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Productive partnerships

Back in the early spring, we held a President's Reception at Guy's Tower in London to look at how we can work with others to support the development of our branches and provide better services to our members. The meeting was a great success with over 80 attendees and several ideas came out of the discussions on how we could work together in a mutually productive way.

In the May issue of *Network*, we highlighted the four main areas that we wanted to focus on.

These were:

- Producing a directory of events
- Building up our branch networks
- Better use of technology
- Developing a range of product service benefits.

Since then we have made significant progress in making these come to fruition and there are a number of developments that branches can now take advantage of.

We have now compiled a directory of workshops, events and courses of interest to HR personnel and hope that branches will find this a great resource for keeping up-to-date.

In many of our branches, commercial partners are starting to help branch chairs to build their networks and activities. In others we are in the process of contacting chairs to set up these partnerships.

Branches have told us that members often find it hard to get to meetings so we have been looking at using technology to set up webinars. Last week, we held our first one on Creating an Integrated and Sustainable Wellbeing Strategy. This was run for us by Right Management and was very successful, with 25 members taking part from across the UK. We are planning some more soon so if you have any ideas for webinars that you would like to see run, please get in touch.

Work on developing our range of product service benefits for members is progressing well.

We are having discussions with product providers and will be able to give more details shortly.

HPMA has also been looking at how to improve the online membership renewal system as well as how to make our website easier to use so that members can access all the benefits that we offer.

We are starting to gear up for next year's awards and have been having very productive discussions with our sponsors. We have also been finding out from members what the real issues and challenges are for them at the moment with a view to creating some new award categories. We are delighted to hear that NHS Employers has invited some of our award winners from this year's awards to a reception at their annual conference, in recognition of the fantastic work they have done. The Meet the Winners session will take place at the NHS Employers' stand at lunchtime on 15th November. Also, one of the winners - Nicky Ingham from Royal Bolton Hospitals NHS Foundation Trust - is taking part in a conference session on staff engagement.

More details on all these initiatives are available on our website (www.hpma.org.uk) or please come and visit us at our stand at the NHS Employers' conference in Liverpool where we can tell you more about our plans. We'd love to hear your feedback and suggestions for how we can continue to develop our services. But if you can't make it to Liverpool, please get in touch at president@hpma.org.uk



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Productive Partnership Initiative
directory 2011



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Tweeting, blogging and the world of social networking

Bevan Brittan **b**



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As online social networking becomes the fastest addiction since the office worker discovered caffeine, employment tribunals are dealing with more and more cases involving work-related comments posted on websites such as Facebook.

The latest in a spate of recent cases is **Whitham v Club 24 Ltd t/a Ventura**. Mrs Whitham worked for a company that provides customer services for Volkswagen. After a difficult day at work, she posted a number of comments on her Facebook page bemoaning her colleagues and stating that she felt like she was working in a nursery. The comments were reported to Mrs Whitham's line manager by two of her colleagues who were Facebook friends. Following an investigation, Mrs Whitham was dismissed for misconduct on the basis that her behaviour had damaged the relationship between her employer and Volkswagen.

The employment tribunal held that Mrs Whitham had been unfairly dismissed as the sanction of dismissal for what were described as 'relatively minor' comments on Facebook fell outside the band of reasonable responses. Also noted was the fact that there was no evidence of actual or likely harm to the respondent's relationship with Volkswagen as the respondent had failed to obtain Volkswagen's views on the incident.

A similar case is **Preece v JD Wetherspoon plc**. Miss Preece was a pub manager and posted several negative comments on her Facebook page about customers who had recently subjected her to a torrent of verbal abuse. The daughter of one of the customers saw the comments on Facebook and complained to Wetherspoon.

Miss Preece's contract of employment clearly stated that she could be dismissed immediately if she was found guilty of gross misconduct. Her employee handbook contained examples of such behaviour and referred specifically to 'blogging'. It stated that comments on websites such as Facebook, which could damage the company's reputation, could warrant disciplinary action. Following an investigation, Miss Preece was found in breach of the policy and dismissed for gross misconduct. She was told that her conduct had

lowered the reputation of Wetherspoon and had resulted in a fundamental breakdown of trust and confidence.

The employment tribunal upheld the decision to dismiss. The tribunal stated that whilst Miss Preece had a right to freedom of expression under the European Convention, the action taken by the respondent was justified in view of the risk of damage to its reputation. The respondent had a genuine belief about the nature of her conduct and had reasonable grounds to sustain that belief having conducted a reasonable investigation.

Research recently commissioned and published by ACAS on how to manage the impact of social networking is a timely contribution to this fast developing area.

The key recommendations stemming from the guidance are for employers to:

- Draw up a social networking policy or to review any existing internet policies
- Treat 'electronic behaviour' in the same way as it would treat 'non-electronic behaviour'
- React reasonably to issues around social networking by asking 'what is the likely impact on the organisation?'

Although only employment tribunal level decisions, the cases of Preece and Whitham highlight the potential impact of social networking on an employer's business and the significance, and usefulness, of having a clear policy dealing with the use of social media.

The cases also emphasise the need to make an assessment of actual harm caused by any social network posts and the need to ensure that any sanctions are applied accordingly.

Jobs and secondment listing

We are now listing jobs and secondment opportunities on the HPMA website. If you have any opportunities to post on the new site, please email Megan@chamberdunn.co.uk, this service is completely free to members.

Benchmarking labour turnover rates: voluntary resignation rate is 8.1%

Voluntary resignation rates are in decline, but tough economic conditions are still pushing up turnover rates for some organisations, latest XpertHR research reveals.

The national median voluntary resignation rate stood at 8.1% in 2010, according to 2011 benchmarking research on labour turnover from XpertHR (see chart). The mean (or average) rate ran at 10.1%.

These measures of labour turnover were in decline when compared with data relating to the previous calendar year (when the median voluntary resignation rate for 2009 was 8.6% and the mean rate was 12%).

These are among the key findings of the 2011 XpertHR Benchmarking survey on labour turnover rates and costs. The survey - based on responses from 280 organisations with a combined workforce of 460,881 employees - looks in detail at trends in labour turnover among UK employers for the 2010 calendar year.

Analysis by broad industry sector reveals that the median voluntary resignation rate was highest among private sector services companies, at 9.7%. This compares with 7% in the public sector and 5.7% in manufacturing and production.

A breakdown by UK region reveals that the lowest median voluntary resignation rate for 2010 was found in the Yorkshire and the Humber region (at 7%), while the highest (11.8%) was in south-east England. The rate for London was 11.3%.

Total turnover rates on the increase

The median total labour turnover rate (which includes redundancies, and is also known as the crude wastage rate) ran at 13% in 2010 (see chart), while

the mean total labour turnover rate was 15.9%. These figures are up when compared with those recorded by XpertHR one year previously.

By broad sector, the highest median total labour turnover rate for 2010 was again seen in private sector services, at 14.3%. This compares with median total labour turnover rates of 12.6% for the public sector, and 9% in manufacturing.

Monitoring turnover costs remains a minority pursuit

Monitoring labour turnover costs tends to be something of a minority pursuit. Only a minority of organisations surveyed by XpertHR were able to supply data on the costs associated with labour turnover.

Among this group, the median cost of labour turnover borne by the organisation per employee worked out at £84.02 in 2010, rising to £167.84 at the mean.

Impact of tough economic times on turnover rates

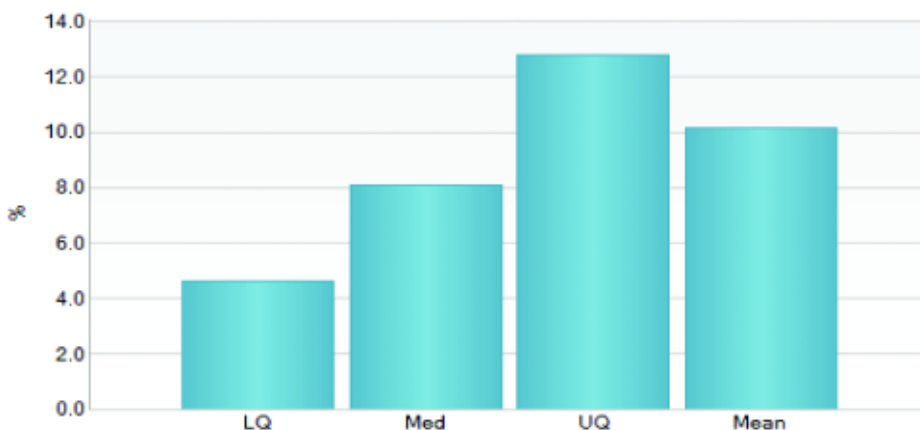
The UK economy might be in recovery from recession, but tough economic conditions continue to influence labour turnover rates. Around one-third of respondents said that their organisation's labour turnover rate had changed 'substantially' over the past 12 months. Analysis of anecdotal evidence from respondents as to how and why labour turnover rates have changed over the past year reveals that many employers believe that a lack of external job opportunities is reducing turnover rates.



XpertHR Health prides itself on being the most cost-effective online information source for good practice, compliance and benchmarking tailored for HR professionals within the NHS. Our new benchmarking service offers subscribers access to a huge resource of customisable benchmarking data.

www.xperthr.co.uk/hr-benchmarking

What was your organisation's voluntary resignation rate for 2010 as a whole?



n = 145
Survey Date: 2011
Source: XpertHR Surveys

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Developing a high performance support workforce in an acute healthcare setting

Human resources directors in acute NHS trusts are shortly to be sent an online survey designed to map developments in the use and management of healthcare support workers at Agenda for Change pay bands 2 to 4. This survey is part of a broader project on this important group of workers, being funded by the NHS National Institute for Health Research (NIHR) and conducted by the Universities of Oxford and York. Further details on the full project are available at www.sbs.ox.ac.uk/research/supportworkers/. The HMPA is keen to support and engage with this research, and would therefore encourage members to complete the survey.

The current research started in April 2011 and will last for two years. The project builds upon earlier work that saw the University of Oxford undertaking research on healthcare support workers at bands 2 and 3, and the University of York on assistant practitioners at band 4. These previous studies generated a wealth of material on the nature and consequences of these roles, highlighting the challenges faced by trust managers in using them efficiently and effectively. The full reports from these respective projects are available through the link provided above.

The current project brings together the researchers from Oxford (Ian Kessler and Paul Heron) and York (Karen Spilsbury). The research reflects the increasing importance of workforce issues in the NHS and, more specifically, the role and development of the healthcare support worker. This interest in the support worker has been heightened by the difficult financial times and ongoing concerns about the quality of the patient experience, not least apparent in current debates about workforce regulation.

The broad project comprises three streams.

- The first, an **innovation** stream, seeks to explore new developments in the management and use of healthcare support roles. In the main it is based on six case study trusts, examining new roles, new practices and the organisational architecture that support or inhibits sustained innovative change.
- The second, an **evaluation** stream, considers various interventions taken in relation to the healthcare support workforce with a view to assessing their impact on various outcomes and stakeholders. This stream takes place in two multi-site trusts.

- The third is an **engagement** stream in the form of four regional workshops to be held in 2012, and brings together those with a stake in healthcare support roles: trust HR and nursing managers, support workers, registered nurses, patients and their representatives.

These workshops will give stakeholders a chance to share experiences and 'good practice' as they relate to support roles, and provide the researchers with an opportunity to develop guidance material for managers on the efficient and effective use of these workers.

The HR directors survey forms an essential part of the project's innovation stream. The head of human resources at each acute trust in England will be sent an invitation to complete the survey in mid November. The survey is short, straightforward to answer and only takes a few minutes to complete. The survey has been designed to ensure that HR directors can answer the questions immediately and without seeking advice or information from others; if respondents feel unsure about an answer they are simply requested to respond with a 'Don't Know'. The research team will be sharing the survey results with the HPMA, so the greater the participation, the richer and more useful the data.

If members have queries about the survey or indeed about any aspect of the broader project, they should contact ian.kessler@sbs.ox.ac.uk.



Ian Kessler,
Reader in Employment Relations at Saïd Business School,
University of Oxford.

Managing industrial action

In the continuing row over pensions, unions representing millions of public sector workers are calling for a nationwide 'day of action'. Industrial action in the NHS on 30 November appears increasingly likely. Whilst the BMA appears to have ruled out balloting its members, and the RCN has not yet committed itself, the risk of real disruption to services remains. We address some key issues which will help NHS employers to manage the operational risks of industrial action.



Sarah George,
Associate - Employment
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For Beachcroft LLP

Partnership working

Staff engagement and transparent discussion with local joint negotiating committees is critical to minimising the risk of industrial action on your operations. NHS Employers has developed a **staff engagement toolkit**, which aims to assist employers to increase staff engagement in their organisation.

Partnership working should not stop when discussions break down. Employers should keep communications open during periods of industrial unrest, by negotiating the parameters of any proposed action.

Key discussion points include:

- Establishing patient welfare as the key priority
- Adequate notice of the action, to enable employers to take appropriate steps to safeguard patients
- Agreeing, where possible, to joint employer/staff-side communications, internally and externally, providing reassurances about patient welfare during any proposed industrial action
- How to deal with unexpected and unauthorised staff absence during periods of industrial action - including whether and what evidence of sickness absence will be required, whether new requests for annual leave will be accepted and whether there will be any circumstances in which employees will not be paid for absence
- Agreeing guidelines as to the size and location of pickets and any restrictions on the activities of those participating in them.

Unless employers and unions have agreed an appropriate approach to managing industrial disputes before the prospect of industrial action arises, so that patient welfare is not at risk, employers should be ready to implement contingency plans.

Contingency plans

Most NHS employers will have experience of planning how to maintain essential operations during periods of disruption. Few will have recent experience of implementing continuity plans to deal with sudden staff shortages arising from industrial action. The only realistic options, where all efforts to avoid industrial action have failed, are to stretch existing resources or to bring in additional help. Neither is without difficulty.

Redeploying existing staff

Employers should consider the possibility of redeploying existing staff to cover essential tasks. Whether this is feasible in practice will depend upon whether there is sufficient flexibility in contracts of employment to allow employers to require staff to work outside their usual role and whether they are suitably trained and experienced to do so safely. In any event, there is always a risk that staff will refuse to cross picket lines.

External resources

Employers may be tempted to use agency workers to fill temporary gaps created by staff who are out on strike. However, agencies could be committing a criminal offence if they were to supply workers for this purpose and the NHS employer could also be prosecuted for aiding and abetting that offence. These penalties do not apply, however, where employers directly employ the additional staff (e.g. through its 'bank' or other direct contract).

Legal action should usually be considered as a last resort to prevent a strike. If the proper statutory balloting and notification processes have been substantially followed, NHS employers should focus on their contingency plans for maintaining operations so far as possible, to ensure that patient welfare and safety is not jeopardised during periods of industrial unrest.

NHS Employers has published on its website a helpful new guide to managing industrial action, which expands on these issues.

Transferring care services - a cautionary tale to NHS employers



Lisa Kelly
Solicitor
For Eversheds LLP

In the case of **Nottinghamshire Healthcare NHS Trust v Hamshaw and others** (UKEAT/0037/11) the Employment Appeal Tribunal (EAT) considered whether the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applied to the transfer of care services from an NHS trust to a private sector service provider.

In an age where social care and public health policy is focusing more than ever on care in the community, we are seeing a number of changes to care services and an increase in private sector care providers. What is the effect on NHS employers who are currently providing these services but will be transferring them to private care providers?

This recent case demonstrates that it should not be assumed automatically that TUPE will apply. Because the activities carried out by the new providers were not 'fundamentally or essentially the same' as those of the Trust, the EAT decided that the employees had not transferred under TUPE, potentially leaving the Trust with significant liabilities for, amongst other things, redundancy pay and unfair dismissal.

The legal background

TUPE applies to a transfer of a business or undertaking where there is a transfer of an economic entity that retains its identity. It also applies where an organisation is engaging a contractor to do work on its behalf, reassigning such a contract or bringing the work in-house.

From the NHS employer's perspective, a TUPE transfer means employees assigned to the undertaking automatically transfer to the new care provider, who (with limited exceptions) inherits all rights, liabilities and obligations in relation to them, effectively stepping into the NHS body's shoes.

Details about *Nottinghamshire Healthcare NHS Trust v Hamshaw and others*

The case concerned a residential care home operated by Nottinghamshire Healthcare NHS Trust, which provided 24-hour care to its residents by care workers employed by the Trust.

On 31 March 2010 the care home closed. The residents were re-housed in their own homes and

provided with support to develop their confidence and independence. Their care was allocated to two private care providers. The Trust advised the care workers that TUPE applied and that their employment would continue with one of the private care providers.

Twelve of the former care workers brought claims of unfair dismissal, pay in lieu of notice and holiday pay against the Trust and the private care providers.

The Employment Tribunal considered as a preliminary issue whether TUPE applied. The Tribunal found that there was no transfer or service provision change as the changes in the service represented a material shift in the ethos of the service and the manner of provision, as the care provision changed from institution to home and from management to support and, as such, the staff duties and residents' daily routines were also different. The Trust appealed against this decision.

The EAT agreed with the Tribunal's decision, finding that the services were fundamentally different to those operated by the Trust; neither the transfer nor service provision change tests were satisfied and so TUPE did not apply.

Impact on NHS employers

NHS employers will need to carefully consider whether TUPE applies when a service they provide is being transferred to a private sector care provider, particularly where the service will be operated differently post-transfer, as will inevitably be the case when services become community based rather than institutionalised.

If NHS employers wrongly believe that TUPE applies to the transfer, in the absence of a well-drafted agreement between them and the new service provider, they could face expensive Employment Tribunal claims, such as unfair dismissal and failure to consult claims, from the affected employees.

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

The state of doctors' careers in 2011

'The State of Medical Education and Practice in the UK: 2011' is a thought-provoking publication by the General Medical Council (GMC) which presents a picture of the medical profession today and makes some suggestions for meeting the challenges of tomorrow. In terms of doctors' careers at present, the bullet points below summarise the GMC findings:

- There are almost 240,000 doctors on the medical register with almost 227,000 holding a Licence to Practise
- 58% of registered doctors are male and 42% female and the number of female doctors is likely to overtake male doctors between 2017 and 2022
- The average age of registered doctors is 39 with the mode being 33 and the average age is falling
- 37% of registered doctors qualified outside the UK, therefore the profession is more ethnically diverse compared with the UK population
- 48% of registered doctors described themselves as white, 26% as Black and Ethnic minority and 26% did not provide the data
- Men and women make different specialty training choices with more women choosing palliative medicine, family planning and reproductive health, clinical genetics and child

and adolescent psychiatry. Anaesthetics, ophthalmology, gastroenterology and the surgical specialties have a higher proportion of men.

In the light of the changing demographics and the need to meet the challenge of treating a population of older patients with more chronic diseases, the GMC has made some valuable comments about their data in relation to medical education:

- It is essential that foundation doctors are exposed to training in a variety of multidisciplinary care settings
- Better information about competition rates and availability of specialty training positions to enable medical students and trainees make more informed career choices is necessary.

The GMC report also examines the number of complaints about doctors and the evidence of variation between different groups of doctors. Readers are encouraged to download the full report from the GMC website at www.gmc-org.uk as the report also contains a series of recommendations for debate and action by appropriate stakeholders in order to take more proactive steps to meet changing needs in service developments, patient expectations and professional regulatory frameworks.



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

Becoming a mindful employer

With recent HR media reporting a rise in cases of stress at work, the publication of a new resource pack for employers represents a timely and important toolkit. 'The Mindful Employer Line Managers Resource Pack' provides practical advice and guidance for employers to support staff experiencing mental health conditions including stress, anxiety and depression, drug and alcohol abuse and eating disorders. Available to download from the NHS Employers website, the guide was produced in collaboration with employers across the public, private and voluntary sectors.

Stress, depression and anxiety are estimated to be the cause of more working days lost than any other work-related illness and the report estimates that over 50% of people with a psychiatric history have concealed the fact from their employer because of concerns that they may lose their jobs.

Employers interested in this resource should consider that a 'mindful employer' is one who

demonstrates that they are willing to enable disclosure of mental health in the workplace and encourage staff to do so without fear of rejection or unfair discrimination.

In summary, the headings in this resource cover:

- Definitions of mental health
- Supporting your staff
- Recovery from mental ill health
- The importance of continued dialogue in the workplace about mental health
- Keeping in touch during sickness absence
- Returning to work and reasonable adjustments
- Sources of further help, information and training.

This essential resource can be downloaded from the 'health, work and well being' pages of the NHS Employers website at www.nhsemployers.org



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



Update from the London Branch and the London Healthcare People Management Academy

Service & Workforce Redesign in Mental Health

A small group of HR practitioners and service managers from mental health trusts in London and the Midlands spent an afternoon with workforce planning expert, George Blair from Shared Solutions at Beachcrofts on 11 October, looking at service and workforce redesign in their specific contexts.

Participants were experiencing major organisational changes including physical rebuilds and redesigning the workforce across the whole system. A main concern was obviously delivering quality and providing evidence of quality improvements to boards.

The session looked at the structure and models of care; service redesign and success criteria; bed reductions; management and admin costs; and skill mix and organisational change, and shared various tools and techniques.

George is also planning to deliver the same session to a group of interested mental health trusts in Wales.

For more information, contact
george@sharedsolutions.net

Improving HR Impact: A Critical Skills Learning Day

A total of 40 HR and OD practitioners from trusts across London came together for a critical skills learning day on 18 October with two-hour sessions on three key issues:

- Consultancy skills - how HR partners can work with line managers to achieve business objectives and priorities
- Developing resilience and mental toughness
- Become more politically astute.

Phil Allen from PA Consulting shared their consulting model with HR practitioners in a straightforward and accessible way which allowed participants to use a consulting approach in 10-minute phone conversations as well as longer meetings and interactions. Phil built on the fact that most HR practitioners already have

70/80% of the skills used in a consulting approach.

For more information, contact
philip.allen@paconsulting.com

Mental toughness specialist and performance coach, Judith Kricheski gave participants a very good overview of the different elements of mental toughness with lots of examples of how mental toughness assessment and development can help identify what is holding people back and transform individuals and whole teams. By the end of the session, after lots of deep breathing and visualising (exaggerating slightly!), we all had a good idea of what it would be like to be more resilient, if not mentally tough! We were also very clear on the huge value of developing mental toughness in our organisations.

For more information on her work and the mental toughness test, contact
judith@mentaltoughnessjkh.com

Julia Tybura from Zenon Consulting helped us all understand a bit more about organisational politics and in particular, helped us become more politically savvy, whatever our starting point! We looked at the typical behaviour of the Machiavellian style operator for better or for worse. We also discussed how politically savvy HR practitioners behave, what they say, what they do etc before moving on to map stakeholder engagement.

For more information on political astuteness, contact
juliatybura@zenonconsulting.com

The day was very generously hosted by PA Consulting - thank you very much to Catherine Berwick and her team.

Developing High Impact HR

A group of HR directors and HR practitioners from the London HPMA branch have been working on adapting the World Class HR model developed by NHS North West and the related HR Business Partner competencies. We will share this work in November's edition of *Network*.

DATES FOR YOUR DIARY

- **NHS Employers Conference & Exhibition** 15-16 November 2011
Liverpool
- **NHS Employers webinar: Industrial action - preparing to minimise the impact** 21 November 2011 London