



PUBLIC SECTOR PEOPLE  
MANAGERS' ASSOCIATION

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# New people, new roles: new thinking

As interesting and fulfilling as the public sector can be to work in, **Sue Evans** says it might be time for an image change if local government is to continue to move forwards and be a home for the workforce of the future

In conversation around the table with young guests at Christmas I caught the following juicy snippet: 'What does your mum do then?' Reply from daughter: 'Oh, not much, she works for the council you know'. The guest looked somewhat horrified and added, with pleasing sincerity: 'Ohhh no!' There was a longish pause for thought: 'But she's such good fun and she's really interesting!'

What a charming young man! Plans to adopt said guest are underway. More importantly, I am on a mission to educate the aforementioned daughter and challenge the idea that we in public services, and especially local government, are somehow boring and not a lot of fun. New year, new image I think.

I am very far from boring and I know loads of people right across our sector who are talented,

interesting and most are a good deal of fun. In spite of the cuts, the changes, the challenges and the cockeyed legislation we have had to manage, people are upbeat and positive and working in local government is rewarding and rarely dull.

So why does the dusty image persist? Above all, what are we going to do about it? Is it just poor



Sue Evans is President of the PPMA and Head of HR and Organisational Development at Warwickshire CC

PR or are we missing a bigger trick in selling the public sector as a career choice?

The challenges are many and various and a review of the kind of person we need in our workforce is long overdue. Many have an ageing workforce (I have to be careful here as I am now one of them!) and we need to be working at keeping our young talent and nurturing it so that we build a new workforce for the future.

The work around the 21st Century Public Servant (if you haven't seen *Walk Tall - Being a 21st Century Public Servant* then do have a look at this useful e-booklet which brings the research to life) and the NLGN work on *Outside the Box*, which recommends actions for the workforce of tomorrow, both open up thinking about the way we work, the new and different roles we undertake and the changing

offer for our staff along with the way we recruit and retain the talent we need.

We cannot afford to wait. We need to be challenging ourselves now to understand our needs and put in place strategies which will deliver a different workforce.

## *Is it just poor PR or are we missing a bigger trick in selling the public sector as a career choice?*

But what do we really mean by different? How different? We have all focused on commerciality and customer service skills, leadership and management of course and other skills-based development in the move to a more entrepreneurial approach with traded services and the need to manage costs down key drivers.

There is much more to do and the focus must now be on values and behaviours. It's time to ditch the old job descriptions and apply some new thinking to job design and the kind of people we need to drive the transformation agenda and lead for the future.

Introducing a set of behaviours which are better aligned to the needs of a modern council has been key in Warwickshire and we are busy making sure that our HR processes are modern and underpin these behaviours.

Getting people to think not just about what they do but how they do it and with whom takes them down a different path from the traditional task focus of the past and helps to develop a more flexible workforce who can adapt and learn. Recruiting for attitude; recognising the social and collaborative skills

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## New people, new roles: new thinking

Continued from page 1

required to operate in our ambiguous and ever-changing environment; developing people who can innovate, take risks and experiment with new ways of doing things; giving people permission to fail, encouraging them to get up and try again and learn along the way are all ways to bring about a change in thinking and approach. Those willing to take the initiative, take responsibility and take decisions are going to be key to the successful shift from provider to enabler. Applying different thinking requires a different mindset.

Many of our existing workforce will be with us for the future and we must address their development as a matter of urgency. We have seen changes brought about by the influx of apprentices – these digital natives are helping existing staff to become more media savvy and ready to learn the digital skills we need. Their attitudes, their fresh thinking and their enthusiasm is refreshing, and challenging at times, and it is exactly what we need to shake off the dust. We are proud to welcome these young people into the workplace and we must work hard to keep them.

We also need to recognise those in our existing workforce who are shifting their attitudes and behaviours and move on those who cannot. Showcasing talent and highlighting the variety of roles on offer in public services, as in the *Walk Tall* booklet, are a good start. But we must work harder on our image and the rewards we can offer.

We will need a new breed of leader too. Both politicians and officers will need to be open to this more experimental, less controlling environment and allow for people to take responsibility and challenge the status quo. We hear leaders say this but in reality I am not convinced that they really mean it! How often do we say 'Go ahead and give it a go' or 'Try it and see what happens'? We tend to be more cautious, asking for more information, the dreaded terms of reference and assurances and wonder why we don't see as much innovation as we would like – we need to break out of the caution habit hole and free staff to take the initiative. That means relinquishing control which will be scary for some and far too scary for many.

Treating people like adults, allowing them to take responsibility for their actions and trusting them to do their best hasn't always been our natural style but it is not just more appropriate in the modern world but an outright necessity in a fast changing one.

My working day is usually full to the brim, it can be fun as well as frustrating and is always varied. I get enormous satisfaction from what I do, and more from what I can support others to do. The connection between the work we do and the communities we serve makes it clear that our efforts are worthwhile – and very far indeed from boring and uninteresting! Tell that to your children please.

Now, when is the next 'Take your Daughter to work Day'?

# We're all in the place

**Caroline Nugent** and **Karen Grave** preview the upcoming PPMA seminar and look forward to an important year ahead for the public sector



Caroline Nugent is Director of HR and OD at OneSource and PPMA Vice Chair, London Region



Karen Grave is an interim HR professional and PPMA Vice Chair

**W**ell how was your Christmas and holiday period? Ours was lovely, interspaced with finalising the agenda for the upcoming National 2017 PPMA conference – which I always find goes along smoothly with that glass of wine! That's one of the joys of the Vice President work – you get to organise the conference.

The launch of the new PPMA website coincides with the launch of the conference so its 'New Year, New Thinking, New Website and New Conference'. We have tried to design the conference so it appeals not only to HR professionals in the public services sector, but also to those who manage people, including chief executives and senior leaders – who will get just as much from it as people issues are not solely the property of HR!

With themes ranging from the Brexit impact, to health integration, public sector operating models, district council issues and more general leadership considerations, there is something for everyone. One of the biggest things we want



to try to ensure is that all of the sessions interlink as no one issue can be taken on its own within the VUCA world we are living in.

As well as building on themes from previous conferences we will take a step back on some key issues. For instance, we're going to look at what digital really means for HR and we'll also introduce our latest thinking on what the HR public sector professional of the future looks like.

The exciting work on the 21st Century Public Servant will also be a key theme throughout the two days so we can show how this can form part of your people strategy and recruitment practices.

Solace President Jo Miller will be speaking at the conference on ensuring tighter working with chief executives, so that when, for example, public policy is

being designed we are at the forefront of helping look at issues and the impact.

It is clear from the new Exit Cap Regulations coming this year that the impact on local government has clearly not been recognised as the sector is significantly impacted more than any other public body due to our existing pension regulations. Taken in turn with the payback requirements on redundancy pay for public sector workers, no-one is yet sure of the full impact of these legislative changes. We need to make sure in future we can show a collective front and we are knocking on the highest doors.

The conference also has the presentation of the annual awards and this year we are looking to show long term sustainable work including transformational journeys and

## DON'T MISS...



- ◆ **PPMA Board Meeting**  
London, 10th February
- ◆ **Rising Star competition selection day**  
Warwick, 16th & 17th February
- ◆ **PPMA Annual Seminar**  
Bristol Mercure, 27th & 28th April



## Tell us your views

If you have any views about the contents of this *PPMA Focus* or ideas for future articles – or would like to contribute – please email Ashleigh Richards (winner of the PPMA Rising Star 2016) at [ashleigh.richards@bristol.gov.uk](mailto:ashleigh.richards@bristol.gov.uk)

# to be this year



their impacts and another on commercial impacts the HR team have had.

We want to showcase the fact that HR is not just transactional but can have a real difference on the bottom line.

The PPMA Awards have launched as you

read this and we are really looking forward to public sector bodies who may not have entered previously doing so this year. They are free so there is really no excuse not to showcase the fantastic work we are all doing.



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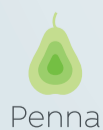
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Come along and **Let's talk, people**.

To register your place, visit [www.ppma.org.uk/seminar2017](http://www.ppma.org.uk/seminar2017)





# What will 2017 bring for your career?

**Julie Towers**, Managing Director of Penna Recruitment Solutions, takes a look at New Year career thinking

**F**or me Christmas and New Year is always a time of reflection, time to look back over 2016 and forward to 2017. As we're now part of The Adecco Group we've changed our financial year in line with the calendar year and it had made the end of the year even more significant from a business perspective.

For many the year end is a time to think about career futures, and life plans, it's the time of booking holidays and thinking about what we want to achieve for 2017. The easter eggs are already on sale...

At Penna the New Year always brings us a flurry of career changers thinking about a major move, a portfolio career or interim/consultancy as an alternative to



to hold or promote your CV is not difficult and most specialise in sectors or professions so you can easily find the one for you. And as I always say to prospective candidates, with so many online options for advertising and some opportunities never appearing in print, it means that you can't rely solely on finding the vacancy you want, so get online to ensure the right opportunities find you.

If you want this to be a new year with a new career then as well as registering your CV online in the appropriate places you should also be proactive by meeting the recruiters, help them know who you are, what you offer and what kind of role you're looking for, take the time to meet them and seek their advice.

Be prepared to spend some time updating your CV, identifying your successes and thinking about what kind of next move you want. Be open minded, as vacancies come in very different shapes and sizes these days and with imminent IR35 changes (see pages 6-8 of this PPMA Focus) we predict much blurring between full-time, part-time, fixed term contract, consultancy and interim contracts

Happy Career Year 2017.



Julie Towers is Managing Director at Penna Recruitment Solutions

their full-time career. Whatever the reason for the change one thing is consistent; it's a time of uncertainty, nervousness and excitement. We spend a lot of time at work and therefore a career/job change is a big decision, so we, like other companies, offer a range of services to help people think through these major decisions. It still surprises me at how out of touch some candidates can be with today's job market.

The channels to find a new job are many; and increasing all the

time. Gone are the days where there was one major media to find

**Whatever the reason for the change one thing is consistent; it's a time of uncertainty, nervousness and excitement**

all the job ads printed in. Today you don't need to find the job opportunities; you can bring the

job opportunities to you through online job board registration, and through your social media profile allowing programmatic media to direct appropriate recruitment opportunities direct to you. Even at executive level these techniques are still very useful – *The MJ* is a prime example of an excellent online service for executive job seekers – have you registered?

There's thousands of recruitment companies, apparently 17,000 in London alone, so finding a recruiter



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# This year's big question for HR directors

**Yvonne Skingle** ponders how impactful we are in facilitating the culture change needed in social care and health integration

**A**t the end of 2016, PPMA and Penna hosted a day's workshop on the role of HR in social care and health integration. We were joined by the Local Government Association (LGA), Health Education England, Professor Guy Daly (Dean of the Faculty of Health and Life Sciences at the University of Coventry) and Julian Mellor (Programme Manager for Integrated Care at Birmingham Community Healthcare NHS Foundation Trust), a range of HR professionals and some social care and health practitioners – so it was a really interesting day.

The conclusion was that there was a real need for HR directors (HRD) to step up in this space to support the behavioural and cultural change required.

From the discussions, it appeared that many HRDs are not at the health and wellbeing board tables or connected to some of the activity around the change, which

was surprising given the level of workforce transformation. Is there something about the value of the profession and its impact on such a strategic debate?

There are clearly a lot of strategic players involved in the integration development – usefully the LGA highlighted their self-assessment toolkit which was shortly to be published; Health Education England highlighted some of their pilot work they have been carrying out; and mention of the social work regulator was also made.

***There was a real need for HRDs to step up in this space to support the behavioural and cultural change required***

Some of the key questions or observations were:

- That the landscape with STPs, devolution deals etc made for complex working and further

clarity around lead roles – it would be interesting to know which partnerships have agreed a workforce transformation lead?

- Whether governance is given too high a profile at the start of the change and this then inhibits the trust and partnership working needed.
- Whether 'combined new job roles' were the answer? It was suggested that 'new roles' needed very careful consideration.



**Yvonne Skingle is Director at Penna Executive Search and PPMA National Policy Lead**

- For successful integration work, it was clear that TUPE and terms and conditions reviews were not the starting point but it was more about building the relationships.
- How developed 'pooled budgets' had become.
- How majorly digitalisation was seen as part of the integration?
- How social care and health integration was place-focused to align to housing needs etc.
- How the West Midlands pilot programmes would be communicated to help national thinking?
- How much community engagement has there been to ensure the path forward is what is wanted or needed?

There was discussion about whether topical integration work was a more successful route – mention was made of dementia here.

Sue Evans, President of PPMA and HRD at Warwickshire CC said

'This is probably the most important development for our workforce in the coming year. Addressing the issues of full integration – beyond just working together – will require a monumental effort from all parties and HR is the best agent to facilitate the changes in culture and working practice to make it happen. HR must step into this space and use our expertise to shape an integrated workforce that can respond to the challenges in getting social care right. No one else can do what we can. The time is now. This event has opened the debate. What we need now is action. Let's get on with it'.

At this stage, there were probably more questions than answers but it felt good to air these and we are planning a follow up day on Wednesday 22nd March, and are particularly interested in seeing more health colleagues on board, so if you are interested in joining us, please contact Helen.avery@penna.com.



# What's in store for HR?

None of us own a crystal ball, but **Barry Pirie** feels it is sometimes useful to look back as well as look forward before trying to predict the future of HR in local government

**D**uring the recent festive period, as many of us do, I had a clear out of papers and reports on a wide range of projects that I have led on, shaped and supported across multiple business areas over the last few years. Always interesting to review where we were and where we are now – as well as the 'journey' we have travelled.

Well I came across a document penned when I first started at Wiltshire Council just after Local Government Reorganisation (LGR) in 2009/10. The discussion piece was boldly headed *HR and Organisational Development at Wiltshire Council – What we need to be delivering to Add Value to the Business*.

I had another read of it and thought that it was pretty good (ha ha)! I also thought of how much we have actually transformed the business at Wiltshire Council and our own function of human resources and organisational development.

***I still believe that austerity has been one of the best things to happen to the public sector and HR. It has forced us to think the unthinkable.***

I also reflected that some of the issues and themes although realigned, remastered, reshaped or re-packaged (or something else starting with re-) may still resonate with colleagues across local government.

I thought I would share some of the thoughts at that time that may still be current now in your authorities or organisations.

The paper recognised the start of austerity and that the financial challenges facing the public sector were made even more difficult by the demands of an ageing population and rising consumer expectations. So, no change there...

## **Reduce costs and fewer directly employed staff**

It highlighted that public-sector organisations need to respond by reducing their costs and maintaining or improving the quality of their most important front-line services. Hard decisions must be taken about priorities, and there will need to be a substantial improvement in public sector productivity. We will have significantly less budget and resources therefore to maintain key services.

Local authorities are likely to have to become increasingly flexible with fewer core staff, and services will need to be delivered



cheaper which will mean a combination of reducing local government staff costs, delivering services through other bodies and increasing levels of innovation. There will be a lot fewer staff employed directly in local government and the staff bill will need to reduce. Yep, good so far.

## **Economy**

The economy is likely to recover over the next few years and with it will be a re-emergence of skills shortage areas impacting upon a small number of key professional areas in the Council (irrespective of whether they are delivered by the Council or not) and HR itself. So, at a time when we need to

retain our key people we will also have to compete for them in a highly competitive market. Again, so far so good.

## **Impact on HR**

The impact of the above factors will have a profound impact on the nature of HR in local government. In summary, what we are likely to see is:

- Continuous requirement to support large organisational change and downsizing for the foreseeable future.
- A fundamental shift of role from applying the council's policies to continuously reviewing and evaluating how they contribute to business aims.

■ A greater coaching role – helping managers to deal with changing situations, think up new business solutions and help their own staff through change.

■ Flexibility requires speed. Solutions will need to be arrived at quickly and properly risk assessed.

■ In a much-reduced organisation, performance becomes a higher profile issue. This will require a bolder, quicker approach with managing performance and attendance.

■ There will be a considerable amount of business development which will throw

up problems we have not seen before. Existing policies will not have all the answers and we will need to 'work the problem'.

■ The size of the function will be reduced and we must prove that we are worth the money. So, no surprises yet.

## **What Will Make HR 'worth it'?**

■ Supporting the organisation deliver more cost-effective priority services to our customers.

■ Assisting the organisation to take costs out of the staffing budget. Be bold.

■ Assisting the organisation to retain the very key skilled people. Require the latest thinking on reward, succession planning and motivational theory.

■ Being pro-active in helping the organisation to work effectively to deliver services through partners.

■ Helping the organisation to communicate, engage and motivate staff.

■ Knowing the business inside out and being able to anticipate upcoming people problems, finding solutions in advance.

■ Coaching key leaders and people managers.

■ Using HR and policies as an instrument for creating the flexible organisation.

■ We must be good at supporting workforce planning but we need to find a less rigid process which will support flexible arrangements and partnership working.

## **So is it still current?**

On reflection the themes and issues appear to still resonate even after seven years. I still believe that austerity has been one of the best things to happen to the public sector and HR. It has forced us to think the unthinkable.

We have delivered the innovative solutions; we have led the transformation of our services and cultures to deliver on the business outcomes identified above. We are worth it and we will continue to add value to our individual organisations in 2017 and well beyond.



**Barry Pirie is Associate Director, People and Business at Wiltshire Council, and past PPMA President**

# The era of the Apprentice?

**Justine Brooksbank** asks if the Apprenticeship Levy is an overwhelming challenge or an opportunity to invest in shaping our future workforce?

**A**pprenticeships are changing with the Government's new scheme including the levy and new targets. Here at North Yorkshire CC we see both challenges and opportunities.

On the challenge side, the levy and public sector target are unnecessary additional burdens at a time of continued pressure on public sector services and finances. Locally we have other challenges, notably the availability of apprentices.

Unemployment in the county is 2% (2,200) compared to the 5% national average with less than 400 aged under 24. Yet our target for apprentices is 480 given the inclusion of schools numbers and the calculation on headcount rather than more sensibly FTE. Some 60% of our workforce is part time so calculating on headcount inflates the target.

**Even before 2010 with a large apprentice programme and many more suitable vacancies, the highest number of apprentices was 140**

We have to compete hard for staff locally which will be no different for apprentices when all local employers are trying to recruit them. The levy, originally projected and budgeted at £750k p-a, increased to £2m with the inclusion of schools creating additional budget pressure. To spend it we need to create 200-300 apprentices depending on mix and cost. The inclusion of schools is at odds with the Government's approach to local authorities' role in supporting schools and while we are now responsible for the levy and target for maintained schools, the Government has ruled out top slicing DSG, discouraged pooled payrolls, and we have no ability to ensure schools create apprentices.

Finally, we have no business need for this many apprentices. We are still a large employer recruiting some 1,800 new staff annually but many are

posts requiring experience in a particular area, sometimes post qualification. Our target requires around quarter of vacancies be filled by new apprentices already in employment elsewhere in the local economy. Even before 2010 with a large apprentice programme and many more suitable vacancies, the highest number of apprentices was 140.

These issues were raised at various stages in the Government's consultation process with a disappointing lack of response to local authority submissions resulting in the feeling that arrangements are based on the administrative convenience of levy collection not the stated aims of the strategy. In venting my views to a member of staff from the new Apprentice Service they happily agreed with me that in reality it wasn't achievable.

However, the levy is coming regardless, and it can be an opportunity to add value in shaping future workforce needs. So we have worked with services on succession planning needs, identified workforce 'hotspot areas' and likely future skills shortages.

We see apprenticeships as a progression route into jobs we still need in the future rather than a training scheme. We are identifying opportunities across council services, including schools, from business admin to teaching assistants, civil engineering to adult social care, ICT to paralegals. For areas with workforce challenges such as adult social care we are using it to create career paths, hopefully attractive to young people which is necessary given the worrying workforce age profile.

Here we hope to provide up to 160 apprentice posts. In working with local universities on degree level apprenticeships in accountancy, law, ICT and engineering we will supplement our usual graduate entry hoping that for 'hard to fill' graduate areas such as engineering it will provide a bigger pool of applicants, greater interest from local young people and in the long run, higher retention.



We are working with our local enterprise partnership and other partners to create cross sector programmes, particularly important for example in social care sector given workforce shortages and our statutory responsibilities meaning regardless of who provides the service we want staff to be



**Justine Brooksbank is Assistant Chief Executive at Yorkshire CC**

trained and skilled to a high level. It has provided the impetus for discussions with partners about joint apprenticeships for example in health and social

**We see apprenticeships as a progression route into jobs we still need in the future rather than a training scheme**

care with local NHS and care providers and with district councils for joint posts across our respective planning and regulatory functions. We will use it, where appropriate, to support the ongoing development of existing staff and to give staff the ability to acquire a higher level of qualification and skills.

We have staff who want to progress their career but often lack the required level of qualification and we can use the scheme to address this.

There are some positive things about the scheme such as the introduction of more degree level apprenticeships which can provide local young people and career changers with the opportunity to secure a good job offer with training and complete their qualifications free of debt.

So being glass half full we will use it to attract new talent, upskill existing staff and help future proof our workforce. The new arrangements are far from ideal, and there's a lot of hard work ahead, but despite this there are some clear opportunities for positive change.



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# Will IR35 cause a 'brain drain' in the public sector?

**Chris Grimes** takes a look at what incoming IR35 rule changes will mean for the public sector

IR35 reform within the public sector was a key announcement in the Autumn Statement for public sector bodies and contractors who work for them through an intermediary. Following a significant period of HMRC discussion and consultation, the proposed changes to the IR35 regime will be introduced on 6 April for the public sector. Contractors working in the private sector will not see any changes to the current IR35 rules.

But what will the changes mean for the public sector?

From April, where a contractor works for a public sector body through a Personal Service Company (PSC), then the public sector body will have to ensure the status of their working practices. If the Public Sector body determines that the role is deemed employment then they must deduct Income tax and employees' National Insurance.

Should they assess incorrectly or continue to pay the worker via a PSC and they are viewed as a disguised employee, the public sector body will be liable and should expect fines and penalties. HMRC has also confirmed that it will no longer apply the 5% flat rate deduction to PSCs which are subject to IR35 to reflect the fact that PSCs no longer bear the administrative burden of deciding whether the rules apply.



## How will this affect engagement with contractors?

There is a concern that attracting and retaining flexible workers will become more difficult. That interim workers may leave the public sector altogether and seek

work in the private sector where there are no changes to the IR35 regime is of particular concern.

The public sector needs self-employed contractors more than ever and a mass upheaval of contractors leaving the public

sector could result in a 'brain drain'. Skills shortages in key areas could severely impact service delivery and be damaging to the public sector.

**What actions can your**

## organisation take in preparation for 6 April?

- Assess all roles contracted directly and via third parties to determine the status of their working practices. Don't just categorise everything as PAYE as this may cause issues with supply that don't need to exist.

- Have a central person/team who completes the assessment, don't allow individual managers to complete this assessment.

- Ensure you have systems in place to capture the evidence as to the conclusions of the workers status and ensure your process allows this to be easily communicated to your supply chain/Managed Service Provider.

- Host supplier forums with interim suppliers to ensure that proactive plans can be put in place to reduce the risk of shortages of candidates is minimised.

- Plan your demand for agency workers using market and business reporting and ensure this is shared in advance with your supply chain of agencies or managed service provider.

- Find out what plans your agencies have in dealing with the Interims currently in contract.

- Start planning with your supply chain or managed service provider now – the sooner you get a process in place, the easier the transition will be come in April.

## Employment law 2017: Seven cases to look out for...

### 1. Employment status

**Aslam and others v Uber BV and others (EAT)**

The employment tribunal decided without hesitation that Uber drivers are workers rather than self-employed, meaning that they are entitled to receive the national minimum wage and paid annual leave. The drivers' claims are being seen as a test case for the employment status of individuals engaged in non-traditional ways by companies operating in the gig economy.

### 2. Equal pay

**Brierley and others v Asda Stores Ltd (employment tribunal)**

Asda is facing a mass equal pay claim in an employment tribunal. The claimants – shopfloor workers who are predominantly female – are seeking to compare their jobs in retail with the jobs of colleagues who work in distribution centres, which are male dominated.

### 3. Whistleblowing

**Chesterton Global (t/a Chestertons) v Nurmohamed (Court of Appeal)**

Since June 2013, whistleblowing laws have provided that a disclosure is not protected unless the employee reasonably believes that the disclosure is being made 'in the public interest'.

The EAT in Chesterton held that matters potentially affecting the operation of the commission scheme of more than 100 managers at a large firm of estate agents could be 'in the public interest'.

The Court of Appeal is expected

to decide whether or not the EAT's liberal interpretation in Chesterton is correct.

### 4. Employment tribunal fees

**R (on the application of Unison) v Lord Chancellor and another (Supreme Court)**

Since July 2013, UK workers have been charged a fee to bring a claim to tribunal, a further fee if the claim is heard and another if they want to appeal.

Unison sought unsuccessfully to have employment tribunal fees ruled unlawful. The challenge went to the Court of Appeal, which rejected it on the basis that there was insufficient evidence of claimants' inability to afford the fees.

### 5. Holiday pay

**British Gas Trading Ltd v Lock and another (Supreme Court)**

In October 2016, the Court of Appeal confirmed that the

Working Time Regulations can be interpreted to require the inclusion of commission in holiday pay. British Gas is expected to appeal to the Supreme Court – it has 1,000 similar claims waiting in the wings.

### 6. Religious discrimination

**Boungaoui and another v Micropole Univers; Achbita and another v G4S Secure Solutions NV (ECJ)**

The big surprise of 2016 was the Advocate General's opinion in Achbita on when employers can ban religious dress.

The Advocate General in the Belgian reference in Achbita suggested an employer can ban a Muslim woman from wearing an Islamic headscarf to maintain its religious and political neutrality.

However, another Advocate General in the French reference in Boungaoui thought that an employer cannot have a blanket ban on religious dress purely

because neutrality is required or a client or customer objects.

### 7. Indirect discrimination

**Essop and others v Home Office (UK Border Agency); Naeem v Secretary of State for Justice (Supreme Court)**

The law on indirect discrimination is in flux. These two claims were heard together in the Supreme Court in November 2016.

In Essop, the Court of Appeal held that it is necessary in indirect discrimination claims for the claimant to show why the provision, criterion or practice has disadvantaged the group and the claimant.

In Naeem, the Court of Appeal held that the existence of a non-discriminatory reason for Muslim prison chaplains being paid less than their Christian counterparts defeated an indirect discrimination claim.

