# HR Hub – Legal Update

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## Section A: Worker status – a reminder of the differences and recent cases

### Employment Status

Under current UK employment law there are three categories of individuals that provide their services to the job market. These are:

- Employee;
- Worker; and
- Self-employed independent contractor.

An individual's employment status is important as certain legal rights are exclusive to employees, although in recent years rights such as minimum holiday entitlements have been extended to workers. Self-employed and independent contractors have very limited statutory protections.

### Statutory Rights During the Contractual Relationship

The distinction between an employee, a worker, and a self-employed contractor is important for a number of different reasons. A person will have different statutory and implied rights relating to their employment dependant on their status. For example, employees have the most rights in employment, and some of the key protections that they have are:

- The mutual duty of trust and confidence between employer and employee that is implied in the employment contract between them;

- The rights on termination of employment granted under the Employment Rights Act 1996 (i.e. the right not to be unfairly dismissed and the right to receive a statutory redundancy payment);
- Only employees are covered by the Acas Code of Practice on Disciplinary and Grievance Procedures;
- Only employees will be automatically transferred to any purchaser of their employer's business under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE);
- An employer is vicariously liable for acts done by an employee in the course of their employment; and
- An employer is required to take out employer's liability insurance to cover the risk of employees injuring themselves at work.

Workers, on the other hand, are not entitled to provisions that employees otherwise enjoy such as:

- Minimum notice periods;
- Protection against unfair dismissal;
- The right to request flexible working;
- Time off for emergencies; or
- Statutory redundancy pay.

A list of some of the further main statutory provisions and rights that attach to employment and worker status is below:

| **Statutory right** | **Legislation** | **Employee** | **Worker** |
|---|---|---|---|
| Written particulars of employment | Section 1, Employment Rights Act 1996 ("ERA 1996") | ✔ | ✔<br>(Regarding all workers beginning work on or after 6 April 2020) |
| Statutory sick pay | Statutory Sick Pay (General) Regulations 1982 (SI 1982/894) | ✔ | ✘<br>(Those workers whose earnings are liable for class 1 National Insurance contributions could qualify) |
| Protection against unlawful deduction from wages | Section 13, ERA 1996 | ✔ | ✔ |

| | | | |
|---|---|---|---|
| Itemised pay statement | Section 8, ERA 1996 | ✔ | ✔ |
| Guarantee payments | Section 28, ERA 1996 | ✔ | ✘ |
| Certain payments on insolvency | Part XII, ERA 1996 | ✔ | ✘ |
| Remuneration during suspension on medical grounds | Section 64, ERA 1996 | ✔ | ✘ |
| National minimum wage | Section 1, National Minimum Wage Act 1998 | ✔ | ✔ |
| Paid annual leave | Regulation 13, Working Time Regulations 1998 (SI 1998/1833) ("WTR") | ✔ | ✔ |
| Rest breaks | Regulation 12, WTR | ✔ | ✔ |
| Maximum working week | Regulation 4, WTR | ✔ | ✔ |
| Right to be accompanied at a disciplinary or grievance hearing | Section 10, Employment Relations Act 1999 | ✔ | ✔ |
| Protection for making a protected disclosure (whistleblowing) | Part IVA, ERA 1996 | ✔ | ✔ |
| Vicarious liability of the employer for the individuals' tortious acts | N/A | ✔ | ✔ |
| Protection under the Data Protection Act 2018 | Data Protection Act 2018 | ✔ | ✔ |
| Right to pension contribution from employer under the auto-enrolment scheme | Pensions Act 2008 | ✔ | ✔ (Only in cases where the worker meets the definition of an 'eligible jobholder') |
| Time off to attend antenatal appointments (paid) | Sections 55 and 56, ERA 1996 | ✔ | ✘ |

## Definition of Employee

The criteria for ascertaining whether an individual is an employee or a worker is not a simple task, the overriding consideration is given to the substance of the relationship between the employer/employee, and the case law in this area is constantly evolving.

The most prominent legislative rights for employees is however found in the ERA 1996 and under section 230(1) an employee is defined as *"an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment."*

The definition of a contract of employment is further defined under section 230(2) as "*a contract of service or apprenticeship, whether express of implied, and (if it is express) whether oral or in writing."*

The concept of a 'contract of service' has been distinguished from a 'contract for services' under which a person provides services as an independent contractor. Although the terms carry no statutory definition, the differentiation is important when determining employment status and tribunals have considered both questions of fact and law when determining employment status.

## Definition of Worker

The hybrid status of a 'worker' is defined under section 230(3) of the ERA 1996 as "*an individual who has entered into or works under (or, where the employment has ceased, worked under):*

*(a) a contract of employment, or*

*(b) any other contract, whether express or implied and (if it is express) whether oral or inwriting, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual."*

It is limb (b) of the test that is often subject to scrutiny when considering whether an individual is an employee or a worker.

In order to satisfy the limb (b) test and qualify as a worker, an individual must show that:

- there is a contract between the worker and the employer (whether express or implied);
- the contract must require personal service;
- the other party to the contract is not the customer or client of any business undertaking or profession carried on by the individual; and
- There is a mutuality of obligation (although this point has been contested).

## Contract with the Employer

The first element of the test is relatively simple, an individual cannot be a worker unless there is a contract, whether this is express or implied, and written or oral. The case *Uber BV and others v Aslam and others [2021]* held that worker status was to be considered in light of statutory interpretation, rather than contractual interpretation and as such has diminished the relevance of a written contract. It was ruled that whilst the documentation was not irrelevant, the legislative criteria should be the first starting point.

The *Uber* case was applied in the Employment Tribunal case *Mulumba v Partners Group (UK) Ltd and another [2021]* where the ET considered the importance of looking at the reality of the relationship between the employer / individual as opposed to the contractual agreement between them.

## Personal Service

The second element of the test is to consider whether the individual undertook the contract to personally perform work or services. This is often considered in light of whether the individual has the right to offer a substitute to do the work and this was one of the elements explored in length in *Pimlico Plumbers ltd v Smith [2017]*.

This was further assessed in *Stuart Delivery ltd v Augustine [2021].* A ET decision was upheld that a moped delivery driver was a 'worker' when undertaking pre-allocated 'slots', committing to be online for a certain length of time, in a certain location, for a guaranteed fee. It was however determined that the driver was not a worker when undertaking 'ad hoc' jobs. The driver was only released from his slot when another courier signed up, and he had no control when this happened (or whether it happened at all). There was therefore, no real right of substitution.

This was again visited in the recent case of Independent Workers Union of Great Britain v Central Arbitration Committee and another [2021]. The court unanimously held that Deliveroo drivers were not workers as they were genuinely not under an obligation to provide their services personally, and in essence had a "virtually unlimited" right of substitution.

## Business Undertaking or Profession

The third element of the test considers whether the 'employer' is a customer of a business undertaking, or a client of a profession carried on by the individual.

Whether an employer is a 'customer' of a business is similar to the test of whether a contract is a 'contract of service' or a 'contract for services'. Relevant factors include the degree of control exercised by the 'employer', the exclusivity of the arrangement, its typical duration, the method of payment, which party supplied the equipment used, the level of risk undertaken by the work, and HMRCs view of the tax status of the individual.

## Mutuality of Obligation

There has been much debate on whether the mutuality of obligation, i.e. the obligation to provide work on one hand, and to carry out work on the other, is a necessary test to be met in determining the status of a worker. This has been reflected in *Windle v Secretary of State for Justice [2016]* which held that the mutuality of obligation is relevant but not necessary to the determination of worker status.

The recent case of *Nursing and Midwifery Council v Somerville [2021]* further considered the mutuality of obligation test and held that an irreducible minimum of an obligation to accept and perform a minimum amount

of work was not a prerequisite for satisfying the definitions of a worker in circumstances where an overarching contract existed between the parties (under which the individual agreed to perform services personally and had done so in respect of a series of smaller separate contracts of appointment).

## Case Law - key questions and recent decisions

### 1. What is the employment status of Uber drivers?

**Aslam v Uber (SC) [2021]**

**Background**

The Supreme Court unanimously upheld an employment tribunal decision that Uber drivers are workers within the meaning of UK employment legislation, given the degree of subordination and control to which they were subjected.

**Employment Tribunal**

Uber's position in relation to the arrangements with its drivers was that:

(a) Uber is a technology company which facilitates the provision of transportation services, but it does not provide those services itself;

(b) the transportation services are provided by the drivers and individual contracts are formed between the drivers and the passengers;

(c) Uber acts as an agent for the drivers; and

(d) the drivers are all self-employed.

A number of Uber drivers brought claims in the Employment Tribunal for unlawful deductions from wages and for a failure to provide paid annual leave. The ET concluded that the drivers were workers for as long as they were (a) in the territory they were authorised to drive; (b) signed in to the Uber app; and (c) ready and willing to accept bookings.

In reaching its decision, the ET concluded that the contractual documentation between Uber and its drivers did not accurately reflect the reality of its relationship and held that the drivers were classified as workers.

**Employment Appeal Tribunal**

Uber appealed the ET decision at the EAT. The EAT dismissed the appeal and upheld the original ET decision, rejecting Uber's arguments that it was a technology platform acting as an agent for its drivers.

**Court of Appeal**

Uber appealed the EAT decision to the CA where a majority of the CA dismissed the appeal. It agreed with the ET's findings that the drivers were workers and that they were to be regarded as working during any period that they were logged into the app.

Uber appealed the decision to the Supreme Court.

**Decision**

The SC unanimously dismissed Uber's appeal.

It ruled that Uber did not operate as a booking agent for its drivers, and that the bookings were principally between Uber and the passengers. Uber relied upon its drivers to perform its contractual obligations to its passengers and it had no way of doing so without either employees or subcontractors to do so. The only way in which Uber could fulfil its contractual obligations to passengers was to enter into contracts with its drivers under which the drivers undertook to provide the services.

The SC then deliberated on the status of the drivers as 'limb (b) workers'. Reference was made to the *Autoclenz* judgement whereby the question of whether an individual is classified as a worker should start with the legislation, and not with the contractual provisions. It was judged the ET were entitled to find that the individuals were workers as per the statutory definition and not sub-contractors. The Uber drivers were 'workers' from the period in which they switched on their apps and were available for work in their area, to the time when they switched off their apps at the end of the day.

**Comment**

This judgment is the fourth time the courts have reached the same conclusion. The significance of this decision is that there is no further right of appeal and therefore Uber must now acknowledge that their drivers are workers under UK legislation.

The case will now return to the employment tribunal to determine the compensation due to the drivers in respect of their claims and the floodgates may now have been opened for thousands of similar claims for unlawful deduction of wages and unpaid annual leave.

The impact for Uber is huge, as not only will they have to deal with the compensation claims for unpaid holiday and minimum wage claims, but may be liable for pension liabilities and have wider commercial tax complications for the company.

## 2. Can a worker carry over leave that has been taken, but not paid, because an employer did not recognise they were a worker?

**Smith v Pimlico Plumbers Ltd (CA) [2018]**

**Background**

Mr Smith was a plumbing and heating engineer who worked for Pimlico Plumbers from August 2005 to May 2011. Throughout that period, Pimlico maintained that Mr Smith was a self-employed contractor with no entitlement to paid annual leave. Mr Smith took periods of unpaid leave throughout his time at Pimlico. Following a dispute, the relationship came to an end in May 2011.

Mr Smith's contract described him as "an independent contractor of the Company, in business on your own account".

Mr Smith brought a claim for unpaid holiday. Status was dealt with as a preliminary issue and he successfully argued that he was a worker in the employment tribunal a decision that was upheld on appeal to the Supreme Court. The reasoning heavily relied upon the plumbers' requirements to deliver the work personally.

Having succeeded in the status argument, the matter reverted back to the ET for his claims to be heard. Mr Smith sought repayment of the 4 weeks' leave required by the Working Time Directive carried over each year until he stopped working for Pimlico Plumbers.

Mr Smith had taken leave during his time working for Pimlico Plumbers, he just hadn't received payment for it.

**Decision**

The Tribunal and the EAT rejected his claim and he appealed to the Court of Appeal. They said his claim was out of time and did not apply King v Sash Windows (which would have meant time ran from the termination date not the date of the holiday) because they said King applied only when leave had not been taken. In King, the Claimant had not taken leave as it was not going to be paid and he was able to argue for payment of all of this (including carried over from previous years) when his engagement was terminated.

The Court of Appeal disagreed and upheld Mr Smith's claim. It said the taking of unpaid leave could not discharge the employer's obligation to provide paid leave. The employer's approach had prevented Mr Smith from exercising the right (to paid leave) throughout his contract. The right had accumulated and crystallised upon termination of his contract. The tribunal had been wrong to hold that King did not apply to the claim, and wrong to hold that the claim was out of time, since it had been brought within three months of termination.

**Comment**

The decision makes clear that the principles in King extend to workers who have taken annual leave but have not been paid for it. Claims for payment in respect of both untaken and taken leave that is unpaid will therefore accrue throughout a worker's engagement until he or she is afforded the opportunity to take such leave and will, unless afforded before then, crystallise on termination.

In an unusual step the Court of Appeal has since issued an amended judgment, a postscript and in appendix in the Pimlico Plumbers case. The earlier judgment of the EAT had included suggested wording to be read into the Working Time Regulations to reflect holiday pay case law under the Working Time Directive, including the King v Sash Windows case. The Court of Appeal held that the EAT had wrongly interpreted King and invited further submissions from the parties as to the appropriate course to adopt.

While the court accepted that it had "no power to draft regulations" it suggested a form of words that would best reflect EU law, as an appendix to its earlier judgment. This includes the following additional wording to be read into the WTR at regulation 13(16):

*"Where in any leave year an employer (i) fails to recognise a worker's right to paid annual leave and (ii) cannot show that it provides a facility for the taking of such leave, the worker shall be entitled to carry forward any leave which is taken but unpaid, and/or which is not taken, into subsequent leave years."*

It remains to be seen whether or not this will be taken any further by the legislators but is an interesting development which may provide some much-needed clarification.

## 3."Irreducible minimum of obligation" not required for Worker status

**Nursing and Midwifery Council v Somerville (CA) [2022]**

**Background**

The Court of Appeal has confirmed that an 'irreducible minimum of obligation' is not a prerequisite of 'worker' status. The statutory definition provides that it is enough for the contract to include an obligation on the individual to perform work or services personally and that other party is not a client or customer. There is nothing to say that there should be some additional requirement to provide work or services which is separate from the work or services provided on a specific occasion.

The claimant was a fee-paying panel member of the NMC's Fitness to Practise Committee on a four year rolling term. His work was governed by a services agreement constituting the following terms:

- he was an independent contractor;
- nothing in the agreement created a relationship of employer and employee;
- the NMC was not obliged to request his services, and he was not obliged to provide them when requested;
- he had no obligation to provide services, and when he did, he would use 'all reasonable endeavours' to attend for the entirety of a hearing; and
- he could withdraw from a booking once he had accepted it, although he had to give notice 'at the earliest opportunity'.

The claimant presented employment tribunal claims for holiday pay under the Working Time Regulations 1998 and/or unauthorised deductions under the Employment Rights Act 1996 on the basis that he had either 'employee' or 'worker' status.

**Decision**

At a preliminary hearing, he was found to be a 'worker' but not an 'employee' for the following reasons:

- the tribunal found a series of individual contracts existed between the claimant and the NMC each time the claimant agreed to attend a hearing;
- letters of appointment and the services agreement both evidenced an overarching contract between them covering each four-year term;
- the claimant was under no contractual obligation to offer or accept a minimum amount of sitting dates; and
- he could withdraw from dates that he had accepted.

The tribunal found that these points demonstrated there was not enough mutuality of obligation to evidence either an overarching contract of employment or a series of individual employment contracts. However, it found he satisfied the definition of "worker" because there was no right of substitution; he agreed to provide services personally; and the NMC was not a client or customer of a business carried on by him.

The NMC appealed to the EAT but this was dismissed, the EAT holding that mutuality of obligation is not a prerequisite of 'worker' status. The NMC appealed further to the Court of Appeal.

In dismissing the appeal, the Court of Appeal found that an individual contract arose each time the NMC offered a hearing date and the claimant accepted it, even though the services agreement did not require him to personally to carry out any of the services. Nonetheless he would agree to accept a hearing and be paid a fee in return, giving rise to an individual contract each time. The court found that the tribunal had been right to conclude that the claimant was a worker. In the Court's view, there was no need to consider the concept of an 'irreducible minimum of obligation'. The ability for him to rescind an agreement to attend a hearing made no difference to the fact of him entering into a contract to provide personal services for a hearing. The fact that the parties are not obliged to offer, or accept, any future work is irrelevant.

**Comment**

The Court of Appeal considered that its decision was consistent with the Supreme Court's decision in the Uber case in that the drivers were providing services under individual contracts when they were working.

This case is important in that it provides additional clarification on the criteria required in order to qualify as a 'worker', particularly in cases of 'one off' contracts and ad hoc engagements.

## 4. Contractual versus Statutory Interpretation – what is the starting point in determining 'worker' status?

**Autoclenz Ltd v Belcher [2011]**

**Background**

In this case, the Supreme Court considered whether car valets were employees or workers, despite their contracts expressly stating that they were self-employed. Autoclenz supplied the valets with cleaning products and equipment and arranged group insurance cover for them. The valets submitted weekly invoices and Autoclenz deducted a fixed sum for the provisions they provided.

The valets presented a claim for the provision of national minimum wage and unpaid holiday pay under the Working Time Regulations 1998.

**Decision**

The ET found that, as a matter of fact, the realities of the valets relationship with Autoclenz was different in practice than their contracts suggested. Their contracts stated that they were under no obligation to attend work, however it was found that they were expected to attend work and provide services personally in practice.

The SC held that the practical realities of the situation was more important than what was written in the contract. The fact that Autoclenz had a 'written substitution clause' in the contracts did not detract from the reality that each of the valets were required to carry out their duties personally.

**Comment**

This decision confirms that, when determining an individual's status, employment tribunals and courts will be able to set aside the contractual terms if the realities of the individuals relationship with the employer is inconsistent with the express terms. Express written terms are not absolute and can be set aside if they do not reflect the actual legal obligations of the parties.

## 5. Did the employment tribunal err in concluding that a black-cab driver was in business on his own account, and not a 'worker'?

**Johnson v Transopco Ltd [2022]**

**Background**

The Claimant used the Respondent's 'MyTaxi' application to source passengers, whilst still sourcing passengers separately as a self-employed driver. He could reject job offers through the application without penalty and could reject bookings that had already been accepted in certain circumstances (again, without penalty).

The Claimant brought various claims and argued that, as a minimum, he qualified as a worker for the purposes of section 230 of the ERA 1996.

**Decision**

The claims were dismissed at the Employment Tribunal and further dismissed on appeal at the Employment Appeal Tribunal. It was found that the Claimant was in business on his 'own account' and in any case, the Respondent was the Claimant's 'client or customer'.

The EAT was entitled to find that the Claimant and the Respondent were two separate entities that contracted with one another, and that the Respondent was the customer of the Claimant's business. It was also noted that the size differences between the two entities was not material to the claim.

**Comment**

The finding in this case differs from *Aslam v Uber* in that the EAT found that the Respondent was not acting in the capacity as 'agent' for the Claimant. It is a further demonstration when determining individual employment status that each case is determined on the its own merits and facts.

## 6. No presumption of employment from finding of mutuality of obligation and control

**HMRC v Atholl Productions Ltd [2022] and Kickabout Productions Ltd v HMRC [2022]**

These cases centre on HMRC seeking to apply IR35 tax obligations to contractual arrangements between broadcasters and presenters. In order to be caught by IR35, it is necessary for there to be a finding that the individual in question would be an employee if the arrangement been orchestrated as client and individual. In these cases (which were heard by the same constitution of the Court), the Court of Appeal considered the application of the IRE35 to the tax treatment of income generated through a worker's services through an intermediary company i.e. a personal services company.

**Background**

In *HMRC v Atholl Productions Ltd* the taxpayer personal service company provided the services of an individual to the BBC for the purposes of presenting a radio show. HMRC had considered that the arrangements were caught by IR35. They were provided under annual contracts which expressly provided for a schedule of services and fees with minimum commitments. Although not exclusively contracted to the BBC, the presenter was prevented from appearing in other broadcast media intended for a UK or Irish audience without the prior consent of the BBC.

The Upper Tribunal determined that the First Tier Tribunal had made an error in its judgement and applied the principles of *Autoclenz* incorrectly. Although it similarly concluded that the 'hypothetical' contract between the BBC and the presenter was not consistent with employment because the presenter could have entered the terms as part of carrying on a business on her own accord.

In *Kickabout Productions Ltd v HMRC* there were two contracts that provided for a fee to be paid per episode performed, with minimal fee that was indicative of 222 episodes being performed per year. The presenter was not exclusively contracted with the broadcaster. The contracts had termination provisions and the radio station prescribed the times and dates of the shows.

The Upper Tribunal reversed the First Tier Tribunal decision that there was no effective employment status on the basis that there was a mutuality of obligation, and that certain terms within the contract would only be workable if there was an obligation to provide work.

Both cases were appealed to the Court of Appeal.

**Decisions**

In *HMRC v Atholl Producitons Ltd* the Court of Appeal allowed HMRC's appeal and remitted the matter to the Upper Tribunal. It was ruled that both the First Tier Tribunal and the Upper Tribunal had assessed the terms of the agreement on the wrong basis, and that the case should be remade. The Court of Appeal further determined that when assessing employment status, the application of *Autoclenz* should not be made outside of the context of protection of statutory employment and workers rights.

In *Kickabout Productions Ltd v HMRC* the Court of Appeal upheld the Upper Tribunals decision that there was a contract of employment. It agreed with the findings on the mutuality of obligation and control although noted that this does not create a presumption that a contract of employment exists, but is part of a multi-factorial assessment.

**Comment**

The Court of Appeal has made an important finding in that the principles of *Autoclenz* should not apply outside of the context of protecting the statutory employment / workers rights and that normal principles of contract law apply. These cases further demonstrate the complexity of applying the employment status tests, and raise concerns that if the First Tier Tribunal and Upper Tribunal can 'get it wrong' when it comes to assessments, then it's likely that practitioners may do so too.

## 7. Director / Shareholder Neither Employee nor Worker

**Rainford v Dorset Aquatics Ltd [2021]**

The EAT has upheld a tribunal decision that a director and 40% shareholder was neither an employee nor a worker of the company.

The claimant and his brother were the shareholders and co-directors of the respondent company. They were advised by their accountants to each take a salary which would be subject to PAYE, plus annual dividends. When one of the brothers left the business following a dispute, he brought various tribunal claims and a preliminary issue arose as to his employment status to be able to bring the claims.

The employment judge found there was no mutuality of obligation other than that the brothers would generate and carry out sufficient work to keep the company afloat. The claimant worked to his own hours and took holiday when he chose; he was free to undertake other work outside the company. There was no requirement for personal service, because the brother's evidence was that the claimant could have substituted someone else to do his work although he never did as a matter of practice. He was therefore found not to be an employee and promptly appealed.

His key ground was that, because it had been found that he worked for a salary, and the arrangement was not a sham, he must therefore be an employee, a worker, or a self-employed contractor working for a client or customer. He argued that he must be an employee or a worker because the company was not either a client or customer of his (so he could not be considered self-employed).

The EAT, however, did not agree. It pointed to case law demonstrating that working director-shareholders do not have to have employment contracts, and there was no suggestion, in the key Supreme Court case on worker status, that an individual had to fall into one of the identified three categories. The EAT considered that the judge was entitled to take into account the parties' views as to the nature of their relationship when it came to the matter of substitution.

The claimant also argued that the judge was wrong to take account of his level of control over the company and his exposure to risk, which was due to his status as a director-shareholder. The EAT accepted that one could not

say that a director/shareholder cannot be an employee, but in this case the control/risk factors only formed part of the overall scenario and had not significantly influenced the judge's decision.

### 8. Are Postmasters workers within the meaning of the Working Time Regulations 1998, and therefore entitled to holiday pay?

**Baker v Post Office [2022]**

**Background**

The Tribunal considered a preliminary issue in order to establish whether 120 Postmasters were considered workers under the Working Time Regulations 1998, and therefore could bring a claim against the Post Office for holiday pay. The Claimants were either contracted with the Post Office in an individual capacity, or as directors of a limited company.

**Employment Tribunal**

The Employment Tribunal disagreed with the Claimants that personal service was required and reflected the reality of their contracts with the Post Office. Although several of the Claimants had shown that they wanted to retain 'back-office' work for themselves as they were personally liable, the Employment Tribunal considered that there was no obligation to do so. The Employment Tribunal also considered that the Post Office did not have an absolute veto over the Claimant's assistants, and the extent of the checks were limited to right to work checks and generic criminal background checks for evidence of dishonesty. The Claimants were also not required to undertake training and there was no disciplinary procedures between the Claimants and the Post Office; the only recourse for the Post Office was the termination of the contractual arrangements.

In short, it was the Claimants' responsibility to ensure that services were provided, whether personally or by an assistant, and there was not the full and proper construction of 'personal service' within the contractual relationship in order for the Claimants to be considered workers. The Employment Tribunal therefore ruled that the Claimants were self-employed.

**Comment**

This case further illustrates the multiple factors and requirements to be considered when determining 'personal service' in the construction of employment status. It was found that the reality of the contractual relationship fell short of the definition of personal service and therefore worker status could not be ascertained.

## Section B: Case Law update

### Was it automatically unfair to dismiss an employee who refused to return to work over concerns of COVID-19 and his vulnerable children?

**Rodgers v Leeds Laser Cutting Ltd [2022]**

**Background**

The Claimant, Mr Rodgers, was employed as a laser operator by the Respondent since June 2019. During the first national lockdown the Claimant refused to attend work, which was described as a large warehouse facility, because he had vulnerable children whom he feared could become very ill if they caught COVID-19. After a period of time he was sent his P45 and effectively dismissed from his role. The Claimant brought a claim for automatic

unfair dismissal stating that he had not returned to work to protect himself from circumstances of danger (which he reasonably believed to be serious and imminent and which could not reasonably have been avoided).

The Employment Tribunal dismissed the Claimant's claim agreeing that whilst he may have had concerns about COVID-19, these were not attributable to the workplace. The Claimant had also failed to support his own argument of facing serious circumstances of danger which were imminent by failing to wear a facemask, leaving his home during self-isolation to drive someone to hospital, and working in a pub.

The Claimant appealed to the Employment Appeal Tribunal

**Decision**

The Employment Appeal Tribunal generally accepted that, in principle an employee could reasonably believe that there were serious and imminent circumstances of danger in the workplace that forced them from attending work. On the facts of this case however, it was found that the Claimant had not met this test.

Further, the Employment Appeal Tribunal commented on the Claimant's lack of reasonable steps to avoid such potential risks of reasonable danger by wearing a mask, observing social distancing and adhering to self-isolation.

The appeal was dismissed.

**Comment**

Whilst this case suggests that it is not automatically unfair to dismiss an employee for reasons of failing to return to the workplace for concerns over COVID-19, the decision turns on the facts of the case. The Claimant had inconsistent evidence and had shown that he had failed to mitigate any such dangers by following COVID-19 safety guidelines. As the world continues to 'reopen' and employers encourage their employees to return to the office, it will be important to watch the Tribunals for similar cases which may yield a different judgment on more convincing facts.

## Agency Workers and the Right to be Informed of Vacancies

**Kocur v Angard Staffing Solutions Ltd and anor (CA) [2022]**

The respondent is an employment agency providing agency workers to Royal Mail as and when needed. A number of agency workers who were employed by ASS Ltd and supplied to work in Royal Mail's Leeds Mail Centre brought employment tribunal claims for various breaches of the Agency Workers Regulations. The tribunal found that regulation 13 has been breached and that they were entitled to be informed of any relevant vacant posts and given the opportunity to apply in the same way as permanent members of staff, which had not happened.

The agency appealed to the EAT, which allowed the appeal on the basis that regulation 13 entitled the agency worker to be informed of vacancies but did not extent this to being entitled to apply for vacancies on the same terms as comparable, permanent employees.

When the agency workers appealed to the Court of Appeal, their appeal was dismissed. The Court of Appeal considered that regulation 13 only confers the right to be notified; and nothing more. It considered whether the purpose of the Directive was to equate notification with any additional rights such as to apply, and be considered, for the vacancy; and decided that this was not the purpose.

The EAT had noted, with which the Court of Appeal agreed, that it would be strange if regulation 13 meant that an employer could not give preference to in-house candidates when a vacancy occurs, and that it would inhibit employers' ability to give preferential treatment to employees who have been selected for redundancy and placed in a redeployment pool. The Court agreed with the EAT that if the legislation had intended these as consequences, the regulations would have been drafted as such.

**Comment**

This case shows that, regulation 13 of the Agency Workers Regulations 2010, which gives agency workers the right to be informed by the hirer of any relevant vacancies, does not go so far as to give agency workers the right to apply and be considered for vacancies on the same terms as the hirer's permanent employees. However, it is a reminder of the importance to at least inform such workers of vacancies.

## If an employer dismisses a disabled employee and fails to make reasonable adjustments during that process, is it automatically unfair dismissal?

**Knightley v Chelsea & Westminster Hospital NHS Trust [2021]**

**Background**

The Claimant worked for the Respondent as a Lead Midwife for mental health.

The Claimant suffered with stress, anxiety, and reactive depression. The Respondent conceded this amounted to a disability for the purposes of the Equality Act 2010.

The Claimant was absent on the grounds of ill health from August 2015 to September 2016. This process was managed via the Respondent's sickness absence procedures. Following further periods of absence, the Claimant was dismissed in 2018 on grounds of capability. The letter confirming termination of the Claimant's employment notified the Claimant of her right to appeal within 10 working days of the letter.

A few days later, the Claimant emailed to ask for a 2-week extension to lodge an appeal. This was refused as it was seen as a pattern of behaviour of the Claimant. The Claimant then submitted a three-line appeal a week later which was not considered as it was out of time.

**Decision**

The ET found the employer had failed to make reasonable adjustments to its procedure when dismissing the Claimant on the grounds of capability, however it found the dismissal was fair and proportionate and therefore the unfair dismissal claim failed.

The EAT dismissed the Claimant's appeal holding that an employer's failure to make a reasonable adjustment during the dismissal process did not render the dismissal unfair.

**Comment**

The process of reasonable adjustments and the process of dismissal are two separate processes. Due regard and consideration must be given to each process independently rather than assuming failings in one process will automatically impact the other process.

## Did the employment tribunal err by awarding the maximum ACAS uplift of 25%?

**Rentplus UK v Coulson [2022]**

**Background**

The Respondent, Rentplus UK, is a privately funded commercial company that purchases properties which are rented to tenants by housing associations. The Claimant, Ms Coulson, was employed by the Respondent in the position of Director of Partnerships in 2015.

In March 2017, unbeknownst to the Claimant, a decision was taken that she would be dismissed. A new CEO was appointed in October 2017 and the Claimant was effectively frozen out of her role from this date. Despite the Respondent receiving £11m of outside investment and the total number of posts available at the company increasing, a redundancy exercise began. The Claimant then attended two consultation meetings in April and May '18 before being dismissed on the grounds of redundancy.

The Claimant had both her grievance and appeal dismissed by the Respondent before pursuing a claim against the Respondent for unfair dismissal and sex discrimination. The Employment Tribunal found in the Claimant's favour and held that the grievance process and the redundancy process were a sham.

The Employment Tribunal awarded the Claimant the maximum ACAS uplift of 25%. The Employment Tribunal also found by a majority that there were facts which could suggest sex discrimination, and the Respondent had not disproved this element.

The Respondent appealed to the Employment Appeal Tribunal.

**Decision**

Although the Employment Appeal Tribunal did criticise some of the Employment Tribunal's judgment, in particular highlighting to distinguish which part of the ACAS code it was dealing with, the Respondent's appeal was dismissed. It was agreed by the Employment Appeal Tribunal that there had been no error in law in applying the maximum uplift of 25% for breach of the ACAS code.

**Comment**

The ACAS code doesn't apply to redundancy dismissals, only to conduct and capability but the Tribunal had concluded that the redundancy label was a sham and employers cannot avoid the code by pretending it is a redundancy situation.

This case further highlights the importance of employers' following a fair process and considering the true reason for a dismissal before deciding the code will not apply. Failure to follow the code can result in significant financial penalties and the tribunals have shown that they will not shy away from awarding the maximum uplift available.

The Employment Appeal Tribunal set out a useful reminder of the questions to be asked when considering when an ACAS uplift can be applied. These questions are:

- Is the claim one which raises a matter to which the ACAS code applies?
- Has there been a failure to comply with the ACAS code in relation to that matter?
- Was the failure to comply with the ACAS code unreasonable?

- Is it just and equitable to award an uplift because of the failure to comply with the ACAS code and, if so, by what percentage, up to 25%?

## Can restrictive covenants in a service agreement prevent individuals from joining a competitor?

**Law By Design Ltd v Ali [2021]**

**Background**

The Claimant began working for the Respondent in 2013. In 2016 she became a shareholder and signed a shareholder agreement. In 2021, the Claimant entered into a service agreement. Both agreements contained restrictive covenants.

The service agreement contained a non-competition clause preventing the Claimant from being involved in any business which was in competition with the parts of the firm the Claimant had been involved in to a material extent in the 12 months preceding termination.

The shareholder agreement contained a similar covenant preventing the Claimant from working for any business which competed with the firm in a territory in which the firm has operated in the previous 12 months. The relevant territory was England and Wales.

**Decision**

The covenant in the service agreement was held to be no wider than reasonably necessary and was enforceable.

The covenant in the shareholders agreement restricting the Claimant from working for any business in competition with the firm in England and Wales was held to be too wide and thus enforceable.

**Comment**

Careful consideration needs to be given to the drafting of post-termination restrictions. A restrictive covenant must be designed to protect a legitimate interest of the employer, for example, trade connection with customers. The scope of the restriction must be no more than necessary to protect the legitimate interest. Wide and vague covenants are likely to be found unenforceable.

## Did the employment tribunal fail to consider the 'last straw' doctrine?

**What is the last straw doctrine?**

Where a Claimant brings a claim of constructive unfair dismissal, the test is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment.

In addition to a breach of an express contractual term, the employer may also be in breach of an implied term. For example, a term of trust and confidence is implied into all contracts of employment, breach of which is to destroy or seriously damage the employer-employee relationship.

The 'last straw' doctrine refers to circumstances where repudiatory conduct consists of a series of acts or incidents rather than one incident of breach. Individually, each incident does not need to amount to a repudiatory breach and therefore may appear trivial, however collectively, the incidents amount to a repudiatory

breach. The last act which causes the employee to leave does not have to be a breach of contract itself, but when taken together with previous acts amount to a breach.

**Craig v Abellio [2021]**

**Background**

The Claimant was a bus driver and worked for the Respondent since 2014. He resigned in 2019 following a period of sickness absence. The Claimant alleged he had not been paid the correct sick pay and raised a grievance.

The outcome of the grievance procedure was for the Respondent to pay the Claimant £6,000 backdated, by a specific date.

The Respondent failed to make payment by the agreed date. In response, the Claimant resigned claiming this was 'the last straw' of a series of poor treatment by the Respondent. The Claimant brought a claim of constructive unfair dismissal.

**Decision**

At first instance, the Tribunal held that the Respondent had addressed the Claimant's pay concerns as part of the grievance outcome and that the failure to make payment by the agreed date was simply a mistake. The ET held the delay in payment was not a repudiatory breach and did not amount to a last straw in a history of events.

On appeal, the EAT held that the ET had failed to engage with the Claimant's factual case on the last straw. The Claimant's claim was to be reheard by a new Tribunal.

**Comment**

The case is a reminder that the final trigger for an employee resigning may not in itself be a fundamental breach. It will need to be looked at in light of the history of other alleged breaches.

# Section C: Future developments

## Menopause

### No plans to introduce menopause as a protected characteristic

In a letter dated 25 May 2022, the Minister for Work and Pensions (Lords) and Minister for Women, Baroness Stedman-Scott has confirmed to the Chair of the Women and Equalities Committee that the government has no current plans to introduce menopause as a protected characteristic under the Equality Act 2010.

In the letter Baroness Stedman-Scott explains that the introduction of menopause as a protected characteristic is not an actual or proposed government policy. Further, there has not been any public consultation on the topic.

Whilst there is no sign that menopause will become a protected characteristic in the near future, the government will maintain in consultation with the Equality and Human Rights Commission and ACAS in order to assess whether the existing guidance on menopause adequately reflects the current body of relevant tribunal case law.

On a related note, the Tribunal has recently published the claim statistics which show that the number of menopause related claims has nearly doubled over the last year.

## National Pay Gaps

### Gender Pay Gap

Under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (SI 2017/172) employers with over 250 employees are required to disclose information on their gender pay gaps each year.

The COVID-19 pandemic significantly disrupted this mandatory pay gap reporting where it was temporarily suspended in 2020 and the reporting deadline further postponed in 2021.

The Office for National Statistics ("ONS") eventually released its Annual Survey of Hours and Earnings report, revealing that the UK's 2021 gender pay gap has grown since 2020, but generally remains smaller than it was in 2019.

In April 2021, the gender pay gap for full-time employees was 7.9% compared to a 7% pay gap in April 2020 and a 9% pay gap in April 2019. The ONS analysis also shows that there remained a large difference in gender pay between employees aged 40 years and over compared to those aged below 40 years, with female employees aged between 40-49 who work full time experiencing the highest gender pay gap at 12%.

Although an increase from 2020, the ONS data suggests that the gender pay gap continues to show a downward trend with the pay gap reducing by approximately a quarter over the last decade. However, the latest reports should be taken with a 'pinch of salt' as the sample size of the analysis is expected to have been significantly reduced due to the furlough scheme.

In December 2020 the Government Equalities Office published guidance that confirmed that employees who were furloughed on *reduced pay* would not constitute 'full-pay' relevant employees for the purposes of mandatory gender pay reporting. The calculations used in the report are based on the pay of full-pay employees, and so the analysis completed will invariably be done on a reduced sample size / workforce which may not be indicative of the true gender pay environment.

## Ethnicity Pay Gap

There has been a steep decline in the number of companies reporting their ethnicity pay gap, with numbers reducing by half in 2021.

The HR DataHub began collecting data on company ethnicity pay gaps in 2018. A total of 170 organisations have reported their ethnicity pay gap since that date, however only a quarter of these consistently reported each year. The most recent report shows that compared to 129 companies in 2020, only 64 had reported their ethnicity pay gap in 2021.

This has led to further calls for ethnicity pay gap reporting to become mandatory through legislation. The government had previously indicated its intention to respond to a petition to introduce mandatory reporting (including a call from the CIPD and the House of Commons Women and Equalities Committee to make reporting mandatory from April 2023) in 'due course' and recently published its response in March 2022 in its policy paper '*Inclusive Britain: government response to the Commission on Race and Ethnic Disparities'*.
In this paper, the government have expressed that they will support employers with reporting by publishing guidance on voluntary ethnicity pay reporting but have stopped short in making reporting mandatory. The guidance is due to be published in the summer of 2022 and is to include case studies of organisations that already report on ethnicity pay gaps, alongside providing employers with the tools to understand and tackle any pay gaps identified through the reporting process.

## Disability Pay Gap

The most recent ONS report shows that the UK disability pay gap for 2021 was 13.8%, up from 11.7% in 2014.

The report shows that disabled employees earn a median of £12.10 per hour, with non-disabled employees earning a median of £14.03 per hour. The disability pay gap for men was also wider at 12.4% than for women who faced a pay gap of 10.5%.

The disability pay gap also widened depending on the type of impairment that the employee suffered. The largest pay gap was found to be with those disabled employees who suffered with autism, with their median pay being 33.5% less than non-disabled employees. Other notable pay gaps were seen with those with severe or specific learning difficulties (29.7%), epilepsy (25.4%), and mental illness or other nervous disorders (22.1%).

## ACAS report on Hybrid Working

On 16 June 2022, Acas published findings of a hybrid working survey. The results show that 60% of employers surveyed have seen hybrid working increase following the COVID-19 pandemic. In addition, 52% have seen an increase in staff working from home full-time.

Accompanying these figures, Acas has provided the following advice to employers:

- Hybrid working policies should explain how hybrid working can be requested, detail how job roles are assessed and how decisions will be made.
- Remote staff should have equitable access to opportunities such as team building, training and social activities as those in the workplace.
- Transparency and fairness are important when deciding whether to approve staff requests for hybrid working. Other forms of flexible working may be considered as alternatives.
- Suitable equipment and information to facilitate safe at-home working is necessary.
- Employers must comply with the law on working hours. Staff working at home should take adequate rest breaks and look after their mental health.
- A trial period to test hybrid working and establish any necessary adjustments may be useful.

## ESG

### What is ESG?

ESG is a collaborative term for the environmental, social, and governance framework of organisations. Originally used by the financial sector in relation to assessing investments, it is increasingly being used by organisations across the business community and has largely replaced the use of the term 'CSR' (Corporate Social Responsibility).

It is becoming increasingly important for organisations to project good ESG practices in order to have a positive effect both internally and externally on their productivity, profitability, and reputation. It is therefore important the businesses comply with the relevant labour and employment laws in place in order to foster a positive ESG profile.

### ESG and HR

There are several elements and related policies when it comes to ESG that employees that work in HR should be aware of, such as:

- Diversity and inclusion;
- National pay gaps (gender, disability, and ethnicity);
- Investment in its people and skills;
- Environmental policies;

- Anti-money laundering and corruption policies; and
- Work-life balance / hybrid working.

Whilst some of the above policies would historically be considered in light of CSR requirements, the COVID-19 pandemic has led to an increased emphasis on employee work-life balance and hybrid working.

Alongside the ACAS guidance published in July 2021, the CIPD released practical guidance on hybrid working on behalf of the government in December 2021. The key take home messages are that organisations should:

- Develop hybrid working principles or policies;
- Consider introducing hybrid working trial periods/pilots;
- Introducing or utilising existing mechanisms for worker voice, such as through workers unions and collective bargaining structures;
- Preparing people managers and workers for the transition to hybrid working, taking lessons from the recent remote working period;
- Reflecting on cultural readiness for the transition to hybrid working;
- Reviewing current and future equality implications; and
- Determining what benefits or support will be provided to hybrid workers including issues such as the provision of equipment.

## ESG in UK Law

There has been a notable push in rhetoric from the government when it comes to ESG. For example, in 2021 the government indicated that it intended to update the Modern Slavery Act 2015 in order to 'clampdown' on those companies and directors that exploit or are complicit in the use of forced labour in China.

Additionally, as discussed earlier, the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 has been brought in that requires those employers with over 250 employees to publish information on their respective gender pay gaps each year.

More recently, on 6 April 2022 new legislation came into force requiring UK registered companies and LLPs with over 500 employees (having a revenue of more than £500m) to disclose certain non-financial reports. The new mandatory reports cover a range of disclosures relating to an organisations governance arrangements in assessing and modelling climate-related risks and opportunities.

Looking forward, we can expect several other government consultations to be published in 2022, including:

- An update to the Green Finance Strategy setting out indicative sectoral transition pathways (to align the financial system with the UK's net zero commitment by 2050);
- Changes to the Modern Slavery Act 2015, including new mandatory content and reporting deadlines for modern slavery statements; and

- Proposed directives on corporate due diligence and corporate accountability in relation to human rights and environmental due diligence in a companies' value chains.

## LGBTQ and the Use of Pronouns

For some people, the gender that they were assigned at birth may not be the gender for which they identify. Often, our perception of someone's identity is based on their name or outward appearance, however this may not be correct.

Gender reassignment and sexual orientation are protected characteristics under the Equality Act 2010. It is unlawful for an employer to subject an employee or job applicant to discrimination, harassment or victimisation in respect of a protected characteristic.

**Key Terms**

1. Non-binary is a term that refers to people who feel their gender cannot be defined within the margins of gender binary, i.e., within the margins of either male or female.

2. Gender fluid is a term that refers to people who move between two or more gender identities.

***Taylor v Jaguar Land Rover [2020]***

**Facts**

Ms Taylor worked at Jaguar Land Rover for 20 years as an engineer. She had previously presented as male but in 2017 began identifying as gender-fluid. Ms Taylor began to dress in women's clothing and was subjected to abusive jokes and insults as a result of this.

Ms Taylor experienced little support from managerial teams during her transition and also experienced difficulties when using toilet facilities.

Ms Taylor brought claims of direct discrimination, harassment and victimisation on the grounds of gender reassignment.

**Decision**

ET held that the definition of gender reassignment under section 7 Equality Act 2010 covers employees who identify as non-binary and gender-fluid.

This is noteworthy as previously, a narrow interpretation was taken in respect of what constitutes gender reassignment and appeared limited to those

Section 7 of the Equality Act states:

*"A person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex"*

The effect of the decision in *Taylor v Jaguar Land Rover* was to extend the interpretation of section 7 beyond those individuals undergoing medical treatment for the purposes of transitioning.

**Takeaway Points**

It is not enough for employers to have appropriate equality and diversity policies in place, but rather staff need to be actively aware of these policies and to be trained in these areas.

Employers should be alive to comments or 'banter' regarding gender identity.

HR professionals should be trained in how to deal with any individual that may approach them to discuss their gender identity and any proposed transition

HR professionals should consider how best to educate the wider workforce:

- Diversity and inclusion training of staff at all levels;
- Consider Equality and Diversity committees and signpost employees to appropriate support;
- Consider implementing/updating equality and diversity policies;
- Consider and normalise the inclusion of pronouns in the workplace;
- Consider any practical and logistical barriers that may be in place, e.g. access to gender neutral toilet facilities; and
- Support employees who are transitioning by maintaining an open dialogue.

## Section D: Our insights into the changing relationship between employees and employers

### War for talent?

HR directors confirm 'the great resignation' is real and not just a notion hyped up by media. It's happening across the board and companies with typically good attrition rates have noticed it. Even the longest serving employees have been moving off to new pastures.

Similarly real are the talent shortages. Between November 2021 and January 2022 the number of job vacancies in the UK hit a record high of 1,298,400, although the ONS said that the rate of growth "continues to slow".

'Meaning' and 'purpose' are words that talent teams now use to describe what candidates seek in a job. The recruitment conversations are increasingly framed in terms of what differentiates organisations, and candidates question what the business does and whether it's ethical or sustainable. Millennials and Gen Z candidates specifically are particularly focused on the social and environmental impact of organisations they are thinking of joining. They can be quite choiceful; they pay attention and note whether the credentials companies put forward are authentic or merely lip service.

> *A lot of candidates - certainly more socially conscious ones - are attracted by our Danone commitments, and notably by our B Corp certification, which puts us in a good position as a prospective employer".*
>
> *- Liz Mason, HR Director, Nutricia Danone UK & Ireland*

**Point to consider - what is your organisation doing to attract (and retain) talent?**

### Flexible working: policies or guidelines?

Home working and hybrid working are not new concepts. Both fall under the broader definition of flexible working which has been enshrined in legislation for a while.

Organisational psychologists point out that most businesses had flexible working arrangements available to employees pre-pandemic, however workers didn't feel they could put in flexible working requests because it would show a lack of commitment and adversely affect their career prospects.

The pandemic, lockdowns and the ensuing requirement to work from home have changed the perceptions around permission. The law hasn't changed; the Government is consulting on flexible working changes only in a very small way. But when employees would historically express the wish to work flexibly and the employer denied the request, lawyers would often advise a trial period. Now the pandemic catalysed the trial period of all trial periods, and the evidence suggests most office workers not only have permission to work from home, but are often encouraged to do so.

> *"We have people making choices; some will choose to be in the office a lot because they're sociable and gregarious, and that's where they feed their energy from. Others will focus so much better and be reflective and want to be at home. That's when it becomes about managers not being unconsciously biased just because they may be seeing some people more frequently."*
>
> *- Rebecca Fennell, Transformation Manager, Nutricia Danone UK & Ireland*

**Point to consider - How your organisation is incorporating flexible working (if at all) to its business model? Are these policies or guidelines?**

## The strategic wellbeing culture

The pandemic has been a major accelerator of the wellbeing conversation. It's created the burning - or at the very least smouldering - platform, so that the agent for change is now here. It's a good place from which organisations can move forward.

A culture that supports wellbeing can only be created when wellbeing is a strategic issue. Organisations need to move on from the 'yoga and smoothies' approach to wellbeing and embrace it as an issue with a very real impact on the bottom line.

Wellbeing is now a senior leadership team issue that many global employers take very seriously. What employees need next is to see this issue addressed at all stages of the workforce. At this point, only about 30% of businesses and public sector bodies in the UK see wellbeing as a strategic issue, but that percentage is increasing every year.

> *"Managing health and wellbeing at work is about creating a culture where organisations retain and attract the right people. Wellbeing isn't a fuzzy construct anymore."*
>
> *- Professor Sir Cary Cooper CBE*

**Point to consider - Does your organisation view wellbeing and culture as a strategic issue?**

## HR of the future

As a public healthcare crisis, the pandemic affected all workforces. At this critical time, HR teams rose to the challenge: they supported, strategised, planned, implemented measures and advised CEOs as issues in the workforce came to the fore.

Playing this key role has changed top managers' perceptions of HR. The expertise and skills were always there; now, so is the credibility.

Aside from dealing with the current agenda issues such as flexible working, wellbeing and ED&I, companies are also coming to the realisation that a motivated and trusted workforce have a direct impact on the bottom line – and HR is the function to deliver that. FDs and CFOs have always had this level of credibility because those functions are measured by monetary terms. If businesses are now starting to be measured on both the credibility of their employee engagement and their employee brand, more than they ever have been previously, this will be a central part to the success of any business moving forward.

> *"The old-fashioned perception is of HR as a function that just takes money off the bottom line; the function has now had the opportunity to prove just how wrong that view is. HR just delivered and delivered over the last two years and got things done, and created licence in the board meeting to share an opinion on any subject and be listened to."*
>
> *- Julie Benjamin, HR Director, Neptune*

**Point to consider - Has your perception of HR changed? How do you see the role further evolving in the future?**