handling complaints relating to conduct and performance of individual doctors

Employing organisations are encouraged to contribute to the consultation surrounding the role of the responsible officer and can do so via the NHS Employers website at [www.nhsemployers.org](http://www.nhsemployers.org)

## Immigration: Summary of the new points based system

Readers can be forgiven for becoming confused by the new points based immigration system as the UK Border Agency (UKBA) have implemented the new system in stages, and as you rush to complete your licence applications for tiers two and five of the system which will 'go live' in November this year. I have prepared a very brief summary explaining the difference between each tier and the type of individual who will come through the system in the differing tiers - with a focus on healthcare clients. All applicants are assessed in differing ways but broadly under the same categories which relate *to qualifications, previous or prospective earnings, funds available, english language skills, and when appropriate age and level of need within the sector the migrant will be working in.*

### Tier one

- Highly skilled workers such as scientists and medical staff - the individual completes and funds the application themselves. It is not initiated by the employer, therefore when applying for jobs the migrant will state on their application form that they are categorised as a highly skilled worker (Tier 1 - general). Employers will need to request to see original documentation.

### Tier two

- Skilled workers with a job offer such as nurses, therapists and medical staff (i.e. most likely those who do not succeed with a tier 1 application due to their age, current earnings or qualifications)
- Replaces the current work permit application process. The employer will have a licence to sponsor migrant workers issued by the UKBA. The employer is then licenced to assess the worker by checking whether the job is on the shortage occupation list or whether the job meets the resident labour market test and then applying the other criteria relating to qualifications, experience, prospective earnings, maintenance funds and english language skills.

### Tier three

- Currently suspended, this tier will allow employers to fill vacancies in specific areas of temporary labour shortage.

### Tier four

- For students only, and UK based educational institutions will award licences.

### Tier five

- Temporary workers e.g musicians coming to play in a concert or a surgeon coming to perform a specific 'one off' procedure.

Further detailed advice and definitive guidance is available on the UKBA website at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk).

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**NHS  
Human Resources**

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## Headlines from Personnel Today

### **The Agency Workers Directive has been passed by the European Parliament - giving temporary workers in the UK equal rights to permanent staff after 12 weeks with an employer.**

All other member states have to give equal rights to temps from their first day - unless they reach such an agreement domestically. Trade unions welcomed the news. Brendan Barber, general secretary of the TUC, said: "Agency workers will now finally have a fair deal and be entitled to the same pay as permanent staff doing the same job, and receive much stronger legal protection from exploitation."

Under the law - which must be implemented by 2011 - the UK's estimated 1.3 million agency workers will get the same pay and basic working conditions as permanent staff after being employed for 12 weeks.

### **Managers and directors across the UK have been warned that they risk imprisonment for health and safety failings, after a new law was passed.**

The Health and Safety Offences Act 2008 received royal assent last week and will mean stricter punishments from January 2009. The new law raises the maximum penalty that can be imposed for breaching health and safety regulations in the lower courts from £5,000 to £20,000, and massively broadens the range of offences for which an individual can be imprisoned.

### **Fours years after their introduction in a blaze of publicity, the Health and Safety Executive's (HSE) management standards for tackling work-related stress have had little, if any, success in reducing stress and anxiety in the workplace, according to the latest research.**

Psychosocial Working Conditions in Britain in 2008, a study by the HSE's Health at Work Group, has concluded that mental health and work conditions in Britain generally have not changed since 2004.

While a report last year did indicate that there had been some improvements, this had not been maintained, it added. In fact, the proportion of employees reporting their jobs as extremely or very stressful, which had previously been falling, had risen this year, although not significantly, it pointed out. This was despite the fact that the HSE ran a series of high-profile awareness-raising workshops between summer 2006 and spring 2007. "There is no longer a downward trend in the number of employees reporting that their job is very or extremely stressful and little change in the number of employees aware of stress initiatives in their workplace or reporting discussions about stress with their line managers," said the report.

**PERSONNEL TODAY** is supporting a campaign by the Employers Forum on Age to force the government to commit to remove the default retirement age in 2011. A growing number of employers have ditched the default retirement age of 65 and instead allow employees to retire when it suits them.

The campaign argues that it is inevitable that the retirement age will be scrapped, whatever the final outcome of the legal challenge to it by the Heyday charity, meaning now is time for HR professionals to show leadership and get it removed sooner rather than later.

Leading HR directors from Asda, the Co-op, Westminster City Council, the Public Sector People Managers' Association and NHS Employers have backed our campaign. We want HR professionals to make the decision to ditch the retirement age. You can register your support by signing our petition on the Number 10 website. <http://petitions.number10.gov.uk/DitchtheDRA/>

### **HPMA webwatch**

## What's employee onboarding?

According to CC Holland on [www.bnet.co.uk](http://www.bnet.co.uk) employee onboarding has two aims: to make new colleagues feel comfortable and welcome in their new roles, and to help them ramp up to maximum productivity as quickly as possible.

As good talent becomes hard to find and harder to keep, starting out on the right foot becomes even more important. A good first experience can show a new employee that they're valued, fit the corporate culture, and likely to be supported and successful in their new work environment.

### **Here are six guidelines for improving your orientation process**

1. **Make new employees feel welcome.** A gift basket, a group breakfast to introduce the new face, or other courtesies can help ease the transition.
2. **Don't wing it.** Create a solid induction programme that ensures your new staff get the supplies, resources and support they need.
3. **Lighten up.** Orientations are often a necessary evil, so you can at least make them fun too. Keep sessions short, and where possible encourage camaraderie with an informal tone.
4. **Start out right.** This is your one chance to make a good (and lasting) first impression. Your words and actions should make your new employees feel delighted and excited to work for you.
5. **Provide ongoing support.** Keep in touch with new staff and ensure that communication channels are wide open.
6. **Don't forget the details.** Follow a thorough checklist so you don't forget to issue a parking pass, provide an organisational chart or set up an e-mail account.

If you have a suggestion or nomination to share, please contact [lauren@chamberdunn.co.uk](mailto:lauren@chamberdunn.co.uk)