

Winckworth Sherwood

People, Culture and Law Conference 2026

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Key Takeaways

Panel discussion: Psychological safety in the workplace

Chair: Clare Walsh, Senior Associate, Winckworth Sherwood
- Dr Chris Davis, Thought Leadership Manager, The Institution of Occupational Safety and Health
- Matt Dean, Co-Founder and Director, Byrne Dean
- Andrea London, Partner, Winckworth Sherwood
- David Stephenson, Joint Head, Parity Chambers

- **What do we mean by psychological safety?**

Although definitions vary, the discussion centred on creating an environment where people can ask questions, admit mistakes, raise concerns and disagree without fear of negative repercussions. Psychological safety supports learning, creativity and performance. Leaders play an important role in making clear that support and a safety net are available, particularly for junior colleagues.

- **What role does inclusion play?**

People need to feel that they belong and can be themselves. DS's experience of joining chambers illustrated how representation and an organisation's history can help establish that sense of belonging. MD described inclusion as the starting point: the ambition should be to create "challenger safety", where people feel able to question established practices and call out inappropriate behaviour. Psychological safety needs to be experienced, not simply promised.
Hybrid working was recognised as a potential challenge to inclusion, but also an opportunity for employers to be more intentional about how they build relationships and involve colleagues.

- **Can you have too much psychological safety?**

MD's answer was no: leaders should want people to say when they are struggling or have made a mistake. Creating that environment requires leaders to reconsider how they manage and respond to concerns.

- **Are expectations shifting towards prevention?**

The panel discussed a shift away from simply responding to complaints towards identifying and addressing risks earlier, referring to developments around sexual harassment prevention and non-financial misconduct. The practical message was to ask what can be done to prevent harm, rather than focusing solely on defending a subsequent claim. This includes training managers to manage people, rather than assuming technical competence automatically equips them for leadership.

- **What would a preventative model look like?**

CD highlighted the value of learning from health and safety practice: identifying early warning signs, understanding root causes, taking proportionate preventative action and checking whether it works. These approaches need to be adapted to human behaviour and relationships. DS emphasised that handling concerns defensively, with litigation as the overriding focus, can erode trust and turn a manageable issue into a dispute.

- **Why do workplace disputes arise and become entrenched?**

MD identified inaction, avoidance of difficult conversations and gaps between managers' and employees' perceptions as major drivers. The panel emphasised the emotional dimension of workplace relationships: people may be seeking fairness, recognition or acknowledgement, not just a procedural outcome. Grievances and investigations can compound a problem if employees feel unheard and come to believe that a tribunal is their only route to a fair hearing.

- **Is a grievance always about the issue raised?**

Not necessarily. A complaint about a practical issue, such as a rota, may reflect a deeper sense of unfair treatment. AL encouraged an open-minded approach that identifies the core concerns, including where lengthy AI-generated grievances obscure them. Resolving the practical issue should be followed by attention to the underlying relationship and sense of fairness.

- **How should managers prepare for difficult conversations?**

Prepare properly, be clear about the purpose and ask questions rather than simply delivering a message. Listen and respond to the emotions in the room. CD stressed the need for developed interpersonal skills and a methodical approach to understanding conflict. AL encouraged HR to coach managers early, helping them build confidence and capability rather than taking over the conversation for them.

- **How can investigations avoid escalating conflict?**

Use respectful, open questions and avoid assumptions or language that sounds accusatory. Explain the investigator's role, the process and expected timescales, communicate any delays and keep a clear record. DS described a "90:10" approach to difficult conversations: spending less time dwelling on the problem and more on what can change. The discussion also highlighted that the effectiveness of any conversational technique depends on the relationship and trust already in place.

- **What habits should leaders develop?**

Pause and ask: "What am I trying to achieve?" Invest in trust and relationships, notice early signs that something is changing and do not wait for complete certainty before opening a conversation. The panel also emphasised the potential value of an early, genuine apology and acknowledgement of wrongdoing, supported by appropriate action rather than words alone.

- **How can HR protect its own wellbeing?**

Seek peer support, practise self-compassion and maintain clear boundaries. Be empathetic without becoming someone's sole source of support. Clarity about the limits of the role, when to step back and when to hand over to another professional is essential.

Practical takeaways

DS: Acknowledge when things have gone wrong and seek early resolution.
AL: "Close the loop, not the case": agree who will do what, by when, and keep people informed. Listen to the concerns beneath the presenting issue.
CD: Prioritise prevention, collaborate across professions and make time to develop the human skills on which workplace relationships depend.
MD: Act on early unease, build the habit of difficult conversations and take opportunities for informal resolution seriously.

The overarching message: preventing conflict from becoming a crisis depends on listening, acting early and maintaining trust. Processes matter, but so does how people experience them.

The Employment Rights Act - Part One

Louise Lawrence, Partner and Duncan Lennon, Solicitor, Winckworth Sherwood

1. Implementation timetable

The Act is being implemented in phases. Changes to employment tribunal time limits, the enhanced duty to take "all reasonable steps" to prevent sexual harassment, third-party harassment liability, union access rights, new union representative rights and protections, and wider protection against detriment connected with industrial action took effect in October 2026. Unfair dismissal reform and the duty to inform workers of their right to join a union are scheduled for 1 January 2027, with the latter moved from 30 October 2026. Fire and rehire reform has been postponed from January to March 2027, when gender equality and menopause action plans also become mandatory for public authorities. April 2027 brings mandatory action plans for the private and voluntary sectors, an organisation-wide threshold for collective redundancy obligations, and statutory bereavement leave, including pregnancy loss. NDA reform follows in September 2027, enhanced dismissal protection for pregnant employees, new mothers and those taking certain family leave, alongside flexible working changes, in October 2027, and regulation of umbrella companies in December 2027. Timing for zero-hours contract reforms was originally meant to come into effect in 2027, but remains unconfirmed.

2. Employment tribunal time limits and ACAS early conciliation

From 1 October 2026, the time limit for most employment tribunal claims increased from three to six months. The new limits apply where the relevant event occurs after 1 October 2026; older events remain subject to the previous limit. The ACAS early conciliation period doubled from six to 12 weeks from 1 December 2025. The combined changes can give an employee almost 10 months to submit a claim, with further delay possible before it is served. This provides more time for appeals and settlement discussions but also prolongs uncertainty for employers.
Practical steps: review data retention policies consistently with data protection principles, preserve relevant documents and evidence, and contact witnesses early. Consider taking witness statements before key employees leave. Employment contracts and, where appropriate, settlement agreements can require reasonable assistance with proceedings during and after employment.

3. Prevention of sexual harassment

Since 30 October 2026, employers must take all reasonable steps to prevent sexual harassment. The revised EHRC technical guidance describes a continuing process: assess risks, consider measures to reduce them, implement all reasonable measures and keep those measures under review. Reasonableness is assessed objectively, taking account of resources, workplace and third-party risks, likely effectiveness, cost and disruption, whether concerns have already been raised, whether steps taken appear to be effective or ineffective. Employers are unlikely to comply without a risk assessment. If further reasonable steps were available but not taken, an employer is unlikely to have met the duty. Regulations specifying preventative steps are expected in 2027.
Practical steps: maintain a documented risk assessment, record the measures considered and action taken, and review effectiveness regularly, particularly following a complaint. See paragraphs 3.31–3.46 of the EHRC technical guidance on sexual harassment and harassment at work.

4. Third-party harassment

Since 30 October 2026, employers may be liable for harassment by a third party in the course of employment where they have failed to take all reasonable steps to prevent it. This is not limited to sexual harassment and may include harassment related to race or disability. The test is objective: employers need not plan for extremely unlikely or completely unexpected situations but should assess foreseeable risks. Restrictions on third-party rights, including freedom of expression, thought, conscience and religion, should be proportionate. Policies should regulate inappropriate conduct rather than regulate the holding or expression of controversial opinions or beliefs.

Practical steps: assess third-party risks, including client entertainment and lone working. Consider conduct standards, contractual terms, signage, training, reporting routes and appropriate action against offending customers. More generally consider what steps are reasonable and appropriate for your organisation. See paragraphs 3.89–3.110 of the EHRC technical guidance.

5. Trade unions: rights of access

Since 30 October 2026, qualifying independent trade unions can seek statutory workplace access, physically, digitally or both, to meet, represent, recruit or organise workers and facilitate collective bargaining, but not to organise industrial action. The July 2026 Code of Practice includes template written requests for trade unions and template responses for employers. Responses must comply with statutory requirements; a defective response risks being treated as a failure to respond as a response cannot be "substantively correct".

Employers have 15 working days to respond to a request and must give reasons for any full or partial refusal. Where terms are not agreed, the parties enter a negotiation period which ends on the 25th working day after the employer's response notice is given. If agreement is reached, the parties must notify the Central Arbitration Committee (CAC) which can be done via email, provide the agreement and confirm it was made under the statutory framework. If the employer does not respond, or negotiations fail, the union can apply to the CAC within 55 working days of the original request. Organisations without a history of union engagement should not assume the reforms will leave them unaffected.

The CAC must refuse an application where the employer has fewer than 21 workers overall, the proposed agreement provides less than five working days' notice before first access, it would last more than two years unless extended by agreement, or refusal is necessary for national security. It may also refuse on discretionary grounds where workers are already covered by a recognition agreement or an ongoing statutory access process. Either party may complain to the CAC within three months of the matter complaint of. Complaint may be made on the grounds the other party has breached the access agreement or a third party has taken steps to prevent access in accordance with the agreement.. Maximum penalties are £75,000 for a first order, £150,000 for a second under the same agreement and £500,000 for a third.

Practical steps: ensure managers recognise access requests and escalate them promptly. Engage proactively and check that responses comply with the required process, rather than ignoring or sitting on a request.

6. Duty to inform workers of their right to join a union

From 1 January 2027, employers will be required to provide a statement about the right to join a union. The Government is to provide standardised wording which employers should use covering the right to join, union functions, relevant recognised unions/access arrangements and statutory membership rights. New joiners must receive it directly alongside their written employment particulars. For existing workers, employers may either make the statement accessible, for example on an intranet or noticeboard, with an annual reminder of where to find it, or provide it directly to employees each year by 5 April.

Practical steps: update onboarding processes and choose how the statement will be made available or delivered to existing workers, with the appropriate annual reminder or direct provision by 5 April. Prepare to use the Government's standardised wording.

7. Fire and rehire

The current target for fire-and-rehire reform is March 2027, postponed from January. Dismissing an employee to impose a restricted contractual variation will become automatically unfair as a day-one right, subject to a narrow financial difficulties exception. For private-sector employers, financial difficulty must affect, or be likely in the immediate future to affect, the ability to continue as a going concern, and the employer must show that it could not reasonably have avoided the variation. Improving margins or pursuing a reasonable commercial objective is insufficient. Even where the exception applies, ordinary fairness considerations, including consultation and the employee's individual circumstances, still require assessment.

Restricted variations include pay, total contractual hours, annual leave and pension entitlements, specified travel and accommodation arrangements, and moves between day and night or weekday and weekend working. Non-restricted variations include share schemes, location changes, and certain other benefits and shift changes which are not protected under the new regime.

Practical steps: identify which terms are contractual, including terms incorporated through policies or collective agreements and build great contractual relxibility into terms which will be captured by the restricted variation regime where appropriate.

8. Bereavement leave

April 2027 introduces a day-one right to up to two weeks' unpaid bereavement leave following the death of specified family members or pregnancy loss before 24 weeks. Covered relationships include spouses/civil partners, committed long-term partners, parents, adult children and siblings, extending to step, half, adoptive, foster and kinship care relationships. Leave may be taken flexibly in individual days within 56 weeks of the bereavement. Pregnancy-loss coverage includes miscarriage, ectopic and molar pregnancy, termination and unsuccessful IVF embryo transfer, and extends to partners and certain intended parents in surrogacy arrangements.

Practical steps: update bereavement policies, prepare managers to handle requests consistently and sensitively, and consider whether you may want to offer paid leave for the week period or for a shorter period.

9. Enhanced pregnancy and maternity protections

The Government intends to introduce enhanced dismissal protection in October 2027 as a day-one right, beginning when an employee informs the employer of pregnancy and continuing until six months after maternity leave ends. This is not an absolute ban on dismissal: existing potentially fair reasons, including conduct, capability and redundancy, remain available, but dismissal must be justified as a proportionate means of achieving a legitimate aim, replacing the usual band-of-reasonable-responses test. Employers should identify the business objective and consider less severe alternatives. Protection will also extend to adoption leave, and to shared parental leave, neonatal care leave and bereaved partner's paternity leave where six or more continuous weeks are taken.

These proposals are separate from existing discrimination and automatic unfair-dismissal protection and the priority right to suitable alternative vacancies during redundancy. Existing redundancy protection extends to 18 months after birth or placement for maternity/adoption leave; this must not be confused with the proposed six-month post-maternity-leave protection. Both regimes will need to be considered where relevant.

Practical steps: monitor the regulations being published in this area, prepare managers for the changes, track the different protected periods accurately and ensure careful HR oversight of proposed dismissals involving protected employees.

Navigating change: UK immigration updates every HR team needs to know

Malini Skandachanmugarasan, Partner, Winckworth Sherwood

Employers should be aware that immigration rules are changing on several fronts, all at the same time. The focus will be on the changes announced last week: earned settlement proposals, Shortage Lists and changes to the Immigration Salary List, as well as sponsor compliance considerations.

Right to Work Checks – October 2026 Changes

Employers should start by asking themselves: Who is a worker? Who does a right to work regime apply to?

From 1 October 2026, section 14A of the Immigration, Asylum and Nationality Act 2006 ("IANA 2006") provides that references to a person employing another individual includes engaging an individual under a worker's contract, engaging an individual sub-contractor and through an online matching service providing details of an individual who is a service provider to potential clients or customers. In these circumstances, an employer can prevent illegal working and establish a statutory excuse by carrying out a prescribed right to work check.

Organisations should refer to the criteria within the right to work scheme to determine whether a right to work check is required, rather than relying on an IR35 tax determination or the employment law definition of 'worker. The position currently is that, where the Home Office is unable to identify the employer who has the direct contractual relationship with a worker, there may well be a liability that extends beyond the direct employer.

Essentially, it is about being aware of and looking beyond your direct employees and having clarity on the nature of the arrangements through which work or services are provided. It is crucial for employers to review their HR processes to ensure the new right to work framework is captured as well as ensuring that going forward, new contractual arrangements engaging new liabilities are clear in drawing out the boundaries to establish a statutory excuse.

Any person seeking to establish a statutory excuse against liability for payment of a civil penalty must comply with the prescribed requirements relevant to the contractual arrangements before the work commences and be able to provide evidence of that compliance if requested. These requirements are:

1. Contractual terms and conditions (written statement)
2. Substitution controls.
3. Takeaways:

- Ensure whether your HR checking process reflects this new framework.
- Maintain evidence – ensure you are aware of the beginnings and ends of arrangements.

Employers will be able to refer to new Q&A section at Annex C of Employer's Guide to Right to Work Checks for assistance. Currently, the immigration sector is awaiting to see how the Home Office will be enforcing these new right to work arrangements.

Earned Settlement Proposals

The standard qualifying period for settlement will increase from 5 to 10 years, however, there will be accelerated or extended routes available depending on an individual's contribution, integration, compliance history and broader circumstances.

There will also be enhanced eligibility criteria (i.e. English language requirements (CEFR Level B2), demonstrating good character and meeting minimum earnings thresholds).

Individuals in the UK with adverse immigration or compliance histories face significantly longer routes to Settlement. Crucially, this includes those who have previously overstayed, breached immigration conditions, historical convictions or recently accessed public funds without entitlement.

There are also targeted transitional protections are proposed to certain existing migrants. This includes some workers in the health, care and education sectors. In addition, and a key point, Skilled Workers sponsored under the pre-April 2024 salary framework are expected to retain the ability to extend their permission under existing arrangements until 2035.

Minimum Residence	Who is this pathway for?	Must have	Must not have
3 years	People making an exceptional economic contribution to the UK	One of: Earned £125,141 for 3 years (or 3 of the last 4 years) Qualifies through the highest talent group	Access public funds in the last 5 years Committed a qualifying immigration breach
5 years	People making a strong contribution to the UK, including high earners, public service workers, people with a British connection.	One of: Earned £50,271 for 3 of the last 5 years Worked in an eligible public service occupation for 15 years British connection Meets all mandatory requirements	Access public funds in the last 5 years Committed a qualifying immigration breach
10 years	The starting point for anyone playing by the rules and making a contribution to the UK.	Earned £12,571 for 5 of the previous 7 years Meets all mandatory requirements	Access public funds in the last 5 years Committed a qualifying immigration breach
20 years	People whose immigration non-compliance or access to public funds prevents them from qualifying for an earlier pathway.	Earned £12,571 for 5 of the previous 7 years Meets all mandatory requirements	None

A crucial consideration for individuals is that people who are already in the UK and are, say, 4 years in, may have to spend another 6 years in the UK before they are able to get their settlement status.
The seed for these changes has been planted and is being watered. It is a significant shift away from this settlement requirement being automatic. Individuals are now going to be required to show that they have actively contributed to economic and society, and have been integrated in community.

Takeaways:
- Extension to settlement timelines, resulting in longer periods of immigration sponsorship that may be required.
- Career progression and earnings – considerations such as salary progression and professional development.
- Retention risk
- Workforce planning
- Budgeting – i.e. additional visa applications and longer routes to Settlement will bring higher costs and increase legal support requirements.

Organisations should be reviewing their current and future workforce in order to be prepared to navigate the changes coming.

Shortage List and Transitional Arrangements
Temporary does mean temporary – the old immigration Salary List ends on 31 December 2026 and further changes are likely to the Temporary Shortage List. Currently, eligibility is dependent on the occupation being listed and the Certificate of Sponsorship being issued before 31 December 2026.
Advice for employers would be to check the individual occupation, not just the lists name – the Immigration Salary List has occupation-specific removal dates, with many entries carrying a 31 December 2026 removal date.
Existing workers may need a different analysis of their roles. Assumptions should not be made about existing workers automatically matching a new overseas recruit, but also that there would automatically be an occupation code available to you.

Sponsor Compliance
Currently, in the last 12 to 18 months, the focus of the Home Office has been on the following:
- Right to work compliance
- Reporting and Record keeping obligations – on a day-to-day basis but also larger scale in relation to changes to corporate or organisational structures.
- Genuine vacancy and/or eligible role assessments – it is something that the Home Office applies quite widely (i.e. whether the individual in question is actually required for their role).
- Salary compliance

Common mistakes we have seen on the employer's side include:

- HR systems not aligned with immigration records (including ensuring individuals are reminded to be updating you with relevant details if anything changes in their specific circumstances)
- Failure to report role changes
- Errors/delays in carrying out right to work checks
- Promotions without immigration review
- Hybrid-working arrangements not documented

Recommendations:

- Ensure Key Personnel and Senior Managers are familiar with sponsor licence obligations.
- Audit right-to-work procedures annually.
- Train hiring managers.
- Regular checks on Key Personnel and corporate details on sponsor licence to ensure they remain up-to-date.
- Conduct post-acquisition immigration reviews.
- Review contractor engagement practices.

What's Coming?

Now and Until End of 2026:

28 October 2026 – Finance Bill 2026/2027 confirms that an employer's payment of the Immigration Skills Charge (ISC) or a Certificate of Sponsorship (CoS) fee is not treated as a taxable benefit in kind.

- Expectation for further Home Office guidance, impact assessments and detailed Immigration Rules implementing the Earned Settlement framework to be issued.

Key Actions: Employers should be reviewing workers with UK immigration permission, as well as identifying employees potentially affected by longer settlement pathways.

Q1 to Q3 2027:

- 1 January 2027 – New Graduate migrants will be granted permission to stay in the UK for 18 months. Although this conflicts with an announcement in the Budget where the Graduate visa length will be two years for people who graduate from high-compliance universities where there are strong labour market outcomes.
- The new Earned Settlement framework with new eligibility requirements will be introduced.
- 26 March 2027 – Requirements for stronger English language knowledge will be put in place.
- Changes to Skilled Worker salary requirements including the general salary thresholds being uprated and updated using latest wage inflation data and the combination of new entrant discounts for different groups.

Key Actions: Employers should prepare themselves for an increase in employee queries regarding settlement eligibility, retention and future UK plans. Additionally, employers should have an insight into occupations affected by salary threshold reductions. Furthermore, employers must be prepared for general salary threshold increase. There will be a need for a review of any PhD roles available in the organisation.

Throughout 2027:

- Closure of the Long Residence route.
- There will be an ongoing focus on sponsor compliance, enforcement and illegal working.
- Changes are expected to allow the "highest skilled workers" to have a visa curtailment period of up to six months.

Key Actions: Employers will need to reassess their Graduate recruitment and early careers strategies and be prepared for an increased demand for sponsorship from Graduate visa holders. In addition, there will be a need for licence and Right to Work audits, HR training and compliance reviews.

Keep calm and don't carry on - resolving issues and avoiding hearings - a fireside chat

Lisa Lewinsohn, Legal Director, Winckworth Sherwood and Tom Perry, Barrister, No5 Chambers

Background – The volume of disputes and claims and their complexity is increasing, there are huge delays at all stages and AI is worsening matters – such issues are likely to be heightened with the introduction of new laws. Against this backdrop, we discussed how we might try to resolve issues and disputes and avoid hearings…?

Some Takeaways re Causes of Disputes:

- Poll results - highlighting the importance of effective dialogue, the main causes of employment disputes shared by the audience were poor communication and communication issues. Other popular responses included issues with leadership/management
- Change – change is a particular moment of risk and it is important to handle change well from an employee perspective (not simply large organisational changes but also at individual level e.g. new manager, return from maternity leave etc)

- AI – AI can magnify and manufacture issues, get things wrong and overcomplicate matters - human interactions and good quality human advice are vital (sometimes worth considering arranging independent advice for employees if necessary for resolution)
- Grievances – the audience agreed that grievances generally do not help to resolve disputes and it is better to have informal discussions as early as possible to identify issues and what might resolve them. (Noted formal processes often currently necessary for legal reasons but this may change per below).

Some Takeaways re Dispute Resolution:

- Informal resolution – in a poll, the vast majority of our audience selected informal discussion and resolution as the most effective method of resolving workplace disputes. This is assisted by having good, well trained managers who don't themselves cause issues, don't avoid/ignore concerns, are able to 'issue spot' and seek advice early and can have appropriate informal conversations. It is important to consider what will be appropriate for each individual and any additional needs they may have and it may well be beneficial to take advice early – particularly in potentially complex cases. Consider being 'creative' with resolution to try to find solutions that work for all in the specific circumstances

- Pre-termination negotiations and without prejudice communications – beware the limitations of seeking to use these to have settlement discussions 'off the record'. For example, 'pre-termination negotiations' are particularly risky as there is no blanket 'off the record' rule, conversations which meet the relevant criteria are only potentially inadmissible in ordinary unfair dismissal proceedings and there must be no 'improper conduct'. Whilst the use of the 'without prejudice' label is more common and 'safer' there are still requirements for a communication to be 'without prejudice' (for example an existing dispute, a genuine attempt to settle and no improper behaviour such as blackmail, perjury or other unambiguous impropriety). (Please do contact us if you would like more information about what pre-termination negotiations and without prejudice communications are and the relevant criteria etc)

- 'Two tracks' - be prepared for litigation in case that ensues – consider the common method of continuing two 'tracks' at the same time (i.e. an 'open' track as well as a 'without prejudice' track) with the intended outcome being the resolution of the dispute but remaining prepared in case that is not achieved

- ACAS – consider the potential value of involving ACAS in resolving disputes at all stages – not just during the Early Conciliation stage

- Employment Tribunal processes – be aware of some possible options for dispute resolution within the Employment Tribunal system:
  - Judicial mediation – a voluntary mediation process quite early in the Tribunal process when there is expected to be at least a 3 day hearing. Both parties must want it and it's not evaluative (the Judge won't give a view on the merits of the claim). It has a high success rate and is especially useful for parties that don't know you can speak to the other side;
  - Judicial assessment – a voluntary evaluative process where an Employment Judge evaluates the strengths and weaknesses of claims. In reality this is not well known or understood and doesn't get used very often;
  - Dispute resolution appointment – an evaluative process designed for longer cases which takes place after witness statements have been exchanged and without the need for consent of the parties. An Employment Judge will express their views on the parties' position. These are useful and valuable but do take place after much of the work is done and costs have been incurred

Mediation – consider using mediation where appropriate. It is a very flexible option (for example, there is an ability to be flexible with timing of mediation, choice of mediator and also with outcomes in a way that is not possible with litigation etc)

Some Takeaways re Possible Changes:

- *Reimagining Employment Dispute Resolution and Enforcement* by Sarah Fraser Butlin, Catherine Barnard & Maayan Menash is a fairly recent publication including various interesting proposals for change. By way of non-exhaustive examples, the following provides a high-level summary of some of the proposals (listed in order of popularity with our audience – proposal 1 being the change the audience would most like to see):

- Proposal 1: Overhauled conciliation system – idea of establishing an Employment Resolution Service as a first port of call for employers and employees for information and advice which would also act as a resolution focused triage service (e.g. to Fair Work Agency for enforcement of basic rights, to phone conciliation for potentially straightforward matters, or to an online mediation service). The idea is that participation would be mandatory, there could be an element of evaluation/reality testing (including in ACAS' approach) and tailoring to circumstances and that Judges could send cases back to mediation;

- Proposal 2: Reformed ACAS Code – idea of prioritising early, informal resolution such that formal grievance and disciplinary processes would be a matter of last resort and not a necessary step. ACAS is considering responses as part of its consultation on reform of the Draft Code of Practice on disciplinary and grievance procedures - amongst other things this encourages early and informal resolution wherever possible, uses less adversarial language etc (suggested reading https://www.acas.org.uk/about-us/acas-consultations/code-of-practice-disciplinary-grievance-2026). 'Watch this space' as significant change in this area may happen soon.

- Proposal 3: Tracking of cases – idea of streaming employment claims into 3 tracks – track 1 for lower value, simpler and quick resolution; track 2 for claims for between 6 months' and 2 years' earnings with strict limits, possibility of some limited court fees and costs awards and early neutral evaluation; and track 3 for higher value claims (or at Claimant's choice) much more akin to normal civil litigation (e.g. re case management, court fees and costs) with points to consider non court dispute resolution and early neutral evaluation; and

- Proposal 4: Better claim and response forms – idea of remodelling forms to avoid legal labels, ask simple precise questions in lay language with word limits on answers, requirement to upload certain documents and automatic generation of schedule of loss.

Overall key takeaways include:

- Keep an eye on the law and ACAS and what's coming next – think ahead - things are/may be changing…;
- Try to resolve issues informally and quickly (and train others to do so too);
- Make use of all resources and options available throughout e.g. continued dialogue, effective managers, ACAS, ET processes, mediation or other 'offramps'.

The Employment Rights Act - part two

Andrew Yule, Head of Employment and Aparna Sudhir, Associate, Winckworth Sherwood

1. Key changes from 1 January 2027

The qualifying period for ordinary unfair dismissal rights will reduce from two years to six months' continuous service. The compensatory award will become uncapped, although the requirement for compensation to be just and equitable remains. Together, these changes widen the population able to bring a claim for ordinary unfair dismissal and materially alter the potential financial exposure. Thus, there must be an increased rigour in dealing with substance and process, in circumstances that may result in dismissal.

2. Address performance and conduct concerns early

Employers should identify and document performance and capability issues at an early stage and well before the six-month point. Contractual probation periods may help structure reviews but are no defence to a statutory claim, so must not be treated as a substitute for checking statutory rights and exact service dates.

3. Check the effective date of termination

The effective date of termination (EDT) is usually the date on which the notice expires, or (in relation to an employee whose contract of employment is terminated without notice) the date on which the termination takes effect - but statutory notice requirements must also be accounted for when determining whether an employee has qualifying service. What is more, the date on which an employee learns of their dismissal or has a reasonable opportunity to do so, is also key – so, notice sent during a holiday period may not be received or read sufficiently early.
Practical steps: calculate exact dates before approving an exit. Do not assume that immediate dismissal with payment in lieu of notice will necessarily prevent an employee reaching the qualifying period, as statutory minimum notice may extend the EDT for this purpose.

4. Assess the full financial exposure

Uncapped compensation does not mean an unlimited payout. The just-and-equitable assessment and an employee's obligation to mitigate loss remain relevant. However, the removal of the cap does change the equation, and it is important to remember that potential loss is not limited to salary: bonus, commission, share awards, deferred remuneration, pension contributions and other benefits are also relevant and can materially affect the assessment, especially for higher earners.
Practical steps: work through a realistic assessment of loss rather than relying on the previous cap. Revisit how short-service exits and settlement risk are assessed.

5. Lessons from the table discussions

The four variations of the Mia scenario illustrated the importance of looking beyond a short-service label: it is important to understand the full picture. For example, the following factual variations can have a material impact on the assessment of risk and, therefore on the optimal approach: unexplained medical appointments alongside performance concerns; a high earner with valuable benefits, pension and future commission arrangements; a proposed restructuring being used as an 'easy option' instead of addressing performance concerns; and an employee approaching six months whose manager proposed immediate dismissal with payment in lieu of notice.

The key actions discussed were to document concerns early, audit short-tenure exits, assess the full remuneration package, identify the real reason for a potential dismissal, and precisely calculate effective termination dates. Where restructuring is proposed, keep the business case separate from performance concerns: identify what work is disappearing, why the role is affected and how any selection and consultation should be approached.
Overall takeaway: prepare now by strengthening early reviews, evidence gathering, and HR oversight. Short service and probation should not be treated as shorthand for a low-risk dismissal.

Panel discussion: AI - Why HR should be involved?

Chair: Chris Garrett, Partner, Winckworth Sherwood
- Natalie Cramp, Partner, JMAN Group
- Lizzie Crowley, Senior Public Policy Manager, CIPD

Chris: To start us off, a question to Lizzie regarding her research with Innovate UK: Give us an outline of the key learnings?

Lizzie: Over the course of the year, we worked in-depth with 8 organisations who were adopting AI in some parts of their business. The first lesson: many organisations were not approaching AI adoption from a business need; instead they were responding to competitive pressures and vendor narratives, or narrowly focused on cost and time-savings. The challenge was that they were not thinking what comes next and what they are trying to solve.

Those businesses were not really thinking about the freed-up capacity and questions such as how to improve customer services, expand into new markets, jobs design and even recruitment.

The second lesson: The critical importance of employee consultation. An example that comes to mind is a construction company – they hadn't consulted with their employees on AI implementation and ended up creating something that didn't meet their needs. The contract was eventually cancelled. When the company was then looking to come together and invest more into AI, employees were, understandably, quite cautious and reluctant later on.

Your people know best how AI can assist, and with what, so often best to consult.

There was a high-level concern about senior level HR professionals about the potential erosion of employee skills as a result of AI usage, but also how junior-level work was changing as a result. HR professionals would need to think about what they need to do to protect the learning opportunities and foundational tasks.

Third, biggest lesson: AI is not only a technological, but an organisational transformation project, hence why HR needs to be involved from the start.

Chris: Similar question to Natalie: You advise businesses in respect of AI adoption. What impacts should HR expect to see with AI implementation?

Natalie: We are going through all of the same challenges and pains as our clients. Usually this is led by senior management (COOs, CTOs, sometimes GCs, etc.) who aren't natural change leaders and are not known for their communication skills. The idea that HR shouldn't be at the table is baffling. Chances of your implementation success are lower if they are not involved.

One of the biggest things for me is that change management is no longer a thing. The world is changing so rapidly, and the way we have to respond to that keeps evolving, even for some of what we were doing concerning AI from 3 months ago.

Success would depend on how you manage change. HR professionals are the most skilled people to assist with this.

You don't get value from technology if it is not integrated into an operating model. You can have the greatest tool, but if no one knows how to use it, then you are not going to get value from it.

Similarly, we need to think about workforce planning: set up, monitoring, and most importantly – making sure the organisation is thinking about where that time is going as there are lots of options on where to use it.

The most important thing is this: constantly testing and reviewing what we have learned from AI.

Chris: Question for both of you: two sides of the same coin: why is that the wrong approach, when an organisation treats AI as a technological issue?

Lizzie: I think it's a very good question. An extreme example shared with me by a large bank and their attempt to automate their call centre using an AI chat bot. They ended up reducing their headcount. HR were not involved – there was no consultation on what jobs would look like. All the employees were getting the worst calls to resolve. What ended up happening was recruitment costs outweighed the technology costs (burnout on people's side).

Natalie: To give another example, we worked on a cross-sell. Without a people team in the room, it was never going to get executed because no one was incentivised to act in that way. Even though it was better and would make the company more business, it would have not worked.

There are different scenarios, not all of them are doom and gloom.

Quite a lot of the signals you get as people leaders would indicate that if you uitlise AI properly.

Chris: You mentioned doom and gloom – media coverage on AI often focuses on job losses. In your current experience, is AI decreasing the number of jobs?

Natalie: It is increasingly important to be conscious of how we are adapting to this situation. Some of the businesses that have said "all of these jobs are going" have regretted it. It is undeniable that some jobs will go, but that is natural and a good example from the past is when people began using farming machines to carry out work that humans did manually. We have to keep adapting.

Lizzie: I was in the city hall this morning giving evidence on this very issue and its impact on young people. If you look at the data, most businesses are still in the pilot stage. Very few have a deeply integrated approach to AI. I do think, however, that there will be a significant change. There is a responsibility on employers and HR professionals to manage that. The biggest impact will be the nature of jobs and how they will change. I think young people are at the most risk: if we remove all of the basic/entry-level tasks, how will they learn?

Chris: Presumably a topic that HR can bring value to: how is the organisation expecting these employees to develop in the future and what tasks will the junior employees be undertaking in the next 5 to 10 years' time?

Natalie: People are rushing to hire data AI specialists to their teams. People can upskill. The best data leaders I have met are people who have come from the business who have upskilled as they understand the business requirements and politics. They also understand how businesses make money or drive value. You don't need a coder as AI can do that for you, but a leader who can assist your team to meet the business goals. Businesses should perhaps look at their workforce and their skillset and see how they can augment that, not simply look to hire people with no clear idea.

Chris: Say HR has been involved in conversations, and the business has decided to adopt a new AI tool or service. What should the organisation be measuring in terms of value? How does the assessment work?

Natalie: Obviously measure how many licences you're going to use in respect of costs. You should be looking at what the outcomes are. Adoption isn't the right metric; it perhaps is checking timesheet data, for example – whether people are talking to clients more, resulting in less time spent on administrative matters and more time engaging with people.
Also measuring employee satisfaction. Lots of different things you can measure.

Lizzie: I agree with everything you have said. You can keep your eye out for unintended consequences that we need to be looking at and measuring. More errors into the system being introduced, for instance. Ask yourself why you've chosen this tool and what you want to achieve.

Chris: Employees using other AI tools that employees do not have authority to use. How do you tackle that?

Natalie: Don't always treat it as a negative thing. Don't outright dismiss it: it is a signal from the employee. Try to understand why they are using it and what they are trying to achieve. There is a benefit of having that discussion: you would know what they want to achieve, and then you can say to the employee "we already have this tool". Employers should also bring people in to discuss why it can really impact their personal career.

Lizzie: I was also going to suggest doing an anonymous survey. Some of these people can also be great AI champions.
Natalie: Parameters shouldn't be a one-and-done.