

Key Takeaways

Panel discussion: Can or should employees be pushed to return to the office?

Chair: Andrea London, Partner, Winckworth Sherwood

Dr Noelle Blackman, Coach, Consultant & Trainer

Katy Fridman, Founder-CEO, Flexible Working People

Paula Tegg, Assistant General Secretary, Accord Trade Union

David Wreford, Partner, Mercer

Poll Question 1: Have you implemented or are you considering a mandated return to office policy?

- Almost half – 49% - interestingly said no
- Yes, 3 days was next highest with 21%
- Yes, 2 days a week – 17%
- Yes, 4 days a week – 6%
- Yes, 5 days a week – 8%

- It was noted that Amazon had recently stated that all employees had to return to the office by January 2025 and that this was a view being espoused by numerous companies now – especially in financial services. It is likely however that this will create dissatisfaction within your workforce – especially if not handled properly - as the pandemic showed people that they could have flexibility and more work/life balance.
- There was a discussion that there are – unfortunately - substantial negatives to working from home, and that the work-life balance does take some work to achieve as the following needs to be considered:
 - » Physical health as not walking to work anymore.
 - » Isolation.
 - » Emotional health (particularly in realm of domestic abuse where people do not ever get away from their partners).
 - » Addition to work /not knowing when or being able to switch off.
 - » Harder for those who live in house shares for example to be around people they have not chosen to spend time with. No specific work space.
 - » Hard to learn about the culture of the organisation and/or establish a workplace culture (it was noted that you must actively address this and bring people together when you can).
 - » Difficult for juniors to learn from those more senior to them when remote.
 - » Does not suit every type of work, for example, some work specifically requires teamwork and discussion.
 - » Employees still work when they are sick, as there is an expectation that if they are at home, they can work.
- If a company is going to enforce a mandatory return to the office, for example at least 3+ days a week, to achieve this its best to value employee involvement. For example, allowing for genuine consultation with employees, introducing the policy slowly over a long period of time so employees can get used to coming in again, not enforcing a blanket approach and making exceptions for those with caring responsibilities, disabilities and other issues.

Poll Question 2: What's the primary driver for your return to the office policy?

- Increasing productivity and collaboration – 59%
- Regaining company culture and values – 23%
- Regulatory requirements/industry standards – 11%
- Workforce mental health concerns – 6%
- Operational costs - 1%

- It is important for both employers and employees to create boundaries for those working from home, and flexibility should go both ways e.g. if there is a new member of staff, everyone coming into the office on that day so that that individual can meet the team.
- Trust is a central issue when it comes to working from home, it is important for employers to trust their employees to work when they should be and not to be working when they shouldn't – and important for employers not to forget about home workers, nor consider that they in any way lack commitment (the "presenteeism" argument).
- For employers wanting to make changes - Communication is key – you need genuine and transparent open communication, and to consider proposals made properly.

- If you want employees to come into the office, it has to be the preferable place to be, so consider if there are any perks which can be offered.
- On a survey conducted called In Employee Minds, it was noted that in respect of their working environment; generally, women want more flexibility and men want more money.
- It was noted that if you want more women in the workplace, particularly at senior levels, you need to offer flexible working. In addition, you should also encourage men to take up flexible working too.
- There was also some discussion about pay and whether employees should get pay rises if they are in the office full time. Also, if employees in London should still receive the London weighting (if they are WFH). All the panellists were of the view that probably not and suggested that this was unlikely to change - but in the long-term it could mean more even pay across the UK.
- It was also said that if you do put a mandated office policy in place, this could also mean that people leave the business and employers may struggle with retention and talent attraction if they do not offer hybrid/flexible/remote roles, as there are plenty of workplaces which do.

Employment law in a time of change – the latest on the Government’s proposed employment law reforms

Bettina Bender, Partner and Florence Smart, Associate, Winckworth Sherwood

The Employment Rights Bill is the first phase of the Government’s “plan to make work pay”. Most of the detail is yet to be provided and therefore, nothing is set in stone and most changes will not take effect before 2026. The next stage is for a consultation process with stakeholders (businesses, trade unions and third sector bodies). The Bill includes the following key changes:

1. Introduction of a “day one” right not to be unfairly dismissed, applicable to employees only. This will be caveated by the introduction of a statutory probationary period (currently expected to be 9 months long) during which a lighter touch dismissal process will apply. This will not apply in redundancy situations.
2. Enhanced protection against workplace harassment through the reintroduction of employer liability for third party harassment (previously repealed in 2013). In contrast to the repealed law, employers will be liable for the first instance of third party harassment, unless they can show they took all reasonable steps to prevent it – this is applicable to all types of harassment. The Bill will also specifically extend the new proactive duty on employers to take reasonable steps to prevent workplace sexual harassment, so that the duty is to take all reasonable steps to prevent sexual harassment.
3. Change to the current flexible working regime so that employers will only be able to refuse a request where it is reasonable to do so. The eight statutory reasons for refusal will remain the same, however.
4. Extension of various family friendly rights, including the introduction of a day one right to unpaid parental and paternity leave; parental bereavement leave legislation to be converted to cover a general entitlement to bereavement leave; paternity leave to be allowed in addition to shared parental leave; and a further review of parental leave, carer’s leave and a wider review of the UK’s family leave system.
5. Overhaul of zero-hour contracts so that those on zero-hour contracts can move to guaranteed hour contracts to reflect the hours they regularly work over a 12-week reference period. The change is designed to allow those on such contracts a higher degree of financial certainty. Those who want to remain on zero-hour contracts can do so.
6. Change to redundancy collective consultation requirements. Currently, employers proposing to make 20 or more people redundant at one establishment within a 90-day period must go through collective consultation. The Bill removes reference to ‘at one establishment’ so that employers will need to count redundancies across all sites/ workplaces. The Government is also due to consult on its proposal to increase the protective award (either by extending the payment period (currently 90 days), or by removing the cap entirely).
7. Change to “fire and re-hire” practices (i.e., dismissal of an employee followed by re-engagement on different, usually less favourable, terms), so that a dismissal will be automatically unfair where an employee is dismissed because they have refused to vary their contractual terms, or if they are replaced by an employee on varied terms who carries out substantially the same role. Employers will only have a defence if the action was to mitigate financial difficulties so serious that they impact its ability to carry on business as a going concern.

Poll results show that our attendees are most concerned about (1) day one unfair dismissal protection for employees (71%); (2) the changes to collective consultation requirements (10%); and (3) stronger protection against harassment and sexual harassment (8%).

Panel discussion: Is your diversity programme effective?

Chair: Andrew Yule, Head of Employment, Winckworth Sherwood

Professor Chris Baker, Director of the Faiths and Civil Society Unit, Goldsmiths University of London

Leasha Lynch, Associate, Winckworth Sherwood and Social Mobility Champion

Ed Shrager, Co-Founder, Culture Catalyst CIC

Poll Question 1: Have you ever joined a new team or group meeting, had an interesting perspective to share, but felt that you couldn't – because you felt you did not "belong" and / or because you were talked over or not listened to?

- Yes: 78%
- No: 22%

- When considering the importance and value of diversity, also focus on inclusion. Ask what can be done to ensure everyone feels comfortable contributing.
- Identify people within the organisation and make them champions - individuals who really want to make a change.
- Embrace individual ideas over group thinking.

Question to Panel: Is it enough just to have a written policy?

- No short-term solutions.
- The importance of having networks – start small, ensure you have the right tools to begin making changes. Use people's passion.
- Recruitment:
 - Community engagement – visit schools for instance, showing examples of people of different backgrounds and sharing their stories.
 - Offering work placements – partnering with organisations who seek to help people of lower socio-economic backgrounds.
 - Reviewing the way you assess applications – having a "real rating" to level the playing field.
- Recognise people's values and beliefs, to allow for their authenticity to shine.
- Bottom line: It takes time. You need to have the right tools, a long-term commitment and encouragement.

Question to Panel: How do you track success when it comes to diversity and inclusion?

- Data is valuable, for awareness and to help inform actions.
- There has been a rise in the gender gap over the past year – how can this be happening? Also consider ethnicity and disability pay gaps.
- Engaging with colleagues and enable them to share their experiences.
- Popularise what you are doing – make diversity and inclusion an active part of your agenda.

Update on the protection of gender critical beliefs in the workplace

Will Clift, Senior Associate, Winckworth Sherwood

- It is unlawful to subject a worker to less favourable treatment because of their religion or belief.
- Grainger Plc and Others v Nicholson – sets out which beliefs are protected, namely:
 - Genuinely held.
 - Not an opinion or viewpoint.
 - Relate to weighty and substantial aspect of human life.
 - Cogency, seriousness, cohesion and importance.
 - Worthy of respect in democratic society, not incompatible with human dignity, or the fundamental rights of others.
- Human Rights – Article 9(2) of the ECHR – the right to manifest a belief may be restricted if that restriction is necessary in a democratic society for the protection of the rights and freedoms of others.
- Distinction between cases where:
 - The reason for the discrimination is the holding or expression of a protected belief amounts to discrimination.
 - Reason is the claimant had expressed that belief in an objectionable or inappropriate way – does not amount to discrimination.

Forstater v CGD Europe and Others

- Lost contract at the Centre for Global Development ("CGD").
- Tweets included:
 - Referring to gender fluid person as "a man in heels".
 - And as a "...part time cross dresser who mainly goes by the name of Phillip".
 - "... smart people who I admire... are tying themselves in knots to avoid saying the truth that men cannot change to women".
- Brought discrimination claim arguing the tweets were a manifestation of her beliefs.
- CGD argued that she had expressed them in an objectionable way.
- Was it discriminatory not to renew her contract because of the tweets?
- Discrimination claim succeeded – claimant's tweets were assertion of core protected belief.
- Could not be objected to even if capable of causing offence.
- Claimant had been provocative or mocking but this was the "common currency of debate" and was not objectively offensive.

Poll Question 1: Was it discriminatory not to renew her contract because of the tweets?

- Yes, it was discrimination – 35%
- No, it was not discrimination – 62%
- Don't know – 3%

Randall v Trent College Ltd, ET

- School priest working for Trent College.
- School programme to tackle "homophobic, biophobic and transphobic bullying in schools".
- Sermon given by the Claimant– pupils did not have to accept "the ideas and ideologies of LGBT activists" where they conflict with Christian values.
- Unprecedented number of complaints and claimant disciplined.
- Brought a claim for direct discrimination, on the basis that he was disciplined for expressing his religious beliefs.

Poll Question 2: Do you think the Tribunal decided it was discriminatory for the priest to be disciplined, bearing in mind the need to balance the freedom to express a belief against harm to others?

- No, it was not discrimination – 53%.
- Yes, it was discrimination – 44%.
- Don't know – 2%.

- Claimant was warned after earlier sermons on marriage, sexual orientation and gender identity.
- The fact that there was no opportunity for discussion in a sermon meant that there was risk of distress and psychological harm to LGBT+ students coming to terms with sexual identity.
- Claimant had disregarded that advice.
- ET held that the Claimant's treatment was not because of his beliefs, but objectionable expression of them.
- Sermon was "entirely self-serving and not driven by the needs of pupils".
- Given purely to try and persuade them to his way of thinking.

Adams v Edinburgh Rape Crisis Centre, ET

- Support worker at Rape Crisis Centre.
- Holds gender critical beliefs.
- Believed supporting survivors of sexual violence entailed respecting their choice of the gender of their support worker.
- A non-binary colleague of the Claimant had changed their female sounding name to a male sounding name.
- A service user enquired whether that colleague was a man or a woman.
- Claimant suggested this response to the relevant colleague and the Claimant's line manager: "[B] is a woman at birth who now identifies as non-binary".
- The line manager told a colleague that Claimant "humiliated" her non-binary colleague.
- Claimant was disciplined and an allegation of transphobic conduct upheld.
- Claimant brings discrimination claim.

Poll Question 3: Do you think the Tribunal decided that the claimant had been subjected to discrimination?

- Yes, it was discrimination – 41%.
- No, it was not discrimination – 41%.
- Don't know – 18%.

- The Claimant's discrimination and harassment claim succeeded.
- The real reason for the treatment was that the Claimant held gender critical views.
- Characterising the email sent by the claimant as humiliating or transphobic was nonsense.

Orwin v East Riding of Yorkshire Council, ET

- Council worker objected to policy inviting staff to add pronouns to email signature.
- Promoting gender self-identification conflicted with his gender critical beliefs.
- Policy was not compulsory or prescriptive as to pronouns used.
- Protested by adding his email signature: "XYchromosomeGuy/AdultHumanMale".
- The Claimant refused instructions to remove the signature.
- Claimant was summarily dismissed and brought discrimination and other claims.

Poll Question 4: Do you think he succeeded in his claim?

- No – he did not succeed in his discrimination claim – 70%.
- Yes – he succeeded in his discrimination claim – 28%
- Don't know – 2%

- Claim is unsuccessful.
- Email signature was a deliberately provocative act to mock gender self-identification.
- It was not an expression of his gender identity.
- No link between his beliefs and the email signature.
- Dismissal because of inappropriate manifestation of beliefs.

Fairness and equality in pay

Louise Lawrence, Partner and Harriet Calver, Legal Director, Winckworth Sherwood

Present situation:

- The gender pay gap is the difference between the average hourly pay of women and men. In 2023, women took home on average £574 less per month than men.
- At the current rate of decrease, it would take until 2051 to close the gender pay gap.
- Causes of the gender pay gap include:
 - Women's unequal share of unpaid caring responsibilities "the motherhood penalty."
 - Overrepresentation of women in part-time work which is often lower paid.
 - Occupational segregation by gender.
 - Pay discrimination and bias.
- Some action has been taken to address the above, including equal pay legislation, mandatory gender pay gap reporting, the introduction of shared parental leave and improved rights of flexible working.
- The case of *Thandi v Next Retail Limited and Next Distribution Limited* was also discussed, as this showed that employers cannot always rely on market forces as a defence to paying unequal pay and it does appear that this defence will be scrutinised more heavily. The decision is however likely to be appealed.
- In April 2017, it was made mandatory for large private and voluntary sector employers (250+ employees) to report their gender pay gaps. If they do not do this, they are named and shamed on the EHRC website.
- There is currently no obligation to report on the ethnicity or disability pay gap.
- For ethnicity, the largest pay gap is white and black Caribbean employees.
- The disability pay gap is 14.6%, and if you combine the data for disability with gender, it creates even larger pay gaps. For example, disabled women are on average earning 30% less than disabled men.

Future Reform:

- The Employment Rights Bill is introducing a number of changes to address the pay gap:
 - When employers report on their gender pay gap they will:
 - (a) have to produce an action plan on how they will address their gender pay gap and support women going through the menopause; and
 - (b) identify the companies that they contract with to provide outsourced services, to motivate them to close the gap throughout their supply chains.
- There is also going to be a bill called the Equality (Race and Disability) Bill. There has been no draft yet but the government plans to extend pay gap reporting to ethnicity and disability, extend the legal right to equal pay to disability and ethnicity, extend equal pay to outsourcing and create a new enforcement unit.
- There is also a Pay Transparency Directive which although does not apply in Great Britain, will need to be complied with by multi-national companies operating in the EU. This Directive includes transparency obligations for all employers regardless of size and mandatory gender pay gap reporting.
- The direction of travel shows action is being taken to close pay gaps, a rise in pay transparency and a potential rise in equal pay claims including in the private sector.

Update on employers' new duty to take positive steps to prevent sexual harassment

Sue Kelly, Partner, Winckworth Sherwood

Sexual harassment is unwanted conduct of a sexual nature which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

Poll Question 1: 'Is sexual harassment at work decreasing?':

- 41% voted 'No'
- 29% voted 'Yes'
- 29% voted 'Not sure'

Since 26 October 2024, employers are under a duty to take reasonable steps to prevent sexual harassment (though the Employment Rights Bill seeks to extend this to taking all reasonable steps which is a high bar) - this requires employers to anticipate scenarios in which sexual harassment might take place and be proactive, rather than reactive.

Breach of this duty means up to a 25% uplift on compensation for a claimant who has brought a successful sexual harassment claim but also potential enforcement by the Equality and Human Rights Commission.

How to deal with this?

- Anticipate that sexual harassment might take place and implement a policy that is fit for purpose; carry out a tailored risk assessment to assess how you reduce the opportunities for sexual harassment in your organisation.
- Train staff
- Raise awareness (e.g., who would an employee go to if they wanted to report sexual harassment)
- Actions speak louder than words
- Monitor (not just the complaints but the policies, and the training)

Panel discussion: AI in the workplace – challenges for HR professionals

Chair: Paul Excell, Chair, AI4C (AI for Charities)

Richard Davis, CEO and Co-Founder, Inference Group

Chris Garrett, Winckworth Sherwood

There is no such thing as an AI project – it is always a business project

There are as many definitions for the term AI as there are people in the room today.

What can AI do for your organisation?

A number of opportunities in the HR sector:

1. Recruitment – automatic sifting of applications and job descriptions.
 - Important to remember AI can cause harm, but it can also mitigate it.
 - Key to understand how to use AI to ensure it is being used in productive and beneficial way.
 2. Benefits/Payroll – AI machine learning can be used to detect fraud, inconsistencies, errors – to improve business.
 3. Compliance monitoring – identify compliance gaps.
- 30-70% of productivity could be potentially gained back on average in your business if AI is utilised.

Question: What are the challenges and issues? What should go from HR to IT?

- Bias – AI is trained from the whole of human history – there is a risk that AI/machines will inherit any biases that have evolved over history.
- HR Professionals must be trained to use AI – this needs to be ensured to avoid any legal issues and to ensure a fair process.
- Discrimination Law and the importance of adherence to it – if AI “discriminates” against employees or applicants for employment, the responsibility and liability for this falls on the employer.
- In order to ensure you’re AI usage/utilisation is compliant, it must be regularly tested and you need to have a set action plan as to how you ensure there is no bias present.
- Personal data – applying usual data protection rules, people have to be told that you have their data, and how this is going to be used by AI.
- Law on Automated Decision-Making – currently it is very difficult to lawfully make decisions using solely automated means. Upcoming Data (Use and Access) Bill as proposed by the Government will relax the rules around this to allow more decision making to be conducted through solely automated means other than where it involves special category personal data.
- A further point to bear in mind is the number of compliance issues in outsourcing (using AI product(s) developed by third parties) – assess responsibility and liability, remember to ensure there is no bias. For data protection purposes, it is important to identify who is a controller and who is a processor and to make sure the contract reflects this.