



## Hot Employment Topics for Acute Trusts

### Competition/conflict issues

With the healthcare market becoming increasingly competitive, it is essential that your organisation takes steps to ensure that its employees are not setting up in competition for potential workstreams. This is particularly important for clinicians: the distinction between simply undertaking private work outside working hours and carrying out work in competition with your organisation can be a fine one.

Capsticks can help you ensure that you have robust policies in place to monitor private work being undertaken and set out the boundaries within which your employees are expected to operate. Specific examples of work that might bring employees into conflict with your organisations can be highlighted so that the expectations on both sides are clear.

### Merger and acquisition, and other corporate vehicles for change

As part of the ongoing re-engineering of the delivery of world class services, your organisation could find itself involved in merger and acquisition discussions, or looking to join with other organisation to create centres of excellence, for example through the Academic Health Science Centre model.

Capsticks has a wealth of experience in advising in this area. We advised on the establishment of the UK's first Academic Health Science Centre at Imperial College and on the human resources issues arising out of the UK's first foundation trust acquisition (which involved Heart of England NHS Foundation Trust acquiring Good Hope Hospital NHS Trust). We have continued to advise on a number of other potential mergers and acquisitions involving foundation and acute trusts. Our corporate and employment teams work together closely on the key issues in this area, which has enabled us bring these projects to a swift resolution.

### Personal liability of senior management

With your board being scrutinised more closely than ever in relation to financial management and use of public funds, the personal liability of your most senior managers is an important issue, which needs addressing head on. This is particularly the case for foundation trusts.

Capsticks has already helped a number of organisations to provide clarity on these liability issues by including clear terms in the relevant procedures and letters of appointment. This ensures that everyone involved is aware of their responsibilities.

The need to identify those roles and responsibilities is particularly acute in the light of the Corporate Manslaughter and Corporate Homicide Act 2007, where the conduct of senior management will be subject to very close scrutiny by investigating agencies and, potentially, prosecutors where deaths occur on your organisation's premises. Whilst no individual can be prosecuted under the new Corporate Manslaughter legislation, the indirect consequences of a corporate manslaughter conviction would almost certainly include replacement of senior board members.

### Senior manager terminations, including approval requirements

In future, your organisation's financial transactions will be subject to closer examination than ever before. Following recent changes to the NHS Finance Manual, it has been clarified that all severance payments that are in excess of an employee's contractual entitlement will require Treasury approval. This is in addition to the other approvals that you may need to obtain through your remuneration committee, the auditors and the strategic health authority. As well as the need to ensure value-for-money in any severance agreements, agreements which appear to reward poor performance or conduct are likely to be rejected.

Capsticks can help you negotiate agreements that are robust, represent value-for-money and stand a good prospect of obtaining the relevant approvals. Equally, we can advise on when severance agreements are unlikely to be appropriate. By having this discussion with you at an early stage, we can formulate a clear plan for your organisation for handling the issue in question and ensuring an appropriate resolution.

## Equality and Diversity

Equality and diversity has always, quite rightly, been at the forefront of many Department of Health initiatives. With an ever-growing portfolio of equality issues to address, your organisation needs access to an employment law service that can assist you in delivering that agenda and which reflects your values in its approach to its work.

Capsticks provides exactly that service and can assist you with everything from impact assessments to an equality audit of your policies/procedures and training on equality issues.

## Investigations and inquiries

An increasingly large number of complex, high-level investigations are being undertaken by NHS trusts as standards of performance and conduct aim ever higher. Your organisation is likely to be faced with daily investigations under various policies, such as bullying and harassment, grievance and disciplinary. The importance of getting these investigations right is paramount: a good, thorough investigation is likely to lead to the right outcome in the same way that a poorly-conducted investigation is likely to lead to further issues.

Capsticks can assist your organisation in a number of ways. For the highest-level and most complex investigations, we can provide an investigating officer with assistance at every step of the process, or even conduct the investigations ourselves where required. Training in how to carry out investigations is often overlooked, despite being a mandatory requirement under national procedures, such as Maintaining High Professional Standards in the Modern NHS for doctors. We can provide your organisation with training for the manager most likely to be conducting investigations to ensure that they are as well-equipped as possible to conduct a robust investigation and prepare a comprehensive investigation report.

## Achieving changes in service through varying the contract

The provision of services by your organisation is likely to be evolving at a brisk pace. The need to adjust the way in which your services are provided can lead to the need to change employees' terms and conditions of employment. This will often be through a change in working patterns which will require a variation to your employees' contracts of employment.

Capsticks has already advised a number of organisations on how to achieve such change quickly and effectively. By working in partnership with trusts at an early stage, we have led organisations through the process of dismissal and re-engagement and already defended successfully Employment Tribunal claims based on such dismissals. By working with your organisation in the same way, we can help you to implement change in accordance with good employment practice.



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