



Welcome to SmartHR's May 2012 E-Newsletter

*We hope you find this newsletter of interest and share it with your colleagues. Gail Yeowell Chartered FCIPD FInstAM(Dip) FCMI FIRP
Managing Director, Smart HR Solutions Limited*

Read our Client Testimonials here: [Testimonials](#)

Redundancy: A Selection Pool of One

Capita Hartshead Ltd v Byard (2012)

In this case, Byard worked for Capita as an Actuary. Due to a diminishing workload in the Company and the loss of some of its clients, the Company decided it no longer needed one of its Actuaries. A redundancy situation was announced.

Byard was placed in a selection pool of one, although there were three other Actuaries – as her Line Manager thought there was a danger of losing other clients if work was moved to a different Actuary.

During consultation meetings, Byard complained about being placed in a selection pool of one; however, it was not altered. Byard was selected for redundancy and subsequently claimed unfair dismissal.

The case went to Employment Tribunal. The ET, supported by the EAT, found that placing Byard in a redundancy selection pool of one was unfair.

The ET found that all four of the Actuaries did similar work and the risk to losing clients if work transferred from one Actuary to another was slight.

The EAT stated that it was for the ET to consider whether Capita had genuinely applied its mind to identifying the selection pool. If it had, then it would be difficult to challenge the decision.

In this case, it was decided that careful consideration of whether a redundancy selection pool of one was reasonable or fair had not been taken.

SmartHR provides a wide range of **professional and effective outsourced HR solutions** to businesses and individuals. With almost 20 years' HR management experience, we utilise our skills and knowledge to assist clients in 3 areas: Recruitment, HR Consultancy and Training.



Recruitment:

- Executive Appointments
- **General Recruitment**
- Interim Positions



HR Consultancy:

- HR Consultancy and Advice
- **Tailored Business Support Packages for a fixed monthly fee**
- HR Healthchecks and Planning
- **Employment Contracts and Staff Handbooks (IOM and UK)**
- HR Policies and Procedures
- **Induction, Performance Review and Succession Processes**
- Ad hoc / Interim HR Projects
- **Redundancy Support and Outplacement Services**
- Online E-HR Shop to purchase template employment documents



Training:

- 'Skills Workshops' to improve people management skills
- **Coaching e.g. managing absence, managing discipline & grievances**

Smart HR Solutions Limited

6 Hilltop Rise, Farmhill, Douglas, Isle of Man, IM2 2LF

Phone: +44 1624 619619 / Mobile: +44 7624 478764

Email: gail@SmartHR.co.im

www.SmartHR.co.im

Identifying any training and development needs and putting in place a structured **'training and development plan'** with appropriate solutions will help to bridge any skills gaps identified and focus on enhancing skills for both current and future performance.

Effective leaders and managers should **encourage staff to develop their full potential and capability**. Development should be a continuous process. Knowledgeable and well trained staff will help you to deliver high levels of service to clients, and in turn help you to retain clients and attract new business.

Targeted **'succession planning'** activities can be used to develop people into identified roles within the business for its continued future success.

Communication should be effective, and actions taken to minimise conflict and create an atmosphere of mutual trust and respect.

In a competitive environment, people make a difference... The way they are managed impacts on the organisation's productivity, profitability, flexibility, service delivery, reputation, and ability to attract and retain clients – all of which contribute to gaining a competitive advantage.

Effective people management practices should be an integral part of an organisation's business strategy and support the achievement of business objectives; building a highly committed, engaged, flexible and accountable workforce with a **'can do'** approach.

SPECIAL FEATURE: GAINING A COMPETITIVE ADVANTAGE THROUGH YOUR STAFF

Attracting, motivating, developing and retaining high quality people with the right skills, knowledge and abilities who are aligned and **'fit'** with the culture of your business and are focused on delivering results are key to gaining a competitive advantage.

There are many HR management practices that can help an organisation gain a competitive advantage. At the beginning, conduct an **analysis of the job role** and its design. The provision of interesting and stimulating work will lead to increased employee involvement, lower conflict and higher levels of commitment.

Having an up-to-date **'job description'** identifying the tasks and responsibilities of the position, and creating a **'person specification'** will help you to identify the knowledge, skills and abilities that the individual will need to be able to deliver in the role. This can then be used as the foundation for your recruitment and selection activities (and supported by any other selection practices such as psychometric testing, ability profiling etc.).

Organisations can identify **business-specific and/or job-specific competencies** and use these to underpin their selection process and the subsequent management of their people e.g. embedding the competencies within the organisation's performance management / appraisal process.

Employees should know and understand what the organisation's **vision, core values and business objectives** are, and how they can individually play their part in achieving business objectives. Corporate objectives can be cascaded down through the organisation via the **'performance management process'** and help to emotionally engage people towards delivering results.

Ongoing coaching, feedback, guidance and evaluation of performance are essential. Your organisation's performance management process should enable an effective two-way discussion that reviews past performance as well as focusing on future performance, setting specific realistic but challenging objectives to be achieved – together with measures of success. *It is a continuous process and shouldn't be seen as a once a year event.*

Your **reward and recognition systems** should be effective and motivating. Employees should feel motivated to achieve high levels of performance and be recognised for doing so. Rewards should be seen as timely and tied to effective performance.

A well structured **'induction programme'** can help a new employee to settle into the organisation quickly and give a positive first impression.

Protection during IVF treatment

There is no statutory right for an employee to take leave for IVF treatment. European and UK case law provides guidance on the rights of women who are undergoing IVF treatment. The UK's Equality Act 2010 provides limited advice and suggests adopting a procedure for dealing with requests for time off for IVF treatment and dealing with such requests sympathetically.

Under the UK's Equality Act 2010 a pregnant woman receives special protection. An employer can be found to discriminate against an employee if during 'the protected period' they treat her unfavourably on the grounds of her pregnancy or a pregnancy-related sickness. The 'protected period' starts when a woman becomes pregnant.

Re IVF treatment, case law from Europe and the UK states that the 'protected period' begins when the ova, having been collected and fertilised, are implanted. It does not begin from fertilisation alone, as women may store fertilised ova for years without implantation. When implantation is unsuccessful, resulting in the pregnancy terminating, the 'protected period' continues for a further 2 weeks. If the implantation is successful, the 'protected period' continues in the same way as for any pregnancy.

European and UK case law has shown that equality law prohibits the dismissal of a female worker who is at an advanced stage of IVF treatment.

To find out how SmartHR can add value to your business call Gail on 619619 / 478764, email: gail@SmartHR.co.im or visit our website at www.SmartHR.co.im

UK EMPLOYMENT TRIBUNAL RULING:

NOT INVESTIGATING MENOPAUSE SYMPTOMS MADE CAPABILITY DISMISSAL UNFAIR AND DISCRIMINATORY

In the case of **Merchant v BT Plc** (case ref ET1401305/11), the ET held that direct discrimination had occurred when BT Plc failed to deal with an employee's menopause in the same way as other medical conditions when applying its performance management policy.

BT had dealt with Merchant via its underperformance procedure on and off for a number of years. This resulted in Merchant being issued with a final warning. Following this, problems continued and a process began to determine whether Merchant should be offered alternative employment or dismissed. A meeting was held to discuss the matter and Merchant provided the company with a letter from her GP stating that *in addition from suffering from stress from being a carer for her mother and her aunt, she was "going through the menopause which can affect her level of concentration at times"*. During the meeting, Merchant referred to her menopause several times.

BT's performance management policy clearly stated that Managers must find out whether underperformance was due to health factors. Despite this, the Manager dealing with the situation decided not to investigate her medical condition, as he felt he had enough information to make a decision.

Merchant was subsequently dismissed for incapability. The Manager's rationale was that it was difficult to assess whether the menopause had made an impact on Merchant's performance. The Manager felt he could make a judgment on the effects of menopause himself as both his wife and HR Adviser had been through it.

Merchant claimed for unfair dismissal and sex discrimination. The ET upheld this, as the Manager had failed to investigate the possible impacts of menopause on Merchant's performance; and it was a breach of BT's own performance management policy. The failure to refer Merchant for medical investigation, after being informed of the effects of her menopause, before taking a decision to dismiss her, was direct sex discrimination as a man suffering from ill-health with comparable symptoms from a medical condition (i.e. affecting concentration), and where performance standards were not being achieved, would not have been treated in the same way.

"SmartHR... Our aim is to be your trusted and preferred HR services provider – delivering effective solutions and customer services excellence."

UK: Supreme Court decision on Age Discrimination - Homer v Chief Constable of West Yorkshire Police

Homer started working for the Police at age 51. He didn't have a law degree. It was not a requirement of the job provided the jobholder had other qualifications, exceptional skills or experience in criminal law. The Police introduced a new grading structure that had 3 promotion levels – the final level required a law degree. Due to this, Homer could not reach level 3 unless he completed a part-time law degree in addition to his job role, and this would take 4 years to complete. The new grading structure was introduced when Homer was age 62, and as he had a default retirement age of 65, he would not have been able to reach a level 3 promotion before his retirement. **Homer brought a claim of indirect age discrimination, stating that he had been subjected to a provision, criterion or practice which put a person of his age at a disadvantage compared with others.** The EAT & Court of Appeal rejected Homer's claim. They stated Homer's impending retirement put him at a disadvantage, not his age, and his position was comparable to other employees nearing the end of their employment (for whatever reason). **The Supreme Court upheld Homer's appeal and stated that persons in Homer's position were disadvantaged because of retirement that directly related to their age.**



SmartHR's Recruitment Services

Executive Appointments
General Recruitment
Interim Positions

We will work in partnership with you to understand your needs and provide you with a *professional, confidential and dedicated personal service.*

Contact Gail on 619619 / 478764 to discuss your requirements

<http://www.SmartHR.co.im/recruitment>

SmartHR delivers a range of 'Skills Workshops' in order to enhance people management performance:

May 8: Managing Performance

May 9: Coaching & Feedback Skills (am)

May 9: Delegation Skills (pm)

May 23: Managing Performance Problems

June 19: Effective Team Meetings (am)

June 19: Effective Time Management (pm)

June 21: Customer Care, Telephone & Time Management Techniques

June 27: Managing Stress (am)

Visit the **Training page** of our website for details of all of our training workshops. For a *cost effective quote* to deliver any of the courses internally, please email gail@SmartHR.co.im

Further details can be found at www.SmartHR.co.im

We can also create bespoke courses and deliver employment legislation overview sessions

