REWARD STRATEGY

INCORPORATING PAYROLL WORLD

Issue 213

MIND THE GAP

Why employers need to record the LGBT pay disparity

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FINDING THE BALANCE

Amber-Ainsley Pritchard

> "It's something I promised myself I would prioritise"

Work-life balance is something I have always seen as extremely important; it is something I promised myself I would prioritise ahead of entering the world of work, even before wellbeing in the workplace became "on trend". This was driven into me by my very hardworking family, some of whom have burnt out from overdoing it at work.

Flexible working is one way of achieving a work-life balance: being able to rearrange your day around your personal needs. This style of working is nothing new, companies have been doing it for years, but what I find surprising is that flexible working has flatlined since 2010 - I'm shocked the population isn't being more proactive to balance their lives.

However, there's hope. The role of reward in the workplace is becoming more common and more crucial, therefore we have dedicated individuals to look at implementing more thoughtful approaches to existing in a workplace with wellbeing in mind.

Recently I have been meeting with heads of reward at a range of companies, from startups to huge corporates, and something important they are all looking to achieve is workplace wellbeing.

I was told by one head of reward, that you'll never achieve a work-life balance if senior leaders don't take the same attitude on board. Employees look up to their managers and, often, try to reflect their ethics and work patterns. So, if a line manager is getting in early and leaving late, sending emails all night, what will their employees do? It's likely they'll copy this behaviour and the cycle will never end.

The head of reward, in talking, also said work-life balance needs to become part of a company culture and that managers with a mindset of thinking individuals who are working late deserve more praise, needs to change. Such employees could be there late, simply because they aren't working hard enough or managing their work load efficiently in the day.

For now, I'll leave the discussion there, but I would like to know what you or your organisation is doing to achieve a work-life balance and a culture where wellbeing in the workplace is of a priority.

Let me know by emailing me at apritchard@shardfinancialmedia.com

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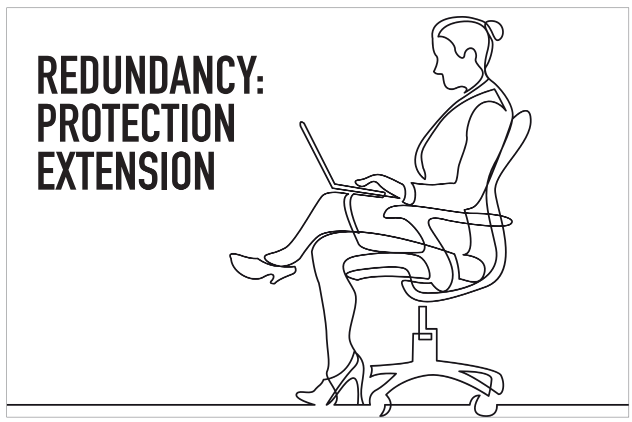


DUTY TO CARE

Ian Hodson explains why reward managers need to take responsibility for their employees' mental health and financial wellbeing

Ian Hodson,
University of Lincoln

Something has been changing in the workplace over the last few years. Most workplaces have seen an increase in mental health absence and more lost work days than ever before. This could be down to a number of factors, including that we now find ourselves with a multigenerational workforce who have differing attitudes to mental health.

Often, in management positions, we find ourselves with a generation to whom mental health struggles stereotypically meant white coats and asylums, however they are managing the millennials who are entering the workforce - who have been brought up in a culture of being open with their health struggles. This workforce is willing to not only declare their struggles and problems, but also want to talk about them. A perfect storm.

Debt and mental health

A recent survey revealed that 46 percent of individuals who were in debt, were also suffering from mental health problems. Nearly 90 recent of people (86) with mental health issues said that it was making their financial worries worse. Intrinsically, the two issues of financial and mental woes seem linked, and in a society where day-to-day living costs continually rise, the problem has still not reached its peak. So what does all of this have to do with reward professionals?

Reward professionals not only have the responsibility of creating motivational reward packages, but also creating reward packages that are going to protect employees and their wellbeing. Within the remit of reward professionals, the topic of financial wellbeing now sits with an equal significance to that of physical wellbeing, and is directly liked to mental health.

Education
The first stage of positively responding to financial wellbeing is to look at prevention. One of the ways of achieving this is through financial education and who is better positioned to do this than reward teams. In the words of Nelson Mandela: "Education is the most powerful weapon which you can use to change the world". Knowledge around tax codes, pensions and savings vehicles, through the payroll are all knowledge that, when disseminated, can allow employees to make informed decisions. The challenge for reward teams is to take this knowledge, that they are undoubtedly very comfortable with, and come up with creative ways to communicate it and encourage employees to engage with it.

Financial education is not always the easiest topic to get employees to engage with, but particularly when you already know that a lot of individuals who still find talking about money matters difficult.

There are a lot of barriers to employees engaging with financial education; including some people who prefer to bury their head in the sand, some employees thinking they already know all there is to know, some individuals being turned off by the topic, and some thinking money planning is for later life. This makes it all the more important for reward professionals to invest in developing their communication and marketing skills, and take that day-to-day operational knowledge out to the workforce in a way that can engage and educate. Perhaps through the roll-out of workshops, drop-in sessions or online guidance, a difference can be made towards preventing those financial worries and the hard to stop creep from stress to anxiety to depression.

Reward design
The second place for reward professionals to add value is in the design of reward packages. We are well-accustomed to talking about the longer-term aspects of pay and pensions, however there is also a place for benefits that support making money go further on a day-to-day basis.

The average pay day loan is £260, with single 25-30-year-old employed males the most likely to be needing support to see them through from month-to-month. We also know that there has been a 10 percent year-on-year increase in the use of food banks, with an increase in usage by employed parents with families where day-to-day living costs are a delicate balancing act - where even a minor disruption leaves a void in the finances. So, as reward professionals we need to be on the lookout for the short-term quick wins that, as an employer, we can offer them.

Benefits such as lifestyle discounts, that can create savings on the weekly shop, can support employees, or the launch of discounted cinema tickets to lower the cost of a family trip, or a debit card with cashback offers for staff to utilise.

There are also options around different saving initiatives, not just pension offerings. A number of providers have now introduced workplace Individual Savings Accounts (ISAs), that allow a better interest rate than high street banks. These ISAs still leave funds accessible and the deductions are taken from the source payroll, so any temptation to spend can be removed. Alongside this offering, employees have the opportunity to better plan their expenditure and iron out peaks and troughs which can help them avoid financial stressors and short-term loans, for costs such as visa applications or season ticket loans. This can significantly help employees, as it is not a lump sum payment which can be spent all at once and lead to issues.

A gifted position
So, what we know is that mental health issues linked to financial worries are on the up. But, reward professionals are actually in a gifted position to help tackle the problem through education and reward design.

Managers need to be educated to deal with mental health in a different way and need education to reprogramme themselves to identify signs of stress and actively talk about it with their employees.

It is important to take positive steps to address this now, as with more millennials entering the workforce who will turn to talk to line managers - the need to offer a listening ear and support will only further increase.

When you are next sitting down and prioritising new pieces of work, remember there is a shifting organisational position, in respect of mental health, that as reward professionals we have not only the knowledge to make a difference, but also a duty to our profession to use that knowledge to make a difference. ■

Ian Hodson, head of reward, University of Lincoln

"I'm not your traditional analytical spreadsheet jockey"

THE TRAILBLAZER

Tracey Newton of Yorkshire Building Society on innovating a reward strategy to serve nearly 4,000 people, whatever stage of their life or career they are in

Tracey Newton: THE CV

Director of people performance
YBS
2017 - present

Group head of reward and benefits
YBS
2014 - 2017

Group reward director
Manchester Airports Group
2013 - 2014

Reward is no longer restricted to solely looking at pay and bonus schemes, it is now more focused on the entire journey of an employees' experience at an organisation. It's also about how an organisation can represent its culture and values through its reward strategy.

Tracey Newton, director of people performance at Yorkshire Building Society (YBS), is passionate about driving reward strategies forward to better concentrate on the individual needs of employees - ensuring they feel valued no matter what stage of their career they are in.

Following up on her trailblazing work, and winning the Best Leader Award, sponsored by Investors in People, at The Rewards 2018, Amber-Ainsley Pritchard sat down with Newton at the YBS headquarters, to talk about a multigenerational workforce, fat cat pay and having a work-life balance.

> "Now it's about how you represent the organisation you want to be"

ALP: Can you tell me how you got into the world of reward?

TN: "I started off as a HR administrator in 1999 and worked for a couple of telecoms companies. In my second job, for a french telecoms company, there were a number of projects that came up: one was a benefits harmonisation project and the other a pay review. I got involved with both and liked them. I didn't find the technical aspects concerning or intimidating, a lot of people worry about spreadsheets and numbers, but I find it all kind of intuitive.

"I moved to Centrica in 2001 to work as senior HR coordinator in their group operation function. It was a generalist role, so I got involved in all sorts. We decided to look at how we could run our HR functions more efficiently. At the same time as this, I was finishing off my CIPD and also doing a post-graduate degree in HR management. As part of my studies, I had to choose a management project.

"At Centrica, we had just had recruited our first group reward manager, because pay reviews were becoming more interesting, so I decided to do my management project around pay progression and had the group reward manager sponsor my project.

"After this, we decided to introduce a shared service model to run the HR operations more efficiently. At this point, I was very fortunate to be given the choice of being a HR manager or a reward analyst, and I chose the analyst role.

"I worked as an analyst with the first head of reward in the shared service model. He had a lot of different areas to cover, so I worked with him to help cover everything. I got to do huge pay reviews, and a lot of stuff around bonus, I introduced a flexible benefit scheme, I was really fortunate. I got to work in France, Belgium and Spain: I went out and did job evaluations and brought reward philosophy in. I looked after four international assignments.

"I then went to work for Northern Foods as their first group reward and performance manager, and since then my focus has always been on reward and working in management teams.

"So my route into reward was unplanned, it just felt like a natural space. My route has been that of quiet a generalist, and that has been really helpful - because you have a different way of thinking, I'm not your traditional analytical spreadsheet jockey. I can spend time analysing spreadsheets still, but I do it because it meets a purpose. I prefer to concentrate on how you integrate reward into a wider people proposition.

"I am much more interested in the behavioural aspects of reward and what that can bring to an organisation, what forms a culture, and creating an environment and a message about who you are."

ALP: What exactly does your role as director of people performance entail?

TN: "The remit of my work sees me look after reward, pensions, employer relations and our union relationship, across the whole business - that's nearly 4,000 people.

"I have eight direct reports: four business partners, a senior manager of reward, a colleague services manager, a senior manager of pensions, and resourcing. Each manage their own teams, so numbers vary in size."

"Our HR business partner reports into me, so we can look at policy development in that space, including people risk which is all about regulatory requirements from a senior manager regime, but also about how we look at the inherent risk of what people present to the organisation, but more about the risks of what not managing them effectively would bring."

ALP: How would you say the world of reward has changed in the time you've been working in it?

TN: "I think it has changed quite significantly. When I came into reward, the focus was very much around pay and bonus - quite a narrow mindset.

"If I think about reward now, it's a much wider piece because you are looking at the whole colleague experience and how you market that to colleagues.

"I think the difference is in the hygiene factors, that reward was originally about paying a bonus and getting it right, and being numbers driven, but it is now more about behaviours - in terms of

what difference can be made in driving behaviours and sending messages about what kind of organisation you want to be.

"I remember when everything was about the market, now it's about how do you represent the organisation that you want to be. That view is really quite different to when I started in reward."

ALP: In this day and age, people are used to being able to ask a question and gain an answer straight away, and that is being reflected in the workplace. Would you agree?

TN: "Yes, expectations have changed in terms of the ability to pick, choose, extract value and get instant responses.

"I think colleagues expect us to demonstrate the value that we are passing onto them. It's about understanding the requirements of the individual.

"There is a limit to how much investment you can put into the reward space, but colleagues want you to understand them and create an investment where they can extract the best value. Are we there yet? No, we have work to do in that space, especially around data, but I think you are seeing much more individualisation in this area as we move forward.

"I think expectations are really different now, when I first came into HR I didn't have people asking about flexible benefit or pension plans, but today people are making choices with different requirements and different data points."

ALP: Will this approach to employees become more vital with a multigenerational workforce?

TN: "Yes. You read that now is the time you have got four generations in the workforce, and you can't make assumptions about any of them. We have apprentices, who are very young, but are actually the most engaged group about pensions. They may be even more engaged than some of the older generations, so their needs and requirements are that different.

"I think that there is more of an expectation now, that it's a meeting of minds of individuals' needs and the organisations' needs, and how you bring it together. It's moved on from being this kind of hygiene factor to more about how do you make sure that you are paying effectively and giving meaning to working at a certain organisation."

ALP: What would you say the biggest challenges are currently facing reward?

TN: "I would say personalisation, data and investment, but of course, competition for key talent is really heating up. I think that good people, no matter what is happening in the marketplace, will be in demand.

"I think some of the challenges we have at YBS, is stepping into those shoes and understanding what is important to individuals, and how do we meet those needs.

"If you think about things like the gig economy and people creating portfolio careers - old school benefits don't work. Equally, if you think about YBS, where do we add real value to our members? We do it in lots of ways, but one of the things our members really value is longevity of relationships with some of our colleagues.

"So, how do you balance this new world? Where people with certain skills are moving on quite rapidly, alongside wanting to really value loyalty and demonstrate how much you value and appreciate experience that individuals bring. That can lead to different reward mechanisms, long service is one that is a bugbear because I hate long service awards. What I mean is: I hate the notion that you wait 10 years to say thank you to somebody.

"We have 'YBS Adventure' and 'Career Celebrations'. We focus on how to recognise somebody is growing and has had experience of the organisation, be it one year or two years, but equally how to celebrate milestone moments which could be in the first week or years down the line - to make sure individuals who have been here for a long time don't devalued because they are not new and shiny."

ALP: What would you say is the future of reward?

TN: "I think it would be around the employee proposition: how you reflect your company culture through the manner of which you conduct yourself around that reward space.

"It's not that new, it's the old stuff around intrinsic and extrinsic motivation about financial reward and total reward, but it's about how you bring it all together in a way which is really congruent -

whether that's how you recognise people or support people through different periods in their life.

"But, I think the biggest thing would be the values of the organisation, it's a real reflection of company culture. If I think of our bonus schemes, which have just changed this year, to being a single bonus that everyone participates in, same bonus structure, same percentage award.

"There are some differences in there in terms of very senior people because there are regulatory pieces that we need to put in place, but for the majority of colleagues it's one scheme and one set of metrics: a single percentage which everyone achieves - it's all group and team performance. It's a really strong cultural message that, at YBS, we are working together in empowerment.

"I think what reward can do, is really be a window to the type of organisation you aspire to be."

ALP: Recent campaigning around fat cat pay has called on companies to ensure bonuses are better structured to reflect effects of work. How do you manage this?

TN: "We have a very strong remuneration committee. If you look at our senior leaders, including C-suite level individuals, and our remuneration committee review, and the objectives we set them - they are all individualised to make sure they focus on the right things, are appropriate and challenging.

"The objectives are reviewed thoroughly, and not only by the remuneration committee, there are a lot of check points to ensure the way in which we are managing those people and individuals, and the outcomes that they are delivering."

ALP: Do you think the need to report pay gaps will see organisations recruiting individuals to improve their gaps, rather than focusing on hiring the right people?

TN: "I wouldn't like to pass judgement on what others are doing, but I do think it's difficult because you have competing priorities.

> "I hate the notion that you wait 10 years to say thank you to somebody"

"If I look at it right now, we have got a target or an ambition about female representation, we also have an ambition to increase our BAME population, and we have an ambition to grow our own talent rather than going externally. You can't do all three, but if you do you need to think really carefully about how you manage all three and balance them.

"If your starting pool, is a pool that is predominantly white and male, but you want to bring in more ethnicity, but you want to recruit from within, it's quite difficult to do all of that.

"There's a whole host of things that we are looking at. We have a diversity and inclusion programme, we have 'squads' around different areas with focusses on a range of things from working families, to multiculturalism, gender, social mobility and the LGBT community."

ALP: A big focus right now, is utilising flexible working to help employees have a work-life balance. Do you offer flexible working at YBS?

TN: "We do, but we are looking at ways we can better utilise and offer flexible working. We are thinking about it in different ways too - ways to recognise everyone, such as the individuals who work in the branches and get in two minutes early every day to open up the store and stay a little later in the evening to lock up.

"In our Scottish network, we are trialling something called "Take Two", which sounds small but is really influential. It's basically just saying to colleagues: take two hours a week and do anything you want to do with it. It could be life admin, spending time with your kids or seeing a friend.

"We have also got an initiative called 'Finding the Balance'. At the heart of that, is something we changed about two years ago. We used to be a statutory maternity pay payer, but that is just not in line with a family organisation, so we have changed that and increased our maternity pay. We pay 16 weeks full pay and 10 weeks half pay for every colleague - and you are eligible for it the very day that you walk in.

"We are trying to do more, to help colleagues see YBS as a place where you come and stay and build a family. It's quite new, but we are also doing a lot more about carers leave, we have support in place for individuals who are going through something like infertility treatment.

"There is quite a lot that we are doing and we are still not finished on the flexibility journey. We are an organisation that seeks to be fair and manages fair, in that it's the same for everyone."

ALP: What would you say the relationship is like between payroll and reward?

TN: "Our payroll sits within colleague services which sits in the HR function.

"Payroll and HR admin are the absolute engine room of everything we do, without them we couldn't deliver the strategy, and without that we could not deliver the things that matter most to our people, which is paying them accurately, safely and on time.

"The two teams are vital, one makes the other thing shine and happen." ■

Amber-Ainsley Pritchard, editor, Reward Strategy

"IT'S CRUCIAL PAYROLL ATTRACTS AND RETAINS THE BEST TALENT"

Western Union Business Solutions explain what's high on their agenda and what they'll be taking about at the Payroll & Reward Conference

Ahead of the Payroll & Reward Conference, headline sponsored by Western Union Business Solutions, Karen Penney, vice president of payment products, and Ashley Phillips, head of pensions and payroll payments, at Western Union Business Solutions take part in a short interview.

Penney will be speaking at the conference, held on June 5 and 6, at The Chelsea Harbour Hotel, London.

Reward Strategy (RS): What do you think has been the most visible change to the payroll and HR industry in the last year?
Karen Penney (KP): "In the UK the dominant topic in the past year has of course been Brexit, its impact on the European workforce in the UK, as well as regulation and international payroll.

"In addition to Brexit; PSD2 and GDPR have both raised challenges and potential changes required. Data quality and integration are big preoccupations, especially with the increasing use of cloud technology. The more automated payroll becomes, the bigger the challenge to ensure data quality."

RS: What do you think are and will be the biggest trials facing payroll and reward professionals?
KP: "Particularly, in the current economic climate with Brexit in the UK, worries about the Eurozone economy and global trade tensions are key. Technology has been a massive enabler to the sector, but at the same time it has presented new challenges - particularly around data security and privacy. This means that payroll departments have to ramp up their digital skillsets, but also their compliance processes and resources. The reporting burden is also likely to increase.

"Growing complexities around local legislation and compliance are always ongoing challenges. Despite the size of the industry, and continued growth, there are surprisingly few comprehensive global payroll management solutions."

RS: Do you think technology has helped or hindered the way you work?
Ashley Phillips (AP): "I would say technology has helped. We've seen a lot of advancements in technology, which also brought its own challenges with the implementation of technology, particularly around data privacy and security. A lot of pension funds and administrators are having to upskill and really look at the compliance and policy around that."

RS: What is going to be the biggest area of investment for your payroll function in the next 12 months?
AP: "Digital transformation is certainly high on our customers' agenda and will continue to be an area of investment. As a provider of financial technology, we work closely with clients to make sure that our technology delivers for their employees."

RS: Without giving too much away, what two things will delegates learn from your session?
KP: "Given the current economic environment and the regulatory changes that are certain to impact the payroll function, we will talk about the importance of holistic payroll policies. The payroll function is core to any organisation, therefore it's crucial that it attracts and retains the best talent as this is essential for a business' reputation.

"We'll also be discussing the nuances of how payroll functions and impacts across international borders."

Karen Penney & Ashley Phillips
Western Union Business Solutions

RS: What piece of payroll software that you currently use is most crucial for your function?
KP: "Western Union's global reach, 130 currencies and 200 countries, makes us a global leader in cross currency cross border payments. Our tech platforms support our customers 24x7 and we constantly improve them to continue to deliver innovation and simplicity. That is the most crucial aspect of our work and that of our payroll clients."

To buy tickets for the conference, or the Reward 300 Gala Dinner taking place the first evening of the conference, call our sales team on 020 7940 4801 or visit the Reward Strategy website. ■

£32BN UNPAID OVERTIME

Is this employee goodwill or employer abuse?

Karen Thomson,
Armstrong Watson

MEMBER OF 2018 REWARD 300

UK companies claimed £32.7bn of free labour in 2018, because of workers doing unpaid overtime, according to recently analysed official statistics from the Trades Union Congress (TUC).

So, this month I am looking into the recent headlines regarding employees working unpaid overtime and whether this is employers taking the "Michael" or just give and take.

The TUC provided the above statistics with the aim of employees celebrating 'Work Your Proper Hours Day' on March 1. They have even designed a calculator for employees to use to check what they could have been paid, had they been paid for all the hours they worked.

As pay is one of the key drivers for most employees, it is understandable employees will feel aggrieved if they think they are being exploited by their employer.

Employee exploitation

One recent case, *Fitz v Holland & Barrett*, was around the opening and closing of the store. Jozsef Fitz claimed that as he had to open the store and get it ready for customers at least 15 minutes before opening, and also spend time cleaning and tidying after closing the store - he should be paid for this time. He won his case.

This case will most likely encourage many more employers who require time before and after the normal contractual hours are worked, on a regular basis, to review their practices.

Recently I was having a discussion with my husband on the "good old days", whereby rightly or wrongly it was just expected for you to be ready to work on time. Inevitably this always meant you were at work at least 15 minutes before. Before my husband became a police officer, he worked for a bank and was always expected to get the cash ready for customers before opening and put it all away after the bank was closed.

> "In today's society, employees want fair pay for what they work"

Interestingly we both felt that perhaps this wasn't fair, it was just the way it was and clearly in today's society employees want fair pay for what they actually work.

The TUC found that public sector workers are affected the most by unpaid overtime and as an example, for the first four occasions in one week (Sunday to Monday) a police officer has the first 30 minutes of overtime disregarded (bought out in 1994 for extra pay and pension).

There is no legislation that states employers must pay overtime, however National Minimum Wage (NMW) legislation can assist. Employers should be recording all hours worked and if an employee's average pay doesn't equate to the NMW, then clearly there is a breach and arrears and penalties will be due.

In addition, as I shared in a previous article, since April this year employers need to record the hours and rate of pay on a payslip, where the pay is affected by the hours worked.

What about flexible working?

So where does this leave flexible working or smart working schemes?

At Armstrong Watson, there has been a real success in introducing smart working. It works on the basis that you don't need to record when and where you were working (except for chargeable time). As long as you do your job and meet customer expectations (or exceed them), then your working hours are not important. Now this doesn't mean the company expects employees to work silly hours or never be in the office, but instead it has encouraged a work-life balance.

I can only speak for myself: I am known for being a bit of a workaholic - I love work, but by smart working I can work from home and take shifts with my family to help out with the dogs, hens or sheep, but this also ensures I deliver my work commitments. It could be the same for parents who want to attend sports days etc. It isn't about when I start or when I finish, I can choose and manage my whole life - not just my working life. But to do this, there has to be trust from employers and employees i.e. employers want to know work will be done and employees want to know they are not expected to work long hours (other than ad hoc when needed).

My concern is that if employers do exploit employees, albeit perhaps unknowingly i.e. opening and closing a store, more legislation will be introduced, which in turn could remove flexibility.

Therefore, my plea is to ask all employers to look at their employment practices and ensure fair pay for hours worked. ■

Karen Thomson, partner, Armstrong Watson

To read more about flexible working and how organisations, such as Yorkshire Building Society (YBS), are recognising such individuals who open up and close stores - see page 8 for The RS Interview with Tracey Newton, director of people performance at YBS

REDUNDANCY: PROTECTION EXTENSION

Extension to redundancy protection for women and new parents could see less exploration in the workplace, the CIPP finds

Helen Hargreaves, *CIPP*

"Protection shouldn't mean a returnee would be placed in a role they could not do"

MEMBER OF 2018 REWARD 300

A consultation was published, at the end of January, which recommended the current protection afforded under the *Maternity and Paternity Leave etc Regulations 1999* (which apply to the period of maternity leave) be extended to cover the period of pregnancy and a period after - an extension of six months. This is a commitment that was made in the government's response to the Taylor Review, and had also previously been raised by the Women and Equalities Select Committee (WESC).

The consultation

- Sets out the current legal protections for pregnancy and maternity;
- Asked how an extension of redundancy protection into a period of "return to work" might best work;
- Asked whether similar protection should be afforded to other groups;
- Set out steps that government is taking to increase business and employer awareness of their rights and obligations, and invites comments on how they might be improved, to tackle pregnancy discrimination more effectively;
- Considered the existing approach to the enforcement of employment and equalities legislation in the context of recommendations from WESC and the Taylor Review;
- Discussed the tribunal time limit.

Industry thoughts

To inform the CIPP's response to this consultation, we published a survey based around the proposals.

75 percent of respondents agreed that protections against redundancy for a period following return to work, should be aligned with those already in place during maternity leave. Some of the reasons cited for this included the experience of women being disadvantaged and unfairly selected for redundancy whilst on leave/a few months after they have returned to work. Reasons also included that protection should be in place, but it should not mean a returnee from maternity leave would be placed in a role they could not do and would therefore have a negative effect on the company, rather than someone who is skilled in that role being offered it first.

Financial impact

When asking about the costs that an extension may bring to businesses, responses included the possibility of losing the wrong people in a re-structure situation due to protections being in place.

For the cost to individuals, responses included that additional responsibilities may be added to a role, and a higher risk of redundancy if not returning from maternity leave due to being 'lower' in the order for possible re-structuring.

Benefits

The consultation also asked about what benefits the extension may bring and responses for business benefits included: retaining qualified staff and that business would be able to better assess a person's skill once they are settled into the routine of their job, and therefore if the job is still required in a re-structure situation.

Responses for individual benefits included: women would be less exploited and have better job security, more women may be encouraged to return to work and it would benefit individuals from a wellbeing perspective.

Protection period

We asked if six months would be an adequate period of "return to work" for redundancy protection purposes or whether a different period of "return to work" would work better.

75 percent said yes: six months was adequate, but the remaining 25 percent disagreed. Comments around this argued that the protection period should be longer - such as a year - because some employers wait until the employee returns and then dismisses them on redundancy grounds within the six moths of returning. However, others said that six months was a fair amount of time to make it affordable for employers (depending on the size of the employer) and gives return to work mothers a further advantage over all employees who could be part of a redundancy situation.

The consultation also asked: should pregnancy, for redundancy protection purposes, be defined as starting at the point a woman informs her employer that she is pregnant in writing? Feelings of respondents to the CIPP survey are as follows:

- 13 percent strongly agreed
- 13 percent agreed
- 37 percent disagreed
- 12 percent strongly disagreed
- 25 percent remained neutral

Following on from this question, the CIPP asked if respondents felt a different reference point should be used and if so, what it should be. Three quarters said yes, a different reference point should be used, and recommend "it should be two to three months prior to the expected week of confinement" or "at the point the employee is leaving to start her maternity".

The consultation also asked that if additional redundancy protection is extended to mothers returning to work after maternity leave, are there other forms of leave which should be considered also, citing as examples: adoption leave; shared parental leave and longer periods of parental leave. All respondents indicated that adoption leave should be considered, the majority thought shared parental leave should be considered and the last option received a half and half split between yes and no. ■

Helen Hargreaves, associate director, policy and membership, CIPP

MIND THE GAP

Why employers need to record the LGBT pay disparity

Lee Sullivan, *TJ Morris*

Please note, opinions are my own and not the views of my employer

The gender pay gap is a known fact. Although narrowing, research by the Office for National Statistics (ONS) shows that, in the UK, women still earn 18 percent less than men.

Last year, Resolution Foundation, a think tank, identified that black, Asian and minority ethnic employees are earning £3.2bn a year less than their white colleagues doing the same work.

To combat these gaps, every company in the UK, with more than 250 employees, is now required to publish their gender pay gap. The government has also proposed similar measures to deal with the disparity in pay between ethnicities.

Despite the warranted attention these issues are receiving, there is very little discussion happening around pay discrimination facing lesbian, gay, bisexual, and transgender (LGBT) workers. This may be due, in part, to the obvious lack of statistics available. When compared to gender and ethnicity, data isn't just thin on the ground, it's almost non-existent.

Surprisingly, there is actually no accurate figure for the number of LGBT people in the UK. The 2011 census, for example, can tell you the average British age, the most common type of occupation and even what type of central heating people are likely to have, yet it made no attempt to ask questions about sexuality or gender identity. However, it has been reported the UK will start recording this data in its 2021 census.

MEMBER OF 2018 REWARD 300

Whilst payroll and HR are famously mines of data, the current efforts of UK companies fare only a little better. Household names like Barclays and Ernst & Young are making positive changes, but LGBT charity Stonewall have highlighted that very few employers bother to collect any LGBT data at all.

“Compared to gender and ethnicity, data isn’t just thin on the ground, it’s almost non-existent”

The gaps

Because of this, the information we have is based almost entirely on estimates and can often, on the face of it, be contradictory. A 2014 report from IZA World of Labor shows that in the UK, gay men receive five percent less than their heterosexual colleagues. In real terms, this equates to around £1,500 annually. Other reports suggest annual discrepancies of as much as nine percent (£2,700).

It is a little less clear cut with lesbian women. A University of Melbourne study claims that, in Australia, lesbian women can earn up to 20 percent less than heterosexual women. Perhaps, unexpectedly though, the majority of reports suggest the pay gap works in their favour. IZA World of Labor actually reports that lesbian women, unlike gay men, often earn considerably more than their heterosexual counterparts. In the UK, this is on average eight percent more, but in the US this rises to as much as 20 percent more.

Unfortunately, there has been almost no research into transgender pay discrepancies. An American study by the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy suggests transgender employees earn, on average, almost a third less than their cisgender equivalents. However, there has not yet been any studies on this that look specifically at the UK. Whilst it is negligible for transgender men, the phenomenon is particularly pronounced for transgender women.

Although figures are impossible to pin down, the one thing these reports agree on is that sexuality negatively impacts the pay of a large section of the LGBT community.

What causes the LGBT pay gap?

The reasons for these disparities seem varied, although the lack of research makes any real certainty difficult.

Sexuality often impacts career choice. Expectations of homophobia often steer LGBT people towards occupations they consider less hostile to their sexuality. In the case of gay men, these are often the jobs seen as traditionally female-led: jobs that are negatively impacted by the gender pay gap. This nonconformity to traditional gender norms goes some way to explaining the lesbian earnings premium. It is suggested that lesbian women have less family commitments and the ability to invest more in their education. Many lesbians choose male-dominated occupations, which regularly attract higher than average salaries. It is relatively apparent here that the LGBT pay gap is intrinsically linked to the gender pay gap.

Of course, it’s impossible to ignore the very real problem of direct discrimination. The Trades Union Congress (TUC) estimates that more than one in three LGBT employees experience harassment or bullying at work. Openly gay men, in particular, are significantly less likely to attain the most senior positions than heterosexual men. This so-called ‘pink ceiling’ means that as of 2017 there are only two openly LGBT FTSE 100 chief executives (CEOs). With FTSE CEOs earning around £4m annual, the impact of this on the pay gap is considerable.

Bridging the gap

It’s undeniable that there is a dearth of useful data. The UK government ought to be taking a more active part. Whilst a ‘diversity tax’ may seem radical, monitoring the economic experience of the LGBT community is a must. In the meantime, employers should take that initiative. As it stands, it is challenging to draw any meaningful data on the current situation or any possible improvements.

However, perhaps because of their interconnected nature, like the gender pay gap, there is no quick fix. The LGBT pay disparity exists despite the UK having some of the strongest legal protections, suggesting that in reality legislation may only go so far in solving the problem.

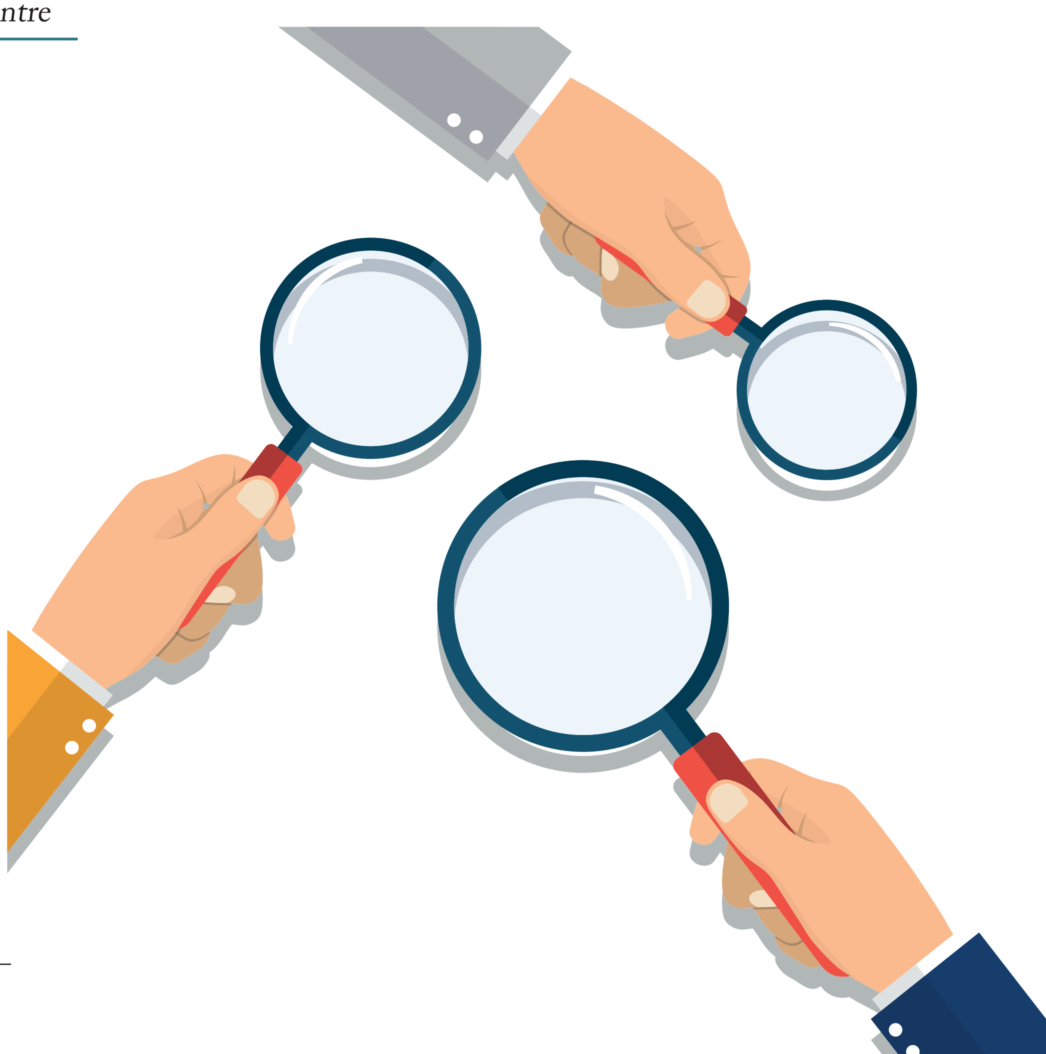
Like with the gender pay gap, there must be a significant culture change before there can be any real improvement. What is clear, is that without a commitment to operate inclusively, transparently and fairly, the LGBT pay gap will never narrow. ■

Lee Sullivan, payroll administrator, TJ Morris

ACT NOW TO AVOID INVESTIGATION

Are you aware of all disguised remuneration outstanding with employees? If not, take action to find out and avoid the wrath of HMRC

Richard George, *The Payroll Centre*



"There is an expected £1bn of loan charge deductions due to be collected"

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A lot of the work was required by the start of this tax year, however there is still a lot of confusion around new requirements for disguised remuneration. There are outstanding loans yet to be administered and confirmed to HMRC.

These remuneration schemes are seen by HMRC as a form of tax avoidance: by paying directors, employees and contractors in the form of loans (usually from third parties in the form of employee benefits trusts and employer financed retirement benefit schemes) as part of their remuneration package - with no intention of the loan ever being repaid.

HMRC's view is that these are no different to normal income and, as such, are liable to tax in the same way as other forms of employee payment. HMRC's own research shows that around 50,000 individuals are affected by this loan charge - which equates to 0.2 percent of taxpayers - and there is an expected £1bn of deductions due to be collected.

As part of the changes to these schemes, HMRC have brought in a charge on outstanding loans made to employees since April 6 1999. This was introduced in the *Finance Act (No2) 2017* and will be applied to all loans under disguised remuneration, which were still outstanding on April 6 2019, where no agreement, or settlement arrangement, was in place by that date.

Given the importance of this subject, it was therefore vital that employees, as well as former employees, gave details to employers of any outstanding loans to ensure employers could report the correct amounts to HMRC. This, in turn, would allow the correct settlement to take place which could be achieved through the Full Payment Submission (FPS), including the new field 197 "Amount of 7A Disguised Remuneration Income".

Correct amounts and details are very important as deliberately incorrect, inaccurate or careless returns, may well cause a further penalty.

With a loan charge therefore possible, it was important employers were in communication with HMRC around the settlement of existing arrangements and for those settlement arrangements to be completed as quickly as possible.

Through communication, instalment options could be available to make good over an extended period, but this needed to be agreed at the earliest opportunity with a "settlement caseworker" from the revenue. If the settlement wasn't agreed, then PAYE and National Insurance due needed to be taken and reported in April 2019.

The charge will also not apply if the loan has already been repaid in full, the loan was given and PAYE paid in full through settlement or agreement with HMRC, or the loan had full PAYE applied under the normal disguised remuneration rules at source.

There are a number of exceptions to what is considered disguised remuneration, but they are subject to specific conditions:

- Loans made in the course of a normal commercial transaction on ordinary commercial terms;
- Situations where an employment-related loan of no more than £10,000 has been transferred from one employer to another;
- Loans made under employee benefit packages;
- Loans made solely to allow an employee to exercise an employment-related securities option;
- Loans made to allow employees to acquire unlisted employment-related securities.

What to do

Due to the change, employers have had several options to manage the requirements - but many had time constraints due to cut off dates confirmed by HMRC for the start of the new tax year, which included:

- Settling the tax and National Insurance liability outstanding prior to April 6 2019.
- Repaying the loan in full:
  - Working with HMRC over a payment agreement in the normal agreed time period, although HMRC have had flexibility of extending to longer periods for higher earners and higher levels of settlement.
    HMRC will agree instalment plans of up to five years if employers, or individuals, settle disguised remuneration schemes before the loan charge arises, without having to give detailed supporting information of their means and ability to pay if the expected current years' gross earnings is less than £50,000, or they no longer engaged in tax avoidance. If gross earnings are £50,000 or higher, and a longer period to pay was required, a longer period could be negotiated.
  - In both of the above cases, a desire to, and an interest to, settle needed to be in place by the end of the previous tax year.
- Report outstanding agreements in April 2019 and make good with the normal return.

This could be through the FPS, but there could also be a requirement to complete through an Earlier Year Update (EYU) which was also updated to include an area for reporting disguised remuneration.

Time to review

Are you aware of all disguised remuneration outstanding with employees or former employees? If not, or no return and communication has happened, it's time for action because, as with all things HMRC, open discussion, transparency and early disclosure will save penalties, interest and further investigations. ■

Richard George, director of education, The Payroll Centre

HOW TO CALCULATE STAT MAT PAY

PAYE Settlement Agreements can cause problems when calculating average earnings for Statutory Maternity Pay. Norman Green explains

Norman Green, *Payroll Consultant*

"Two cases have changed the law around pay rises, in the context of maternity pay"

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With Brexit everywhere, it is worth remembering the *Pregnant Workers Directive 92/85/EEC*, which protects the employment rights of workers during pregnancy and while breastfeeding. It is 25 years old this year and was made by the European Economic Community (EEC) - a forerunner of the European Union.

Among other things, the directive is the reason that the first six weeks of statutory maternity pay (SMP) are based on the woman's average earnings, rather than a fixed rate throughout the pay period as applies to all other statutory payments.

Calculating the average

The average earnings calculation is done over the eight weeks up to, and including, the qualifying week - which is 15 weeks before the expected week of childbirth (EWC).

Eight weeks does not work for monthly paid employees, therefore typically two months are used. The law, of course, does manage this by starting with the payday before the EWC and then counting back eight weeks to find another payday.

The earnings period to be used is the day after that earliest payday, up to and including the payday before the EWC. For regular weekly or monthly pay cycles, this gives eight weeks or two months. It also takes care of any bonus paid to the employee at any time, whether it is a normal payday or an extra pay run, as every payment attracting National Insurance liability, to the employee in the earnings period, must be included in calculating the average.

To qualify for the statutory payment, the average earnings must equal or exceed the lower earnings limit for National Insurance contributions (NICs) at the time of the qualifying week.

For example, a baby due now: the lower earnings limit is £116 because the qualifying week in in the 2018/19 tax year. For a baby due in August: the limit is

“PAYE Settlement Agreements make life easier for the employer”

£118. Note that the EWC is always a National Insurance week - in that it starts on a Sunday and finishes on a Saturday and thus the qualifying week is also a Sunday to Saturday week.

Landmark decisions

There have been two cases which have changed the law around pay rises, in the context of maternity pay, *Gillespie v The Northern & Social Services Board* and *Alabaster v Barclays Bank*.

So, any pay rise paid between the start of the period, used to calculate the average earnings, to the end of a woman's SMP, has to be used to increase the woman's average earnings.

With a woman on low earnings, this may take a woman into eligibility. If that is the case the then employer becomes responsible for paying SMP and if that is during a maternity pay period, then the employer is to assume that the woman received the higher rate of maternity allowance from the Department for Work and Pensions (DWP).

PAYE Settlement Agreement

There is one other thing that must be taken into account: any earnings that the woman would have received during the average earning period that are in a PAYE Settlement Agreement (PSA).

The point about PSAs is that they make life easier for the employer, in respect of a benefit in kind, that is minor, irregular or which it is too difficult to operate PAYE. For a woman with average earnings, it is likely that the last category is the most likely. For example, the woman enjoying some staff entertainment beyond the tax-free limit. This leads to a set of rules to be applied when calculating the average earnings for a woman who, on pay alone, does not reach the lower earnings limit.

Once the calculation has been done and the limit not reached, a check is required to see if she enjoyed a benefit that is in a PSA and covering the period of the average earnings calculation.

If so, then the woman's share of the benefit has to be calculated (using average cost per head, for example) and that additional "earnings" added to her pay and the comparison rechecked. If she now reaches the lower earnings limit, then she is entitled to SMP on earnings grounds.

If the woman becomes entitled to a pay rise, the increase must be applied to the earnings without the PSA earnings and the average reassessed. If that reaches the limit, then fine - but if not, the average must be recalculated again with the PSA "earnings" added back in.

As a part of the post-tax-year-end activities, it is worth identifying the pregnant women on relatively low earnings and enjoying a benefit that is included in a PSA for possible consideration when calculating their entitlement to SMP.■

Norman Green, payroll consultant

MANAGING GLOBAL PAYROLL

Employers have more to focus on than ever before when it comes to global mobility. PwC's Lou Gray explains what needs to be considered

Payroll is becoming increasingly complex, with more scrutiny from regulatory and tax authorities than ever before. Many countries are moving towards real time filing with the electronic deposit collection of taxes.

In 2018, Australia embraced payments speed and introduced its New Payments Platform (NPP), a real-time payments infrastructure. In January 2019, Ireland's PAYE modernisation project involved the most significant reform of the Irish PAYE system since its introduction in 1960, with employers being required to report their employees' pay and deductions to Revenue as they are being paid.

When the UK introduced Real Time Information (RTI) they also provided a 'relaxation' in reporting, when employers are registered as a modified or shadow payroll. Unfortunately, this is not always replicated globally.

Payroll transformation

Organisations have to deal with the evolving labour force demographics and individuals' working arrangements e.g. zero hour contracts, job share, flexible working arrangements, to name but a few. All these increase the burden on the HR and payroll functions, with the added responsibility for contracts ensuring payment across our geographic borders.

Organisations are progressing beyond the UK domestic boundaries and this increases the complexity of payroll. Short-term assignments and international business travel are on the rise, rather than the traditional long-term assignments. As our international mobility increases, one of the hardest challenges faced by organisations is the tracking of individual employees to determine taxability on a country-by-country basis - alongside ensuring compliance with tax withholding rules. Another consideration is the exchange rate fluctuations and organisations need to contemplate guaranteed net pays with no detriment to the individuals.

UK global domestic payrolls can include individuals on either assignments or secondments, complex payroll computations, split payments, compensation collection, and late reported payments and corrections on National Insurance and tax to be reported later.

Organisations are now having discussions to select the right technology for their own business need and they also need an understanding of the broader IT and business strategy in these modern ways of payroll processing. Good governance, control systems and processes are also a necessity with strict rights for the individual in relation to their privacy. Failure to comply with these can lead to serious legal and financial consequences, alongside the operational challenges, especially when considering business disruption, brand damage, financial and reputation loss.

At PwC we can provide in-house, in-country payroll teams to over 150 countries across the world, and the team based in Belfast manages and coordinates this using evolving technology which offers clients continuous development of payroll and reporting.

Managing a payroll for mobile employees requires payrolls to be managed in a coordinated way, allowing for home and host country issues to be addressed simultaneously. The global portal was designed to automate and simplify payroll activity wherever possible - offering both our clients and their employees a single user interface allowing clients one point of contact rather than multiple. Using our approach to transforming payroll delivery, our clients have been able to minimise compliance risk, streamline processes, standardise controls and improve efficiency and flexibility.

Technology today means employees are both informed and empowered, therefore increasing their expectations. ■

Lou Gray, payroll manager, operations and delivery, PwC Complete Payroll

Lou Gray, *PwC Complete Payroll*

"One of the hardest challenges is the tracking of individual employees"

PROTECT YOUR EMPLOYEES FROM ECONOMIC ABUSE

Economic abuse can begin with sabotage in the workplace, so how can employers recognise and bring an end to this behaviour

Eleri Butler, *Welsh Women's Aid*

"Domestic abuse is estimated to cost employers around £1.9bn every year"

For the first time ever, the UK government has proposed a statutory definition of domestic abuse, for England and Wales, which will specifically include economic abuse and controlling and manipulative non-physical abuse.

The extension to include economic abuse has been supported by employers and charities, because doing so will help more people understand what constitutes abuse and encourage organisations to respond effectively.

Many behaviours associated with domestic abuse are crimes: including physical, sexual, emotional, verbal and financial abuse, and coercive and controlling behaviour. Whereas financial abuse refers to limiting and controlling access to money and finances, economic abuse extends our understanding to include controlling or preventing a partner's ability to acquire, use and maintain economic resources like housing, employment or transport.

The majority of economic abuse victims are women, and this can happen regardless of career or economic status. It often starts with abusers deliberately creating economic instability - for women who work this may often include trying to sabotage their financial independence by preventing them working or damaging their professional reputation.

The workplace as a weapon

Around three quarters of victims are targeted at work. This may range from harassing messages, being stalked or threatened, or attempts to discredit them. Usually signs are more subtle, and can include a change in someone's manner or appearance, being less willing to join in social situations or put themselves forward for different roles.

Mangers may not know, if they don't ask, that a decline in performance which results in disciplinary action is caused by abuse. This lack of attention to the cause of performance concerns exacerbates the abuse and economic instability women face. Colleagues may not notice how many perpetrators of abuse use their own workplace resources to monitor, threaten or check up on their partners.

We know domestic abuse enters the workplace every day. In one year, one in five employed women are forced to take time off work because of domestic abuse, and around two percent lose their jobs as a direct result of the abuse. Domestic abuse is conservatively estimated to cost employers around £1.9bn every year in decreased productivity, time off work, lost wages and sick pay. Its cost to victims and to society is staggering - £66bn to the state and victims in one year. Yet, many companies still don't have adequate prevention policies, sufficient training or awareness to identify and respond to abuse.

How to help

How a workplace chooses to respond can significantly help victims of abuse, or further collude with and perpetuate the abuse. It's that simple. Five measures employers can take include:

- Introduce a company policy on domestic abuse, with a focus on economic abuse.
- Be aware of domestic abuse, the risks and signs of economic abuse in relation to the workplace.
- Make sure line mangers have training on how to identify abuse and not exacerbate it.
- Include routine information about free national helplines in staff rooms, toilets, on intranets and even alongside the regular issuing of payslips or other routine information for employees.
- Raise awareness of help available in local communities: specialist domestic abuse services are available in most areas.

Take action today, to begin changing your workplace culture, to prevent economic and other forms of abuse from ruining lives. ■

Eleri Butler, chief executive, Welsh Women's Aid

HOW TPR IS INSTILLING CLARITY AND CONFIDENCE

The Pensions Regulator explains how it's cracking down on illegal activity and authorising master trust schemes

The Pensions Regulator is continuing to be clearer, quicker and tougher to ensure savers are protected and saving into safe and secure pension schemes.

We've been working to tackle criminality and also to intervene to persuade employers, advisers, providers and trustees to do the right thing without us having to take court action.

The last few weeks have seen a number of enforcement firsts for The Pensions Regulator (TPR): the launching of our first money laundering prosecution; the securing of our first convictions for fraud and making prohibited employer-related investments; and the first defendant being jailed after a TPR prosecution.

Being clearer

We recently published our Annual Funding Statement (AFS), which clarifies how we expect trustees and employers to fund a defined benefit scheme. It is particularly relevant to those conducting valuations with effective dates between September 22 2018 and September 21 2019.

Compared to previous years, we have put additional focus on scheme maturity, more emphasis on employers and trustees establishing a long-term funding target and, for the first time, we set out our expectations on investment and covenant.

Trustees and employers should be setting a long-term funding target and agreeing a clear strategy, or journey plan to achieve it, recognising how the balance between investment risk, contributions and covenant support may change over time.

We have articulated how a comprehensive approach to Integrated Risk Management (IRM) should allow schemes to ensure they only take an appropriate level of risk with investments. IRM is an important approach that helps trustees to assess, prioritise and manage the employer covenant, investment and funding risks, only taking investment risk where it can be supported by the covenant.

Since the majority of schemes are closed to new members and future accrual, we expect scheme maturity issues to assume greater significance for setting funding and investment strategies in the future, particularly where schemes are experiencing high levels of transfer values.

This year we are contacting more schemes before triennial valuations are submitted, to identify potential risks which could impact on members.

Ensuring confidence

Following the official closure of the window for master trust applications for authorisation, TPR is now working hard to assess the large volume of submissions received.

The last minute high volume of applications was expected and we are confident we will process them within the legal timeframe laid out in law. Our list of schemes which have achieved authorisation will be updated weekly.

Looking ahead we'll be maintaining a close relationship with authorised schemes as part of our supervision work, to ensure these standards continue to be met.

We anticipated scheme consolidation and for those which did not apply or did not receive authorisation, we will continue to oversee their exit from the market.

Where a master trust is being wound up, trustees must provide us with a plan of how they will transfer out their members' assets. We'll be analysing elements of the transferring and receiving schemes, challenging trustees where necessary, to ensure members get the best outcomes.

Where trustees are managing an exit well, we'll be taking oversight and having regular engagement. However, if we have concerns about an exit our engagement will be more frequent and intense. ■

The Pensions Regulator

The Pensions Regulator

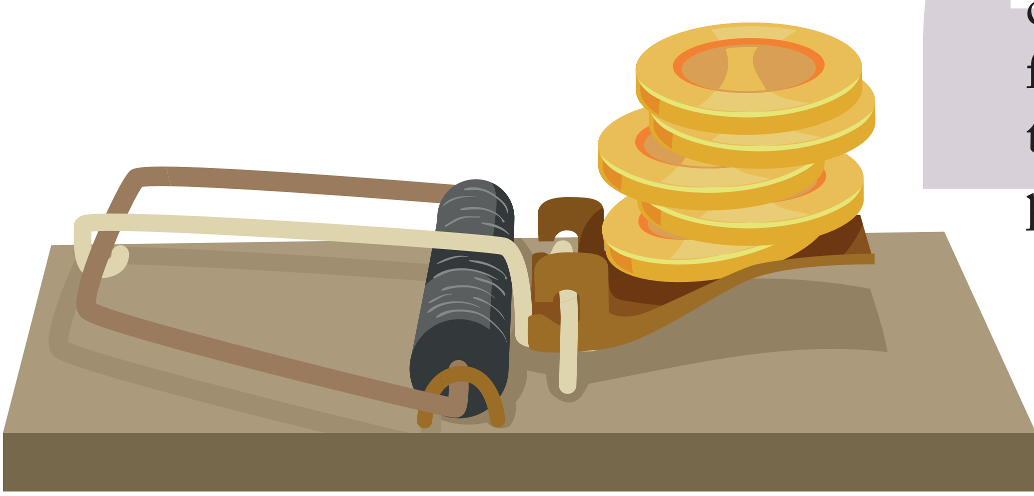
> "For the first time, we set out our expectations on investment"

PENSION SAVINGS TAX TRAPS

Kay Ingram seeks to help employees advise their senior employees on what to do if they find themselves with large unexpected tax bills

Kay Ingram, *LEBC Group*

"Many have had to carry forward relief from earlier years to mop up excess pension input"



The British Medical Association (BMA) campaign for a change in pension savings tax for NHS staff has sparked a parliamentary debate on whether doctors should be exempt from additional taxes which can apply to pension savings.

The BMA claim the impact of the pension savings tax has led GPs to retire early or go part time, and to hospital doctors declining extra shifts for fear of higher tax bills. With doctors in short supply this is certainly a Treasury own goal, but the problem is not just confined to NHS employees, it affects others in the public and private sector too. More are expected to be caught from the 2019/20 tax year, especially high earners and some over 55s subject to annual allowance restrictions. So, how should employers respond?

The extra tax charges

Pension tax relief gives employees income tax relief at their highest marginal rate on pension savings and treats employer contributions as tax-free benefits. Since 2006, it has been limited to both an annual allowance and a lifetime allowance. The annual allowance, at £40,000 for most employees, but as little as £4,000 for others, measures the inputs into the pension scheme. The lifetime allowance, at £1,055,000 from 6 April 2019, measures the cumulative value of pensions accrued during the individual's lifetime.

Any input amounts above the annual allowance, for each tax year, is taxed at the employee's marginal rate of income tax. Amounts over the lifetime allowance are subject to a one-off tax, at certain trigger points, such as first drawing benefits or reaching age 75, of either 25 percent if the excess is taken as income or 55 percent if drawn as a lump sum.

It is reasonable for the Treasury to put some limits on the cost of tax relief to the taxpayer. However, cuts in the allowances, made since 2010, other restrictions on high earners, and those over 55 who access their pensions flexibly under the pension freedoms reforms, create a tax regime which leaves some pension savers with unexpected and often large tax bills. It is this aspect of the annual allowance tax charges which is affecting thousands of pension scheme members every year. It is giving rise to opt outs from pension saving and appeals to employers to assist those affected.

How the tax charge arises

To understand whether an individual has breached the annual allowance, employers first need to understand how input amounts into pensions are calculated. There are two distinct pension regimes, defined benefit and defined contribution, which use different calculation methods (see table one). There are three distinct categories of employee, with varying allowances; most employees have £40,000 annual allowance. High earners and over 55s who have accessed pensions flexibly have a lower annual allowance (see table two).

The calculation of the input amount is relatively straightforward for defined contribution schemes - it is simply the monetary amounts paid in by all parties throughout the tax year.

For defined benefit schemes it is more complex. Those who can easily incur an accidental tax bill are employees who have long service in a scheme and receive a larger than usual pay rise in any given tax year. This is most likely to arise in firms which have been exercising pay restraint for several years and then escalate pay over a short period as a "catch up."

Example

An example is James, a 47-year-old employee with 26 years' service. His pay is increased on promotion from £78,000 to £100,000. His scheme accrues at 1/40th of salary per year. At the start of the tax year his pension accrued is £48,750 per annum, after his pay rise it grew to £65,000. The pension input amount is £244,400 and the resulting tax charge, after using up relief of £40,000 from the current year and available relief from the previous 3 years is £79,567. Such liabilities can be an unwelcome shock to the employee.

To avoid the unintended tax consequence of a large pay rise, employers who operate defined benefit schemes need to consider gradual phasing of incremental pay, spreading the increase over a few tax years can reduce or eliminate the tax bill. An alternative, subject to scheme rules allowing, is to make some pay increases non-pensionable. This clearly needs coordination between the pension scheme trustees, line management, recognised trade unions and employees, to ensure that the outcome of a big promotion or pay rise is managed tax effectively. It is also good practice to give employees, affected by these taxes, access to independent advice so that the options available to the employee can be fully explained.

High earners

From 2016/17, high earners have had their relief restricted. A high earner is anyone with total taxable income over £110,000. The definition of taxable income is wide and includes investment income, property income etc, beyond the individuals earned income, so it can be difficult for employers to know who is a high earner. The numbers affected by this restriction have been limited as many have had to carry forward relief from earlier years to mop up excess pension input amounts. From 2019/20, that changes as someone who was a high earner in the earlier years will have a restricted allowance for all three previous years too.

Once income is above £110,000 the employer pension contributions are added. If this figure remains below £150,000 then the employee has a £40,000 allowance. For each £2 over £150,000, the allowance is reduced by £1 until at income of £210,000 and above, it is a flat £10,000. These thresholds introduced in 2016 are not uprated for earnings growth, so over time more people will be caught.

The problem for some high earners, whose income fluctuates due to bonuses, investment income or other variable amounts, is knowing, from year-to-year, what their allowance will be, especially those in the £110,000 to £210,000 band. This makes it difficult for them to know how much they can save in a pension before the tax charge arises. They can still carry forward from the previous three years, which may help if earnings dip one year and rise the next.

Employees in the £210,000 plus bracket at least know that their allowance will be £10,000 and that savings in excess will be taxed. Many of these individuals may request alternative remuneration.

Pensions flexibility

Since 2015, individuals over age 55 have the freedom to access their pensions as and when they please and can withdraw as much or as little as they wish. Anyone who has done so and has withdrawn more than the tax-free lump sum (usually up to 25 percent) will have a restricted annual allowance thereafter and will also forfeit any carry forward allowance. For defined contribution pensions, their allowance is restricted to £4,000 and for defined benefit schemes £36,000. According to a freedom of information request made to HMRC, there were 980,000 taxpayers affected by December 2018.

How to pay the bill

The tax liability rests with the employee and should be included on their tax return. Where the liability is more than £2,000, the pension scheme is required to offer a scheme pays facility. This means the tax due is paid by the scheme, but is then deducted from the members pension.

For defined contribution schemes this simply means cancellation of investments to pay the tax due, with a reduction in the members fund.

For a defined benefit scheme, a debt is created on the member's eventual pension due. Interest and administration charges on the loan accrue from the date of payment to the date the pension is drawn. At that time the scheme actuary will calculate the reduction required to settle the debt and interest. One unsatisfactory aspect of this is that the member does not know, until near retirement, what their eventual pension will be. Where the member has other funds available to pay the tax, advice should be sought on how to pay.

What you should do

Employers are under no obligation to offer alternative remuneration. The employer may do so if they wish, but the priority should be to provide education and access to guidance and advice so that employees can understand if they are likely to breach the annual allowance and what they may do about it. Employers may fund this advice up to £500 per year as a tax-free benefit.

For most employees a pension scheme offers one of the most tax efficient benefits and for most staying in the scheme, even with some tax consequences, it will be the best course of action.

Where significant numbers of employees or key employees are affected employers may choose to offer a cash in lieu payment of the pension contribution, which exceeds the available annual allowance. This will be a taxable benefit and subject to employer and employee National Insurance. It is usual for employers to net off the National Insurance cost before making the cash payment, so that the cost of providing the benefit is neutral.

It is advisable to offer this via a clearly defined process, with advice and guidance made available from an independent third party. This avoids any suggestion of favouritism of employees later claiming that they were misled into opting out, and ensures that those who can still benefit from participation in the pension scheme are able to do so. ■

Kay Ingram, director of public policy, LEBC Group

Table one: Measuring annual input amount* for pension savings annual allowance

Scheme type	Annual input amount
Defined contribution	Total contributions made by employer, employee and third parties. * 1
Defined benefit	Annual pension accrued at end of current year, – annual pension accrued at end of previous year (uprated for CPI) x 16.

*Measured on a tax year basis.

1*Does not include transfers in from other schemes or compensation payments.

Table two: Annual allowances for the three types of employee

Employee type	Annual allowance
Income under £110,000	£40,000 plus three year carry forward
High earner Income over £110,000	£10,000 to £40,000 plus three year carry forward
Over 55 after flexible access to pension	£ 4,000 into defined contribution, £36,000 into defined benefit, no carry forward

Carry forward is the unused portion of the three earlier years annual allowance, which can be used once the current year is exhausted and earliest year first.

PENSION PAIN FOR LOW EARNERS

Henry Tapper explains how to care for your low earners who may struggle with the automatic enrolment pension increases

Henry Tapper, *First Actuarial*

"You must make sure your vulnerable staff are getting the tax breaks government promised them"

MEMBER OF 2018 REWARD 300

I know a lot of pay and reward managers are worried about the impact of the recent increase in auto-enrolment (AE) contributions.

I cast my mind back to 2012 when Marks & Spencer decided they would avoid phasing and set the employee contribution high. The idea was that they would have a high opt-out rate, so targeted contributions to those who cared about pensions. The strategy was a failure, Marks & Spencer ended up with a similar opt-out rate to everyone else and they ended up fully funding AE contributions for more than six years longer than they needed.

The M&S experience suggests that if your worry is that you will have a high level of opt-outs this month, then the evidence is against you. If your worry is that the overall reward bill will not be reduced by opt-outs, you may have a right to be concerned.

Anyway, let's take a step back and stop worrying. By the time this magazine lands on your desk, it is likely your employees will have received their first payslip with changes to their pension contributions (if they are opted in). From April 6 this year, employer minimum contributions to workplace pensions increased from two percent to three percent. As for employees' contributions, this increased from three percent to five percent. But, remember: minimum contributions don't start at £1 and are capped. For the 2018/19 tax year this range is between £6,032 and £46,350 a year (£503 and £3,863 a month, or £116 and £892 a week).

What to tell your staff

If you tell your staff nothing else, tell them the facts. If your scheme pays more than the minimum, be prepared to explain to people how much more.

If you are paying the minimum, sell the minimum for what it is – it is a pay rise, albeit contingent on employees paying more and a pay rise with deferred gratification. For anyone on £46,350 or more it's another £400 per annum.

As for that increase in employee contributions, remember that basic rate taxpayers only feel the impact net of tax - and it's softer still if you do salary sacrifice and/or pay higher rate tax.

Sadly the people who will be hurt most by the increase, are the people who need cashflow most: the low-paid who don't pay tax and have to pay the full five percent without a government incentive.

If you are operating a workplace pension on net-pay (where relief at source doesn't apply) and you have a number of people auto-enrolled, but not paying tax, now is the time to consider moving to a Group Personal Pension, NEST or People's Pension – all of which will give these staff a 25 percent discount on their contributions.

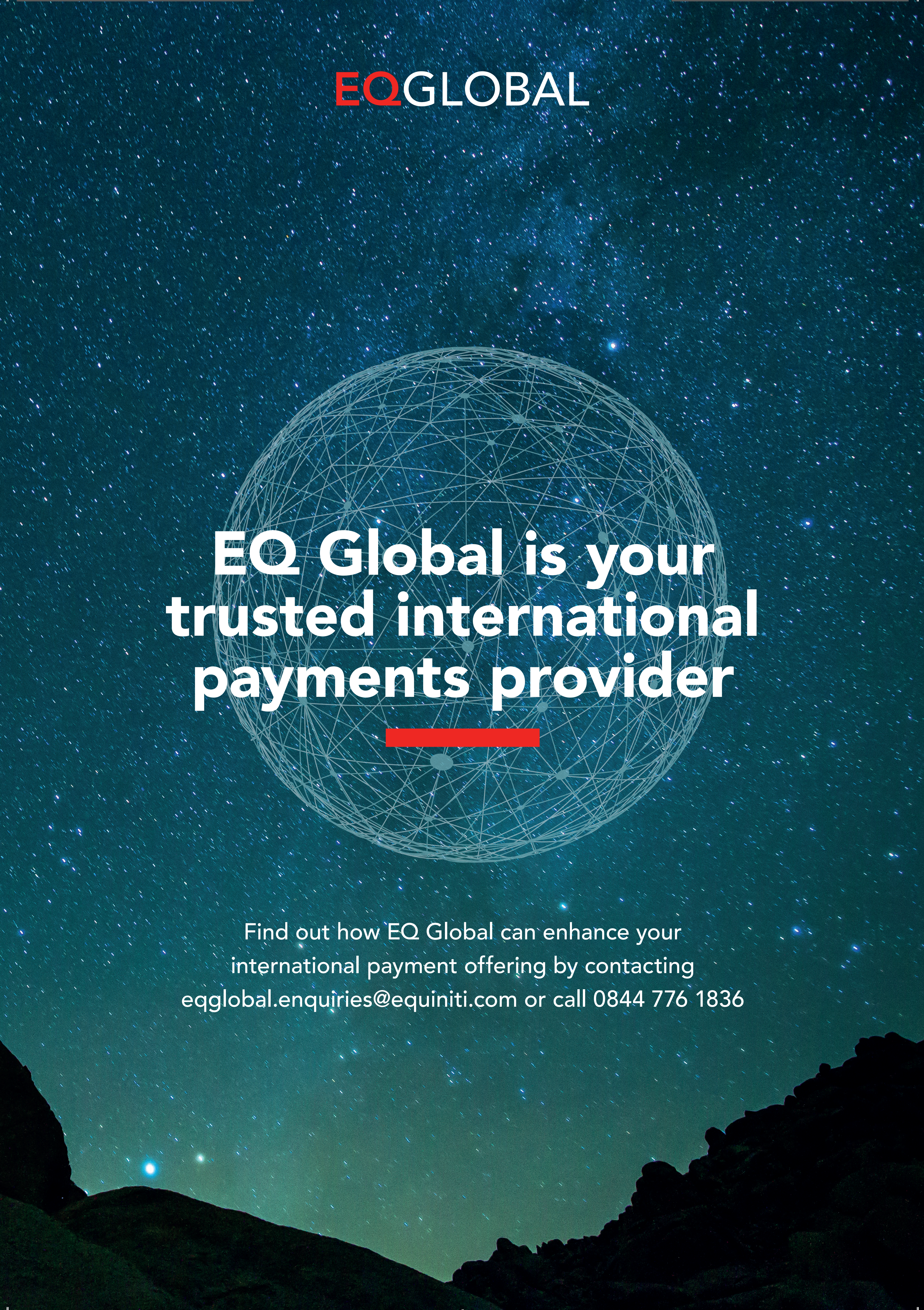
So let's look at your most vulnerable employees, the people who really are needing every penny of their pay packet. If you know who your vulnerable staff are, and they are still contributing to their pension, then you really must make sure they are getting the tax breaks the government promised them when they still advertised AE as 3+4+1 (when 1 was from HMRC).

I suggest that you run a report for opt-outs in April, May and June. Those who are opting-out on hardship grounds are people you need to watch out for, those who simply don't want to save will be few and far between.

People are naturally inclined to save, but the reality is enough people aren't - so they will welcome paying more, even if they moan.

My colleagues in pensions fall into two categories, those who predict disastrous opt-outs when people see their pension contributions go up, and those who moan we aren't compelled to pay 12 percent of salary like they are in Australia. Both positions are unhelpful. AE contributions are what they are – they are the law – we had best make the best of them. ■

Henry Tapper, business development director, First Actuarial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EMPLOYEE BENEFITS

GUIDANCE

ARE YOU EXPOSED TO EMPLOYEE CLAIMS?

Alastair Kendrick explains how employers can meet the costs of mileage for employees who drive on business

Alastair Kendrick,
Employment tax specialist

It is the case that there is still some confusion by employers over how they reimburse their employees for any business mileage they cover in their work. It is also true to say, that it is the case this is an issue which is looked at very closely at the time of any employer compliance visit.

There is not surprisedly different rules applying for those who drive a company vehicle to those who use their own vehicle for business travel.

Company owned vehicle

Historically, many employees who had a company vehicle would have been provided with a fuel card, which was available to be used for both business and private fuel. But, given the significant increases in the level of the fuel scale charges over the years, most employers have withdrawn from permitting the fuel card to be used for private fuel.

It is clear the government want to stamp out this benefit in kind and will continue to increase the taxation on this. It is still the case that we see employees who have free fuel paying more in income tax on the benefit, than the actual cost of the private fuel they have used.

If the employee is not provided with a fuel card, which is available to meet all the employee's fuel spend, then the other ways that the fuel policy is drafted is:

• **Point one:** That the employee will receive a fuel card for their business travel and whilst the card can be used to meet all fuel spend, the employee is required to reimburse the cost of the private fuel spent.

This would normally be reconciled monthly with the employee required to record their opening and closing mileage reading for the vehicle and recording details of business mileage. The cost of the fuel spend can then be split between business and private mileage, with the cost of private mileage recovered against other expenses paid.

• **Point two:** The employee will be reimbursed a mileage rate for business mileage covered. There are prescribed rates which are called the Approved Fuel Rate (AFR). These rates are determined by an independent source for HMRC and said to represent the cost per mile of running the particular vehicle. See the latest figures in the chart below.

In operating one of these systems, it is important to ensure that you are comfortable you have robust systems in place so that you are sure you are only reimbursing business mileage. If there are faults in your systems and you have reimbursed by accident an element of private fuel, then your employees will face the fuel scale charge and you the Class 1A National Insurance (NI) charge, unless that can be made good by the employee. Remember you only have to pay £1 of private fuel for an employee to trigger the full fuel scale rate tax charge.

In addition, if you are paying a fuel mileage rate which exceeds the AFR then tax and NI will arise on the excess, unless you have HMRC to pay at that rate.

Employee owned vehicle

HMRC permit an employer to pay at a mileage rate which does not exceed the Approved Mileage Allowance payment (AMAP) rate, which is 45p per mile for the first 10,000 miles covered on business in the year and 25p for any excess. If the employer decides to pay at a rate below the AMAP rate, then any difference can be claimed in tax relief by the employee concerned on their self assessment return or by completing a form P87 which is available on the HMRC website.

Again, it is important that employers are comfortable they have robust systems in place to ensure only business mileage is being reimbursed. Any failure in this regard will lead employers to be caught to a PAYE/NI charge on the excess.

In my years in tax, I have seen many instances in which employers have got their mileage controls wrong and in some cases they have incurred a significant claim for income tax and NI together with interest and penalties. So, if this not an area you have looked at recently it would be worthwhile exploring. ■

Alastair Kendrick, employment tax specialist

Advisory Fuel Rates from 1 March 2019

Engine size	Petrol - amount per mile	LPG - amount per mile
1400cc or less	11 pence	7 pence
1401cc to 2000cc	14 pence	8 pence
Over 2000cc	21 pence	13 pence

Engine size	Diesel - amount per mile
1600cc or less	10 pence
1601cc to 2000cc	11 pence
Over 2000cc	13 pence

THE USE OF NDAs COULD BE CHANGING

The #MeToo movement has shone a light on the misuse of confidentiality clauses, so what has been the government's response?

Michelle Lawlor-Perkins,
Blake Morgan

> "Calls to abolish NDAs have been made to protect individuals from an actual or perceived imbalance of power"

As the government made clear in its response to the Women and Equalities Select Committee's inquiry into sexual harassment in the workplace, harassment of any sort is abhorrent and cannot be tolerated - the government has called for greater regulation on the use of confidentiality clauses.

In March this year, the Department for Business, Energy & Industrial Strategy (BEIS) launched a consultation putting forward proposals to prevent the misuse of confidentiality clauses, also known as non-disclosure agreements (NDAs), within the context of employer/employee relationships.

The consultation closed on April 29 2019. Though the focus of the consultation is the use of confidentiality clauses in the context of workplace harassment and/or discrimination, the proposals are intended to apply to the use of these clauses in relation to all matters arising in the workplace.

Current use of confidentiality clauses

Confidentiality clauses create a contractual obligation to keep certain information confidential and are legitimately used by many businesses to protect their business interests. These clauses are primarily used in employment contracts to protect trade secrets, for example (and in settlement agreements) to help both parties move on from a dispute, with relevant carve outs, such as an employee who signs a settlement agreement not being precluded from "whistleblowing".

Despite their legitimate use by the majority of employers, confidentiality clauses have attracted increased negative media coverage because of concerns about their misuse, with calls for their abolition, to protect individuals from an actual or perceived imbalance of power and to enable individuals to discuss the issues they have faced with relevant people, including the police, doctors or therapists.

Proposals for change

The BEIS consultation contains various proposals to tackle the misuse of confidentiality clauses including:

• Disclosures to the police

Currently, an employer cannot use confidentiality clauses to prevent an employee making a disclosure they are obliged to make by law and making a protected disclosure for the purposes of "whistleblowing". Any attempt to do so would render the clause void.

The government is proposing to introduce legislation that prohibits confidentiality clauses in an employment contract or settlement agreement which seek to prevent a person from making a disclosure or reporting a crime to the police. This will allow victims of harassment and/or discrimination to report concerns to the police without fear of reprisal, even if they have signed a confidentiality clause.

The government has also asked whether disclosures to other people or organisations should be excluded from confidentiality clauses but it does not want to make this list too broad.

• Clarity of drafting

Even where confidentiality clauses are used legitimately, the government has raised concerns that they are often drafted in a way that hides from employees their rights and protections.

Standard, approved wording for confidentiality clauses was recommended by the Women and Equalities Select Committee and government has asked whether it should set a specific form of wording.

The government's view is that confidentiality clauses should be drafted in a way that makes it clear to an employee that the clause does not prohibit certain disclosures and that the limitations of the confidentiality clause, whether in an employment contract or settlement agreement, are clearly set out. For example, any confidentiality clauses and their limitations should be summarised in the written statement of particulars issued at the start of employment.

• Enhanced requirement for legal advice

For a settlement agreement to be valid, the employee must have received independent advice from, for example, a lawyer or trade union official. The government proposes to extend this requirement so that employees receive advice specifically on the effect and limitations of any confidentiality clauses and the disclosures they are permitted to make. Failure to provide such advice would render the clause unenforceable and an individual who breached it could not be sued subsequently.

This change, if implemented, could lead to an increased cost to businesses as template settlement agreements and advisers' certificates will need to be amended.

• Enforcement

Enforcement measures will differ depending on whether the confidentiality clause appears in the employment contract or settlement agreement.

As mentioned above, the limitations of any confidentiality clause should be summarised in the written statement of particulars and failure to provide the written statement is a right that can be enforced in the Employment Tribunal and compensation awarded.

Any confidentiality clause in a settlement agreement, that does not meet the new requirements, will be void and there could be the risk of reputational harm for the employer if the departing individual then spoke publicly about the circumstances of the termination of their employment. ■

Michelle Lawlor-Perkins, senior solicitor, Blake Morgan LLP

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