

INSIGHTS

HUMAN RESOURCES

2019 ISSUE 8

A DRIVING FORCE AT SANDOWN MERCEDES BENZ - JO MICHAEL, GROUP HR DIRECTOR

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MAKING THE LEAP
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AVOID THE LEGAL
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HOW TO CHOOSE
BETWEEN 2
CANDIDATES



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Hello and welcome TO ISSUE 8 OF HR INSIGHTS!

We can't quite believe that November and the Christmas season is already upon us here at Bond Williams, which means this is the last issue of 2019! Before summarising what we've got coming up, I'd just like to thank all of our contributors and readers for your continued support this year together with our loyal client base. Thank you.

The year has gone so quickly for us and has not been without its challenges, and I'm sure it's been the same for you. At the time of writing, Brexit has been delayed yet again but regardless of if and when we do exit, and with what kind of deal, we consider the potential impact on recruitment and the jobs market, and you'll be pleased to know it's not all negative!

For our focus interview, we were delighted to speak with Jo Michael, Group HR Director of Sandown Mercedes Benz, who has been hugely successful at managing change, which will no doubt be a challenge for many HR professionals in the coming months.

Another hot topic is employment law. Since the Supreme Court ruled that employment tribunal fees were unlawful in 2017, there's been an influx of claims and our guest authors provide advice on whether to settle or fight, if secretly recorded meetings are admissible, preventing harassment and bullying claims and the legal pitfalls of LinkedIn.

Other regular contributors provide advice on making the leap from teammate to manager and how to present for funding; our own articles include tips on choosing between two great candidates and why you might be struggling to fill a vacancy, and we also introduce our new Business Manager for Southampton, Lisa Orchard.

We hope you find this issue insightful and as always, let us know if there's something specific you'd like covered in our January 2020 issue or would like to contribute your own article.

In the meantime, have a great rest of the year and festive season!

Claire



Claire Bond
Director, Bond Williams Professional Recruitment

If you would like to be involved or contribute to the next issue of HR Insights, we'd love to hear from you.
Please email: marketing@bondwilliams.co.uk

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10 MINUTES WITH...

JO MICHAEL, GROUP HR DIRECTOR, SANDOWN MERCEDES BENZ

Find out how former cruise ship bartender, Jo Michael, became Group Human Resources Director, responsible for the wellbeing of over 450 employees across 10 sites.

What were you doing before you got into HR?

Having lived most of my life in a seaside town in Essex, I'd always thought I'd work in the hospitality industry. I studied for an HND in Hotel Catering and Institutional Management and following that took a year out and went to sea as a cocktail waitress for Princess Cruises. A decade later, I was still there and during that time had become the first female bar manager for Princess Cruises. Promotion to Assistant Food and Beverage Director followed, with responsibility for all of the bars and restaurants on board.

How did you make the move into HR?

During my time at sea, cruise liners did not have HR Managers on-board, although I believe they do now. Department heads were responsible for their own personnel. I had a large team of people and in addition to the day to day operational management I was also responsible for ER, staff welfare and training. As a result, when I left the ships in 1998 I decided I would like to pursue a

career in Personnel and Training as it was then known.

Having moved to Poole I was fortunate enough to get a job almost immediately as Personnel Assistant at the then 5* De Vere Royal Bath Hotel. I had hoped the Personnel Manager could become a mentor however, when I arrived I discovered that they'd recently departed so I was on my own! A baptism of fire followed but I found my way through with support from Head Office. I was appointed Personnel and Training Manager within six months. I remained with De Vere Hotels for six years until I took maternity leave in 2004. My next career move was to Bezier, a print management company, as HR Manager based in Poole. The print industry is heavily unionised and I gained valuable experience working with the Trade Union reps and shop stewards. In 2010, I joined Jacksons Mercedes as Group HR Manager. The Company became Sandown Mercedes in 2014 and I was asked to join the Board and



promoted to Group HR Director.

Do you have any HR qualifications?

I studied for my CIPD via distance learning with BUSEC whilst working for Bezier and bringing up my young son. It was a bit of a challenge at times but I am really proud of that achievement. I was delighted to be invited to apply for Chartered Fellowship status a few years ago and pass the assessment.

What would you say are your key strengths?

I have always been hands on and I am closely involved with my HR team. My key strengths are probably employee relations, change management and strategic management.

The Sandown group has evolved over the past five years and this has involved bringing together two culturally very different companies and an overhaul of most of our business processes. We began as a company with three Mercedes Benz retail sites with 140 employees and are today a company with 10 locations and over 450 employees who are hungry for further acquisition and growth. Sandown has evolved with a strong identity and a unified culture.

How has the HR sector changed and what are the current challenges?

The world of HR has undoubtedly changed significantly from the days of personnel management, driven mainly by technology and new legislation. HR professionals now have a far higher profile, have needed to become more strategic and to illustrate added value to a business. As such, HR professionals now need to have a far greater understanding of the business and industry they are working in than ever before. HR is expected to be far more commercially-minded and ensure that the HR strategy remains aligned with the business strategy.

Our priorities now are developing the talent from within and attracting great talent for the future while preparing the team to be able to cope with vast changes in technology and more specifically for us, the immense changes in the retail sector and the shift towards online purchases. To compete, we ensure that we are an agile organisation with agile leadership teams that can respond to the

challenges of online retailing. Recruitment can be challenging too. Recruiting traditional skills such as technicians is hard and therefore we invest heavily in technical apprenticeships across all our sites. We also now have a far more diverse workforce and people are working for longer. As a business we need to make sure that our employer offering is interesting to all employees across a depth of range.

Describe a typical day

Every day is different. Clearing my inbox is always on my to do list. I'm quite often out at our sites for meetings. Our furthest site is in Guildford where our MD is based and our nearest is Mercedes Benz of Poole. When I am at the offices in Poole I like to ensure I have a morning meeting with my team.

Under my wing I have HR, Payroll, Health and Safety and Training and I work closely with my amazing team. I will speak with most of the Heads of Business on a daily basis. I can also be involved with interviewing for senior appointments, board meetings, strategy meetings, manpower planning, policy and procedure reviews and dealing with ER issues. I need to ensure we stay true to our HR strategy and guarantee that we have a sustainable culture and business which will put us in a good position to expand and grow.

I am fortunate to work within a progressive, forward thinking company who truly know the value of the HR function. I have an incredibly supportive MD and a talented and loyal HR team who enable us to achieve great results. We are valued and respected within the company and have contributed to the success that the Sandown group has achieved.

What advice would you give to people considering a career in HR?

Someone considering a career in HR should research in depth what it entails - the CIPD website is a good first port of call. If possible, try to get a placement or work experience within an HR department and speak to as many HR professionals as possible. Ask the right questions at an interview - delve into culture and people values. Personally, I think it's really good to have a solid grounding in all the HR disciplines. Be prepared to coach, tell people when things aren't working and provide honest feedback and build good relationships across all levels of the business.

Finally, you need to believe in the business you are working in, be an optimist, aim high and strive to help the business achieve its objectives. You need to love what you do. If you are working in an HR environment, it will be very apparent to the wider team if you don't!



UPDATE

CHANGES TO IR35 LEGISLATION IN THE PRIVATE SECTOR – THE IMPACT ON YOUR BUSINESS

From April 2020 the responsibility for assessing IR35 status of Contractor assignments falls to the company which engages the Contractor (for medium to large sized organisations). In addition, the liability for Tax and National Insurance will be the responsibility of the fee payer if you get it wrong (that could be your company or the agency you engaged the contractor through, or both).

Private sector businesses are concerned that this will reduce the pool of available talent and increase costs, admin and risk. However, could there also be an opportunity to mitigate risk, reduce costs and secure the best talent in the marketplace?

IR35 rules in the public sector

Since April 2017, many organisations in the public sector have adopted a blanket risk-averse approach by declaring all Contractors are within IR35 and therefore classed as Workers, not in business in their own right as a legitimate Limited Company. This means Contractors are paid on PAYE contracts with tax paid at the source or through an umbrella PAYE model. This has reduced the number of Contractors available for public sector work as these individuals shy away from Worker defined contracts at effectively lower pay. It is yet to be seen what the knock-on effects will be of declaring formerly independent Contractors as Workers in the future – if they are being taxed as a Worker and treated like a Worker, what employment Worker rights/benefits might be claimed in the future?

What we are hearing now, though, is what private sector businesses are worried about in terms of availability of suitable candidates and what this means to them from an increased administration and cost perspective.

Impact on the private sector

As has been the case in the public sector, private sector employees are concerned that less Contractors will put themselves forward for work on a Worker-defined basis. The best people in the industry will gravitate towards those companies that can accommodate their genuine Limited Company status offering business-to-business contracts that fall outside IR35. If businesses can't accommodate these working relationships,

they risk losing talent. Those that can may be able to secure this talent at a discounted price as outside IR35 contracts will be an attractive option and probably not widely available. If businesses define an independent Contractor as a Worker for Tax and National Insurance, then those Workers are likely to increase their rates to compensate for the additional costs they face in carrying out their roles as a Worker rather than a Limited Company.

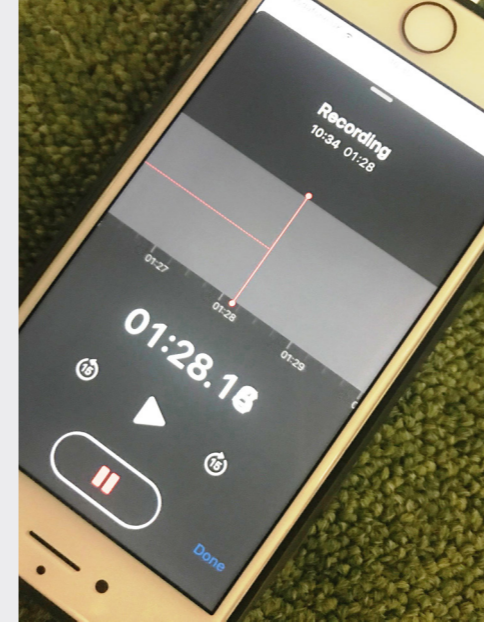
Only time will tell, but one thing is certain - the responsibility falling on Employers/Companies to support HMRC in deciding who is inside or outside IR35 (Worker or legitimate independent Limited Company Contractor) will increase workload regardless of whether you adopt a blanket approach or assess individuals/assignments on a case-by-case basis. The Government's own tool to support companies in making the correct decision (called CEST) has undergone significant testing and they are confident that companies using this tool will have their decisions upheld with one cautious proviso: "providing the information has been entered correctly"!

What businesses need to do now without delay

Our advice is to make sure you have your processes in place for making well-informed decisions about IR35 status and documenting/recording these (using CEST or other in-house tools) well in advance of April 2020. Seek the support of your agency suppliers and, if possible, IR35 specialists and/or employment lawyers who can support you in the transition to this new way of engaging interim talent for your business.

Moving forward, if you want to secure the best interim talent in the marketplace whilst keeping costs for your business down you will need to engage with professionals to help you define how interim work is assigned and delivered for your business. If you do it correctly, it may be easier than you think to support genuinely independent contractors with assignments falling outside IR35, thus giving you a competitive edge in the contractor landscape of the future.

Feel free to get in touch with us here at [Bond Williams](https://www.bondwilliams.co.uk) for an informal discussion around FREE solutions for your business that could potentially mitigate business risk (with insurance backed guarantees) and also help you to secure the best talent in the interim marketplace from April 2020.



SECRETLY RECORDING MEETINGS: MISCONDUCT? ENTRAPMENT?

In unfair dismissal cases, both the compensatory and basic awards can be reduced by the tribunal, potentially to zero, based on the employee's conduct before dismissal. Secret recordings of meetings by an employee can be admissible evidence in cases if the tribunal thinks it is relevant. However, secretly recording a meeting might amount to misconduct, depending on the employer's rules.

Meeting with HR secretly recorded

In *Phoenix House v Stockman*, the employee was unhappy about a restructure. She secretly recorded a meeting with HR. As part of an unfair dismissal claim, the tribunal accepted the employee's explanation that she recorded the meeting because she felt flustered rather than to entrap the employer. They reduced her compensatory award by 10 per cent because of her conduct.

The employer appealed, saying they would have dismissed the employee for gross misconduct had they known about the secret recording so her compensation should be reduced to nil. They said the secret recording was a breach of trust and confidence.

Are secret recordings entrapment or misconduct?

The Employment Appeal Tribunal upheld the tribunal's decision. In the past, it was fair to assume that covert recordings were part of a plan to entrap the employer. These days, mobile phone technology makes it easier and more common to record meetings.

Whilst secretly recording a meeting might usually amount to misconduct (except in the most pressing of circumstances), it isn't necessarily gross misconduct. In this case, covert recording was not listed as a gross misconduct offence in the employer's disciplinary rules.

Undermining trust and confidence

A secret recording doesn't necessarily undermine trust and confidence either because it can happen for different reasons such as record keeping or to assist with getting legal advice. The EAT found that the tribunal was entitled to reduce compensation by only 10 per cent. The tribunal had correctly looked at the chances of the employee being fairly dismissed had the employer known about the recording.

This case gives employers helpful guidance on secret recordings at a time when every employee carries a device, which can secretly record events. Employers may want to include covert recording of meetings as a specific example of gross misconduct in their disciplinary policies and ensure that employees understand the potential ramifications.

Paul says:

"Employers take note. Review your policies and check whether covert recording of meetings is listed as a specific example of gross misconduct in your disciplinary policies. If you do not want employees to record meetings, then you should expressly tell them at the beginning of a meeting."



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7 BREXIT THOUGHTS FOR THE RECRUITMENT INDUSTRY

Whenever it happens, if it happens and with what type of deal, if any, one of the biggest questions surrounding our departure from the European Union is the impact on the UK jobs market. The possible ramifications will be felt on many levels –by employers and employees – as well as by those migrating to the UK for job prospects and even among Europeans who are currently working here.

In this blog, we summarise the key points of interest, underpinned by a note of caution that everything is speculative as we enter uncharted territory. It's also pertinent to point out that many of the UK's recruitment prospects will be strongly linked to a potential no-deal outcome as well as any incumbent Government reforms and the chance of a change in power with a General Election looming.

1. The thought that **nothing will happen immediately** is one that many analysts are talking about. It may be a case of 'business as usual' for months and even years after Brexit as businesses adopt a wait and see approach. Companies will not have the desire or manpower to act overnight, so an apocalyptic day following our exit isn't widely forecast.
2. Another train of thought suggests there could actually be a **recruitment explosion after Brexit**. Analysis from the Office for National Statistics released in September 2019 shows hiring had slowed in the three months to July this year - a below-forecast figure blamed on Brexit caution. Once we have left the EU, companies may draw confidence and increase recruitment activity.
3. **There may be more jobs for UK residents**, especially in the wake of a no-deal and a mass exodus of EU

workers. Although it's natural to think these roles will be filled by home-grown workers, many business analysts think wages will have to rise to entice UK people to apply.

4. One thing is certain – **HR departments will be busy**. A change to free movement as a result of a no-deal outcome will raise questions among EU nationals already working in the UK and those from Europe hoping to gain employment here. The new Home Secretary, Priti Patel, has recently announced some bold immigration initiatives, including an end to the right of residence, the introduction of European Temporary Leave to Remain (which lasts up to three years) and a points-based immigration system moving forwards. Indications show EU nationals already in the UK will be able to apply for a new status to remain until December 2023.
5. Research from the Association of Professional Staffing Companies (APSCO) has shown recruitment professionals are **most worried about a no-deal resolution**, with 87% concerned about the impact on freedom of movement and a feasible recruitment crisis if EU workers have to leave.
6. On the flipside, **international students will provide a boost to the UK**

recruitment market thanks to an incoming relaxation of rules. Laws are changing as of 2020 to allow foreign students to stay in the UK for two years after graduating so they can find work. The announcement coincided with the launch of the world's largest genetics project – the £200 million whole genome sequencing project in the UK Biobank, which will draw from a pool of international bioscience talent.

7. **New trade deals** may indicate where recruitment will flourish and where job losses may possibly occur. While it's hard to say at this stage what EU trade deals will survive after Brexit, it is hoped deals with non EU members, such as America and the Far East, will plug gaps and boost the export/import market. In turn, this will strengthen businesses, and stimulate new jobs and recruitment.

There's no doubt that pessimistic Brexit talk will fill the air in the coming days and weeks but it's good to end on a positive note. New analysis by BNP Paribas and the Centre for Economics and Business Research (CEBR) predicts an explosion of 2.7 million jobs in the science, technology and healthcare sectors in Britain between now and 2038, illustrating that every cloud on the Brexit horizon has the possibility of a shiny silver lining.

SAY HELLO TO OUR NEW BUSINESS MANAGER FOR THE SOUTHAMPTON BRANCH



We are delighted to announce the appointment of Lisa Orchard to our Southampton branch in Ocean Village Innovation Centre as Business Manager.

Lisa has a 20-year proven-track record in recruitment with both large corporate chains and smaller independent agencies across Southampton and the surrounding areas. Having specialised in temporary placements in the commercial and HR sectors, Lisa went on to run successful permanent divisions and agency branches in the city.

Her passion, enthusiasm and commitment has led to her being highly regarded amongst employers in the region and her unfailing willingness to go the extra mile with a constant smile on her face means she has excellent long-standing relationships with candidates too.

The appointment supports the growth of Bond Williams in Southampton and beyond, allowing for a consistent and high-quality service to employers and job seekers in the area. Lisa will not only be driving the growth of the candidate and client base, strongly supported by her excellent reputation and positive attitude, but also responsible for building a motivated and diverse team.

Lisa commented: "I'm hugely excited to be joining Bond Williams and to bring my in-depth knowledge of the local market to the whole team. Being very central for people to commute both in and out of from as far west as Chichester and up to Basingstoke, Southampton is a hive of activity for both candidates and employers alike, especially in service-led sectors.

"I will be capitalising on my excellent relationships to proactively source the right talent for clients whilst ensuring candidates are placed in their ideal roles. I'll also be raising the profile of Bond Williams locally through site visits and events."

This is the latest in a series of business growth developments for Bond Williams in the last 18 months. Not only has the recruitment agency expanded the team at its head office in Bournemouth, but it has significantly grown its presence in Southampton and Oxford since opening two new offices in 2018 and launching a fifth specialist division in Engineering, Science & Space.

Claire Bond, Director, added:

"Having crossed paths several times over the past decade and worked together previously, I have always held Lisa in high esteem as an excellent recruiter with unrivalled communication skills and endearing nature that people are drawn to. Finally, the stars have aligned and we're delighted to have been able to bring her on board to drive our continued growth across Hampshire. Lisa will no doubt make a big impact and we wish her every success in the role."

If you require support in filling your next vacancy or are looking for a new opportunity in Hampshire, contact Lisa on 02380 173655 or email lisa.orchard@bondwilliams.co.uk.

MAKING THE LEAP FROM TEAMMATE TO MANAGER



Making the transition from teammate to manager can be fraught with pitfalls, but not if you go in with your eyes open.

There is a wealth of information and advice out there for new managers, though it can be harder to find solid guidance for those making the transition into an internal management role.

While there's much crossover, Google returns just 1% of the amount of search results for transitioning managers compared to a search for new managers. Organisations that provide good support do so in the form of structured development, mentoring and progress reviews, but all too often managers making 'the leap' are left to fend for themselves.

It's a time of great change, both for the manager and their new team. Here are some practical steps you can take in the early days that can have a huge impact longer term.

Start as you mean to go on

Firstly, understand that the people who were previously your peers will see you differently and they will be waiting for you to make your first move, so consider it carefully. Don't make any rash decisions or changes and instead sit down with each of the team individually. Talk openly about the change that has happened, ask them how they feel about it and explain that you're going to need their help to get the team to where they need to get to. Discuss and agree expectations of each other; what do they need from you and vice versa. Get to know their strengths and consider how these could be leveraged (if they're not already).

Be a role model

It's just as important for you to have a natural relationship with the team but there is now the added element of professionalism (not that when we're teammates we don't need to be professional of course). Not having a clear professional divide with the team just muddies the waters when the time comes – and it will come – for making tough decisions, managing poor performance or giving difficult feedback. Have fun with the team and don't underestimate the value of spending time together outside of work, but always keep in mind

that you are their manager and leader. It's now down to you to be the role model, rather than risk your inappropriate behaviour being used as a defence when you come to address theirs.

Identify your quick wins

Try and get a couple of quick wins under your belt to show that you are on the same side and fighting their corner. As a teammate you had a unique insight into the wants and needs of the team; what winds them up, frustrates them, drives them crazy? It might be something as simple as introducing some flexibility into the routine or more complex like making a commitment to change a convoluted process or procedure that ties the team up in knots.

Create your reason for being

Make sure that as a team, you have a common goal and purpose. What is your raison d'être; your reason for existing and spending more time together than you each probably do with friends and family? Get the team involved in identifying this so that you create something you can all commit to. Once you know where you're going as a team, keep checking against this to review progress and provide enough development for you and the team to help your vision become a reality.



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Right Trax Training works with managers and their teams to help them interact and communicate more effectively, giving people the skills and mindset they need to better deal with change and conflict and lead effectively.



5 RED FLAGS THAT SHOW YOU'RE USING THE WRONG RECRUITMENT AGENCY

A recruitment agency should be an extension of your HR & Recruitment department – an indispensable time-saver that 'gets' your company from the outset, understands the nuances of your industry and has the intuitive ability to put forward A class candidates whilst protecting your brand through the recruitment and onboarding process.

If your search for staff is proving fruitless - despite using a recruitment agency – it's time to check for the five warning signs that indicate you've made a hiring mistake before you've even seen a CV. If you recognise any of the signs below, please get in touch with one of Bond Williams Professional Specialist Recruiters, experience counts and with over 300 years combined recruitment experience we really are experts in our field.

You're not asked enough questions about the role or your company – an experienced recruiter will want to get under the skin of a company before the recruitment process starts. A phone call followed by an onsite visit – there should be a detailed discovery phase. A recruiter should ask about your work culture, values and ethics, environment and be keen to hear about your career development and benefit programmes and equality policies.

Diligence should be extended to the nature of the vacancy too, with questions asked about staff already performing the same or similar roles; what specific experience or skills are required and how the role may develop in the future.

Too many irrelevant CVs being passed on – a recruitment agency is there to save you time and effort and ultimately help you identify the best talent in the market and sort the chaff from the

wheat. One of the most important roles of a recruitment agency is to identify specific talent, pre-screen, CV sift, face to face interview and filter out unsuitable candidates utilising their experience and knowledge gained in the discovery phase detailed in point one. Receiving too many inappropriate CVs is a sign of lack of experience, poor knowledge or a casual attitude to candidate matching.

A recruiter should deliver applicants who meet what has been set out in the job description, ticking boxes when it comes to qualifications, skills and experience. And if the recruitment agency has a good dialogue with its candidates and the employer, it may even be able to earmark applicants who they think will be a good social fit too. If there is a talent shortage an experience recruiter should be able to think outside the box when providing alternative suitable solutions.

There's a lack of communication – once a recruiter has opened a conversation with an employer, it should actually never stop. As well as the discovery phase, there should be an open dialogue during the CV filter stage, pre and post interview debriefings, so the recruiter can refine their suggestions based on feedback. Even when the position has been successfully filled, a good recruiter will stay in touch to ensure the candidate has fitted in well and be there for any support needed whilst the candidate is in probation and should offer to help with any further vacancies that may arise.

They are not a true industry specialist – many recruitment agencies will claim to be a specialist in certain sectors but if you have your doubts, it's worth questioning them a little further. A real specialist will have no

trouble in discussing current trends, issues and developments - not just in recruitment but in specific industries as well. They should know about pay scales, emerging job roles and niche technology that may impact recruitment. Who is available in the market, competitors, who is passively looking if the right role comes along. If they can't hold a competent conversation on the above, it may be time to rethink your partnership. Bond Williams Professional recruitment have 5 specialist divisions, each with consultants having between 5-25 years recruitment experience in that specialist area, we know from experience you can't be an expert in everything, it is just too complex.

Everything is out-of-date – it's important to know that your recruitment agency has its finger on the pulse but there are some telling signs that show an agency may be under-resourced or on the wane. If it isn't keeping its social media channels populated with fresh posts – especially LinkedIn – then question why. Other signs to look out for include the most recent jobs posted being months old, and online news/blog pages that haven't been kept up-to-date.

Bond Williams Professional Recruitment is a recruitment specialist with more than 300 years combined recruitment experience sourcing and placing the best talent in the market serving the specific sectors of HR, Office & Commercial, IT & Software Solutions, Accounting & Finance, Engineering, and Science & Space sectors. We have invested in three office locations servicing UK roles to continually develop a true understanding of often niche job markets where our industry specialists lie and are here to continually support our clients growth and top talent acquisitions.



EMPLOYMENT TRIBUNAL CLAIMS – SETTLE OR FIGHT?

How many calls and texts have you had about a potential claim for PPI or an ‘accident’ you have had in the last three years? We all know that we live in a claims culture – and so do employees.

Over the last few months, I’ve had an influx of calls from clients who are facing employment tribunal claims from former employees who fancy their chances of making some extra cash. All of these employers had followed their policies and had reasonable grounds for dismissal and most of the employees had less than two years’ service – so, on the face of it, no right to bring a claim.

However, everyone knows someone down the pub who has a mate who is a lawyer and everyone ‘knows their rights’. If they haven’t got the required service to claim unfair dismissal, many will try wrongful dismissal (breach of contract), whistleblowing or even some form of discrimination claim.

To make matters worse, since the Supreme Court decided – in their wisdom – in July 2017 that employment tribunal fees ‘prevented access to justice’ and were, therefore, unlawful, the employment tribunals have been under-resourced

and overwhelmed by an ever-increasing number of claims – many of which are vexatious. What deterrent is there then for the ‘have a go’ employee and what a dilemma for the employer who receives notification of a claim against them – settle or fight?

Although it’s a galling thought when you’re pretty sure you’ve done nothing wrong, it generally makes sense to at least consider the possibility of settlement early on and before potentially embarking on what may be a costly defence.

This is, of course, particularly important when the prospects of winning are low. In August 2014, the BBC spent £500,000 on the failed defence of an unfair dismissal claim brought by its former chief technology officer. It was later reported that he had offered to settle the case for £50,000.

However, there are other important factors in the decision-making process:

What are your chances of success?

By looking at the information available, an employment lawyer will be able to make an early assessment of the likelihood of successfully defending an employment tribunal claim. If those chances are 50% or less, it will probably be a good idea to look to settle at an early stage. But we all know that the outcome of any employment tribunal claim is never certain and it’s never a bad idea to expect the unexpected.

What is it likely to cost you if the claim is successful?

How much compensation the Claimant may be awarded if they are successful will influence your decision as to whether or not you offer settlement at all but also how much may be appropriate. Remember that a Claimant has to demonstrate that they have tried to mitigate their losses and, if they have found work on an equivalent or higher salary, this can greatly reduce any compensation they will be awarded.

It’s also often forgotten that the employment tribunal can reduce compensation – e.g. in an unfair dismissal claim, where the employer has clear evidence that the employee was guilty of gross misconduct but they failed to follow a fair process prior to dismissal. This may be a procedurally unfair dismissal but the tribunal can then consider whether, if a fair procedure had been followed, the employee would have been dismissed in any event and, if so, they may reduce any compensation award by anything up to 100%.

What about the wider impact?

Settlement could have a significant indirect impact on your business – primarily in terms of your internal reputation. Although any payment made should be confidential, people talk and it may still get out that an employer has settled a case. If you

then receive further claims and you decide to settle those as well, it sets a precedent that encourages other disgruntled former employees to follow suit – issue a claim and they will pay you off.

Most claims don’t make the news but, in the unlikely event that yours did, what sort of headlines would it attract and how might this affect your reputation? Even if it didn’t make the news, it could well be a source of local tittle tattle.

Perhaps most important of all, though, defending a claim can be extremely stressful and time consuming for the key people involved. Not only will you incur the legal costs of defending the claim, but you will also incur the costs of the time spent by those key people on preparing documentation and attending court to give evidence.

So, what advice do I give to my clients? Stop and think – it’s very easy to knee jerk and you will very likely be angry. You may take an early decision that you will defend a case no matter what and that you want to send a very clear message to your employees that it doesn’t pay to ‘have a go’ and take you to the tribunal.

Before you cut your nose off to spite your face, it’s really important to take advice, reflect and consider all these factors. Then – and only then – if you still think the right thing to do is to defend the claim, go ahead. You can always settle later down the line if you change your mind.



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Workplace Motivation

Using data collected from nine surveys, involving over 10,000 respondents, we've pulled together important insights into what workers want from their office.

Viking

Insight 1 : The shape of our working day

The 9 to 5 in the office needs rethinking



Half of people want to work a four-day week



60% of people want to work from home

Workers want to spend 1/3 of time working remotely



Ideal working day = 8am to 6pm

Employees need their one hour lunch protecting



1 hour lunch break is the most popular



2/3rds people work through their lunch break at least once a week

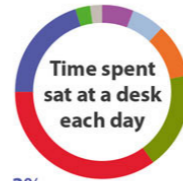


The most popular lunchtime activity choices are: 52% Eating 28% Reading

Insight 2 : Workplace physical health

Workers need more info about display screen equipment safety

Up to 1 hour = 6%
1 to 2 hours = 6%
2 to 3 hours = 10%
3 to 5 hours = 18%
5 to 7 hours = 35%
7 to 9 hours = 20%
More than 9 hours = 3%
Don't know = 2%



8 in 10 are worried about the effects sitting at work will have on their health

1/3rd say their employers are not doing enough to help their health

43% do not feel informed about how to protect their health at their desk

Insight 3 : Workplace mental health

Workers need more support



6 in 10 workers have negative thoughts about their job on at least a weekly basis



Half of employees regularly work over contracted hours

43% say they feel an unpleasant level of pressure to succeed at least once a week



Managers need to know more



Over 2/3rds of managers have had no helpful mental health training



65% of managers have been approached concerning mental health issues

Insight 4 : Procrastination at work

Social media is important to employees



Less than 15% of people stay off social media and other mobile apps at work



60% say social media usage at work is either banned or strictly limited



29% say that they would be less productive if social media were banned

Employers need to be clearer about social media policies



Half of people either don't have a social media policy at their workplace or are unaware of it

Insight 5 : The right office environment

Habits to avoid

When asked what were the most annoying office habits were:

28% said being regularly late

28% said complaining all the time

24% said eating smelly food



4 in 10 people have considered leaving their job because of these annoyances

Art is good for employees



54% of people think art should be in every workplace



Half think that art reduces workplace stress



53% think art would make them happier

LINKEDIN: HOW TO AVOID THE LEGAL PITFALLS

With more than 645 million users in 200+ countries, LinkedIn is the world's largest B2B social network. Its online CVs make it the go-to platform for recruiters, clients and candidates.

Britain is one of the world's biggest users of LinkedIn (after the USA, India, China and Brazil): 27 million UK citizens are on LinkedIn. That's equivalent to 84% of the workforce.

So being on LinkedIn is a no-brainer; it looks unusual if you're not. But this mass adoption of the platform has created a legal minefield for employers...

Post-termination restrictive covenants

What do you do when someone leaves your company? They built up a network of LinkedIn connections during their tenure with you – your clients, your referrers, your suppliers. And now that employee is about to walk out the door. How do you deal with that? Here's the issue: their LinkedIn profile is precisely that – theirs. The days of employers being able to dictate terms about this are long gone. But you are not powerless.

When an employee signs a contract, ensure that it contains post-termination restrictive covenants. These can include a clause that prohibits an employee from competing against their former employer for an agreed period.

Options include geographical or territorial restrictions but bear in mind that LinkedIn is a global platform. The world is now a very connected place so – depending on your business – establishing and enforcing these clauses may be more complex than it first appears.

Furthermore, it is important to be reasonable – non-competing clauses will backfire if they are too draconian. A court is unlikely to uphold a clause that would prevent someone from earning their living anywhere on the planet for years to come.

If you make your clauses too tough you risk ending up in court. That is often time-consuming and expensive. No-one wants that: not you, not the other party and certainly not the court.

Previously, the courts would simply strike out a restrictive covenant clause if it were too onerous towards an employee (past or present) in what is known as the 'blue pencil test'.

Now – rather surprisingly – the Supreme Court held in the Tillman v Egon Zehnder Limited case that words can be severed from a clause to rescue an otherwise invalid restraint of trade.

However, be very careful how you draft restrictive covenants. Do not rely on the courts for possible assistance regarding enforcement.

Dealing with Copyright Infringement on LinkedIn

LinkedIn takes copyright very seriously. Its user agreement requires that members post only accurate, lawful information that does not violate the rights of third parties.

If your copyright has been infringed you can ask LinkedIn to take down the offending post(s). LinkedIn also reserves the right to ban the offending member. You can also seek redress through the normal legal processes. But this is a complex area of the law so both we and LinkedIn recommend that – before taking any action – you seek legal advice.

Protect yourself with Trust and Confidentiality Agreements

Inform any new employees that their activities on LinkedIn will be for the business and that they will be developing 'know how'. All this can be tied to a Trust and Confidentiality Agreement.

Signing one of these agreements makes the information involved absolutely confidential. This can be enforced by the courts. But to be truly effective, you must ensure that the agreement is backed up by the other necessary legal paperwork. You must have in place:

- a signed confidentiality agreement
- a signed employment contract
- a signed social media policy

Who owns the LinkedIn connections created during employment?

LinkedIn's terms and condition state that the employee owns the account. An employer can't force an employee to transfer ownership of the account or reveal their username and password.



But what if that employee made lots of connections in the course of their work with the employer? Who owns that data? It is generally acknowledged that head office addresses and contact numbers are in the public domain and therefore not confidential; direct dial numbers or email addresses of individuals are confidential and belong to the employer.

Two High Court cases provide some useful guidance on the data ownership rights of employers.

PennWell Publishing (UK) Ltd v Ornstein and Others (2007) highlighted that the contact details in dispute were stored in the employer's IT systems – not on the LinkedIn website and its external servers – and so belonged to the employer.

Whitmar Publications Ltd v Gamage and Others (2013) highlighted the duty of fidelity that employees owe their employer. That duty of good faith includes reporting the wrongdoing of other employees (a duty which the employees in the Whitmar case failed to exercise because they failed to report each other's wrongdoing in obtaining confidential information).

Are you liable for anything your employees post on LinkedIn?

Yes. You can be held to be vicariously liable for the posts of your employees in the course of their work.

Does a LinkedIn post constitute a contract?

A LinkedIn post or message could make a contract legally binding if you failed to include the important phrase 'subject to contract'. The courts have ruled that a simple email signature block – even one without a scanned handwritten signature – can constitute a legally binding digital signature. If the use of LinkedIn is a business-essential activity for you, perhaps you should seek legal advice.



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HR INSIGHTS 15

Workplace harassment and bullying – be proactive and preventative



Workplace harassment and bullying have recently been reported to be on the increase. The words 'bullying' and 'harassment' are often used interchangeably, however many people do not know that unless the bullying behaviour amounts to conduct defined as harassment under the Equality Act 2010, it is not possible to make a complaint to a Tribunal (unless the behaviour supports a claim of constructive dismissal). Bullying and harassment not only involve similar conduct, but the resulting impacts of both are often very similar - workplace stress, low employee morale and long-term sickness absence. Because of the similarities between bullying and harassment, the precautions employers can adopt to minimise the effects of both are very similar.

What is harassment?

Unlike bullying, harassment does have a legal definition. The law states that harassment is unwanted conduct relating to a relevant protected characteristic which has the purpose or effect of violating the victim's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the recipient. Sexual harassment occurs when the harasser engages in unwanted conduct of a sexual nature and the conduct has the same purpose or effect as described above. It is also sexual harassment if the victim is treated less favourably because the victim submitted to or rejected the conduct.

The main difficulty in dealing with harassment complaints is that harassment is a subjective concept. One person's definition of harmless office 'banter' may be perceived by another as intimidating and offensive behaviour. Understanding what amounts to harassment and how to combat such behaviour is therefore important. This is especially vital considering that an employer can potentially be vicariously liable for anything done by an employee "in the course of their employment", regardless of whether the employee's acts

were done with the employer's knowledge or approval.

A Tribunal will consider the victim's perception and whether it is reasonable for the conduct to have had that effect on the victim. Crucially, the Tribunal will consider the victim's subjective perception. The Tribunal will however apply a 'reasonableness' test and this should therefore mean that a particularly oversensitive complainant who unreasonably takes offence at an innocent act or comment, would not necessarily be considered to have been harassed.

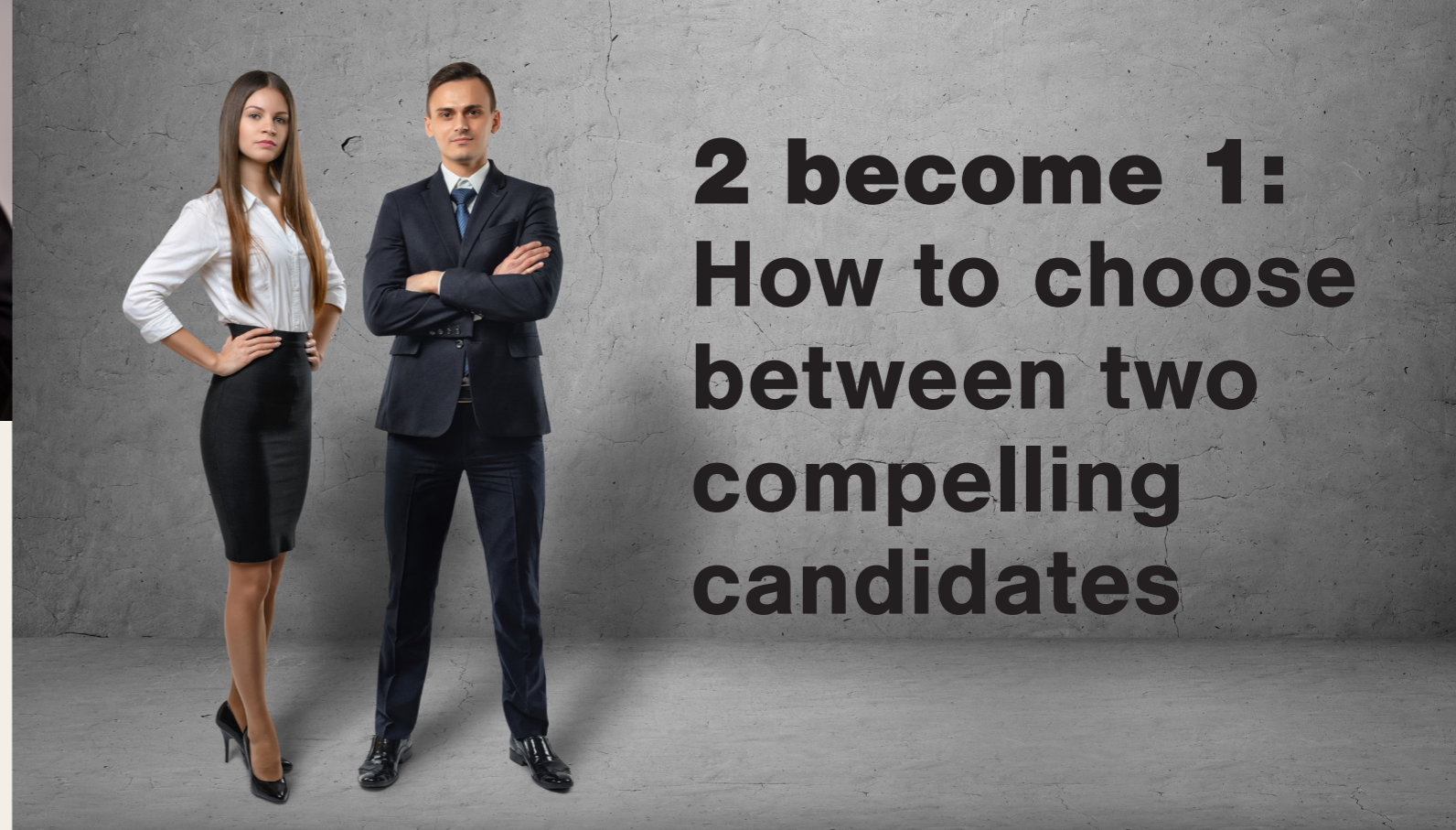
How can employers minimise the risk of workplace harassment and bullying?

Many employers know that workplace bullying and harassment is increasing, but don't feel equipped to tackle it. Failing to adopt a non-tolerance approach to bullying and harassment can leave your business vulnerable to a ticking time bomb.

To combat harassment and bullying, prevention is better than cure. Employers should therefore adopt proactive measures to prevent bullying or harassment from occurring. Regarding harassment, adopting a proactive stance will increase an employer's chances of successfully defending harassment claims. Litigation can be extremely time consuming, legal costs can be significant and a Tribunal can potentially award an unlimited amount of compensation to a harassed employee. Harassment claims can therefore not only adversely affect an employer's reputation but bring a huge amount of financial uncertainty to a business. For these reasons, employers need to ensure harassment and bullying complaints can be raised without fear of reprisal.

- Employers should consider implementing the following steps to ensure they proactively manage the risk of workplace harassment and bullying:

- Deliver staff training on bullying and harassment in the workplace including how managers should deal with complaints in a sensitive and confidential manner;
- Ensure all current and potential employees are aware of your business's commitment to preventing workplace bullying and harassment;
- Publish your business's anti-harassment/bullying policies and any steps taken to implement them on the business's website;
- Ensure your business's anti-harassment/bullying policies are shared with third parties who provide staff and services so that these organisations are aware of your business's policy and how to report instances of harassment and bullying;
- Look out for warning signs (for example, employees who have increased sickness absences related to depression/anxiety);
- Take steps to encourage employees to report issues to management and make it clear that all complaints will be dealt with confidentially;
- Implement a clear reporting structure to ensure employees know who to report to in the event they are being bullied or harassed, remembering to make it clear who employees can report to if their direct manager is the alleged perpetrator;
- Set up working/focus groups;
- Consider training some staff members to become mental health first aiders and/or providing an in-house counselling service or an employee assistance programme. These services can play a vital role in dealing with bullying and harassment complaints, by providing a confidential and informal avenue for employees to discuss issues and provide the opportunity to resolve complaints without the need for any further or formal action.



2 become 1: How to choose between two compelling candidates

You've penned a persuasive job advert, sifted through the CVs and had the fortune of interviewing some amazing candidates but what happens when two people stand out from the crowd and you can't choose between them?

Sometimes employers are faced with a disappointing group of applicants but if the role is well remunerated and rewarding, the quality of the field may be excellent and a decision made difficult when there's nothing between two people. If you find yourself with the luxury of a pair of possible hires who look good on paper and have convinced you they're right for the role, either hire them both (seize the opportunity!) or it's time to look at other factors that could influence your decision.

Here is Bond Williams' advice for choosing between two candidates after the interview stage.

Ensure you take up references – while a CV and interview will always be angled to paint everything in the most positive light, what comes back from a reference request can be closer to the truth and cast new light. Where possible, try and talk to the referee rather than rely on an email for the chance to really explore a candidate's prior career history.

Set a round of second interviews – first interviews tend to be more formal, and dominated by skills, qualifications and industry questions. Nerves can also influence how a person comes across at first presentation. A second interview for the top two applicants can be a more relaxed affair where you can explore their social and personable attributes in greater depth.

Set a test – if two candidates are truly impossible to distinguish, a formal test will provide you with measurable answers in an environment that the candidates can't prepare for. Whether you set a practical, skill-based, psychometric or written test depends on your industry and the job advertised but it's wise to include some open-ended questions that encourage the applicants to think on their feet.

Run a trial day – qualifications, CVs and interview performance aside, your new hire should be a good cultural fit for your company as much as a competent worker. Assessing how well they'd fit into a team and the rest of your business can be observed during a trial run – just remember to schedule the candidates on different days.

Think ahead – it's easy to become blinkered by hiring for the role that immediately needs filling but thinking of the applicant as a long-term member of staff will help differentiate between the two. Will they be able to develop the role and how quickly could they deal with increased responsibilities or even promotion? These are areas you can explore at the first interview stage.

Involve a third party – a second opinion is sometimes what's needed if you're stuck between two candidates. This might be a colleague from your team, someone from HR or even a peer from the same industry who works at another company. Ask them to cast their eye over the CVs or even sit in on interviews.

Hire both people – if two outstanding candidates are both keen, and appear good fits for the role and your company, seize the opportunity! It goes without saying that this can't be a spontaneous, solo decision but before offering the job to one person, speak with HR and the company directors. They may know about an expansion plan or a hush hush resignation, or are happy to create a new opening so the talent isn't lost.

For many employers, a recruitment agency is an integral part of the hiring process and Bond Williams is happy to be a sounding board and confidant at any point, perhaps helping you to make that final decision. For our professional take on matters, such as choosing between two candidates, contact us for advice.

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HOW TO PERFECT YOUR PRESENTATION SKILLS FOR FUNDING

Want to get funding? Your pitch presentation will play a critical role in your success. Here are some top tips to delivering impressive pitches.

Audience

- In my book 'High Performance Presentations' and with clients I always say step one is to consider your audience. Even more so if you are asking the audience for money!
- Do some research on the people you are pitching to – what is their background; what are they interested in; what do they want to hear from you; what's in it for them?
- If your audience changes, adapt your pitch positioning accordingly.

Practice

- Do not 'wing it' - practice what you are going to say! Something that looks great on paper when spoken out loud can sound completely different.
- Get feedback from people you respect or a professional presentation skills coach. Invite questions from someone independent and practice answering awkward ones.
- When you are pretty near the finished article, record yourself and listen or watch it back to see how you could improve. Perhaps it's about saying things differently or being clearer and more succinct.

Confidence

- If you are a nervous presenter, then it will show – get professional help before pitching.
- If you have distracting habits, even if you aren't an anxious presenter, it will look like you are. Don't click your pen, wring your hands, jingle your change etc.
- Don't be too confident! Share your achievements, but don't come across as a know it all. The people you are pitching to may not know your product or industry inside out, but they've likely seen it and done it all before!

Timing

- If you create a great 10 minute pitch, it is super easy to make it longer, but a long pitch is tricky to shorten!
- Preparing a 10-minute pitch first (regardless of how long you have) is good discipline to force you to stick to the key points.
- Once you've got a cracking short pitch, you can build out the key points from there.

Storytelling

- You could start your presentation with a 'story' about the problem your service or product is solving for your customers. What is the market like now, what are people doing now and why is that a problem? Basically, what is the pain?
- Next reveal your solution – why is your product or service unique and how does it address the issues mentioned?
- Justify demand – If you're looking for funding or investment, you need to prove that people want to buy what you're selling. How do you reach your customers? Do you have some early successes? How well has it already been received? Do you have concept market research findings? What about endorsements and testimonials?
- Finally you might paint a picture of the future. Including the financials if they haven't already been covered, how this can scale up, your marketing and sales strategy, funding needs and investor returns and exit plans etc.

Evidence

- After you've delivered your presentation, they will ask you to evidence your claims – make sure you can answer specific questions succinctly and don't just rely on handing them over the executive summary or full business plan.
- Use visuals to convey complex ideas and evidence. You might use a competitor comparison matrix to map your features and benefits vs the competitors with ticks and crosses highlighting gaps.
- Make sure your evidence doesn't contain typos or inconsistencies – the investor will get cold feet wondering what else might be wrong.

Team

- Investors often invest in the people even more than the idea. Tell them why your team are the best for this stage of the business.
- If your team are with you, get them to present some of the pitch. Make sure you practice who is saying what and how to hand over to one another
- If the team aren't confident at presenting, get professional coaching. Don't have them stand there and say nothing.

Demo

- Wherever possible have the people you are presenting to experience the product or service - show a prototype, do a demo or have them feel it in some way.
- If that isn't a possibility, create a video or better still, an interactive online model.
- Always practice the demo. Give it to an independent person and ensure they 'use' it correctly. You may want to clarify the instructions you give for example.

Next time you need to present for funding, look at these guidelines, polish your presentation skills and enjoy the experience.



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Dee Clayton is a speaker, trainer, author and founder of Simply Amazing Training. Her latest book, 'High Performance Presentations Public Speaking Tips & Presentation Skills to Engage, Persuade and Inspire', is available on Amazon from February 2019 and contains more on SAS and how to use it.



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