



Ashley Kate  
HR & Finance

# HR Director Boardroom Summary

## November 2023

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# Speakers:



**Simon Rice-Birchall**  
Partner  
Eversheds Sutherland



**Jill Maidment**  
Founder & Director  
Natural Talent

**Discussing the topic:**  
*'Managing Performance in the  
Hybrid Workplace'*

Jill, primarily functioning as an executive coach and mentor with expertise in career and resilience coaching, acknowledged the impact of hybrid and remote working on performance management. She noted that since March 2020, some managers have hesitated to address performance issues due to challenges like homeschooling and associated lockdown and COVID-related issues. The residual effect of this hesitation has led to the neglect of poor or underperformance in many organisations. The shift to remote work has often disrupted regular in-person or online one-to-one meetings, and essential processes such as appraisals were initially cancelled during the crisis. While some clients are now reintroducing performance management processes, Jill highlighted the persisting challenges, including the geopolitical situation, economic concerns, skills shortages, and the significant issues of retention and employee engagement.

In continuing the discussion, Jill observed that some organisations choose to retain employees even if they are not performing at their optimal level, viewing having someone in the role as preferable to having nobody at all temporarily. Expanding on this, she noted the increasing complexity of the workplace, marked by the prevalence of global and virtual teams. The absence of physical offices poses its own set of challenges, and the integration of matrix structures in both the public sector and industry further complicates managerial responsibilities. Jill will sometimes encounter a reluctance among line managers to engage in constructive feedback conversations. This hesitancy stems from the managers' avoidance of difficult discussions related to providing feedback on potential underperformance, as individuals grapple with complex challenges not only within the workplace but also in their personal lives.



# Navigating Morale in the Workplace

Recognising the consequences of unaddressed poor performance, Jill pointed out that it can adversely impact the morale and engagement of high-performing individuals within a team. Productivity may suffer, leading to interpersonal conflicts that manifest in the misinterpretation of communications through various channels, such as emails and text messages. Despite physical separation, there is a noticeable increase in interpersonal conflicts among colleagues. Jill highlighted the unfortunate scenario where top talent may choose to leave due to perceived inequities in workload tolerance. Such situations can escalate, leading to legal issues, as Simon may have encountered in his experience. Jill suggested that leadership and management training can play a crucial role in addressing these challenges. She anticipated discussing how HR professionals can contribute to retaining top talent and enhancing employee engagement, emphasising the importance of their role in the process.

## Fostering Engagement

Jill expressed her enthusiasm for statistics and noted that the CIPD often emphasises the positive impact of line managers holding their team members accountable for their work, correlating with increased engagement. Jill mentions a recent statistic suggesting that only 3% of the UK workforce is actively engaged, though she cautions against quoting the exact figure due to potential variations in the data she regularly tracks. Acknowledging widespread disengagement, she alludes to a CIPD survey conducted in May 2023, familiar to many participants, which highlighted increased productivity resulting from remote and hybrid working arrangements.

Jill noted that employees working from home generally feel more productive, and their output is still valued. However, she highlights the challenge of remotely managing individuals, especially in terms of performance management. Referring to a CIPD survey from May, Jill mentioned that most employees expressed a desire for regular remote work and informal flexibility. Many prefer not being mandated to come to the office five days a week, though certain industries and locations, like London, are seeing a push for office returns. Jill anticipates discussing these trends in the breakout sessions, acknowledging the potential challenges of commutes and industrial disruptions.

## Addressing Performance

Simon began by acknowledging potential queries from the audience. He pointed out that, despite the impact of the pandemic, there haven't been significant changes in employment law. Simon emphasised the unchanged basics, highlighting the critical factor of length of service in performance management issues. Noting that employees with less than two years of service lack unfair dismissal protection, he explained that this absence of protection provides employers with greater latitude to address performance issues aggressively during the initial years of employment. Simon suggested that this approach aligns with the intended flexibility for employers to assess and determine the best fit for their organisations within the first two years of an employee's tenure.



## Legal Complexities

Addressing those with more than two years of service, Simon pointed out the complexities involved in terminating employees for poor performance, requiring a careful navigation of procedural requirements. He outlined the three primary reasons for termination—misconduct, redundancy, and poor performance. While misconduct and redundancy are straightforward, poor performance is further divided by lawyers into two aspects: inadequate job performance and poor performance related to health issues, which isn't the focus of the discussion. Simon emphasised that the discussion today centres around employees who are present at work but not meeting the expected standards. He noted that this facet of performance is recognised as one of the most challenging dismissals to execute fairly, requiring a meticulous approach.



# Challenges of Dismissal

Describing the straightforward nature of dismissal cases related to misconduct and health issues, Simon underscored the significant challenge of terminating an employee with more than two years of service due to poor performance. He acknowledged that many employers often opt for engineering redundancy situations as an indirect way to address performance issues, recognising the difficulty of directly managing someone out fairly. Simon pointed out that the process involves extensive coaching, time for improvement, and various other considerations. From his perspective, the landscape of performance-related terminations for employees with more than two years of service has become even more challenging over time.

## Monitoring, Due Process & Transparency

Simon noted the difficulty in monitoring employees' activities, especially in matrix situations, as Jill mentioned. He highlights the increased complexity of one-to-one meetings, often cancelled due to time pressures. Simon drew attention to the inherent challenges in the performance management process, emphasising the importance of gathering relevant evidence and following due process. From a legal standpoint, he stresses the necessity of issuing warnings and ensuring that established procedures are meticulously adhered to. Simon underscored the significance of transparency throughout the process, ensuring that employees are fully aware of the issues, the need for improvement, and the opportunities given to address the concerns before any decision on dismissal is made.

Explaining the challenge of fairly managing dismissals on capability grounds, Simon emphasised the difficulty of determining when an employer has done enough in the eyes of an employment tribunal. He underscored the distinct nature of capability-based dismissals, often driven by the desire to replace the employee rather than a genuine job loss as in redundancy situations. Simon noted that tribunals typically scrutinise employers closely, evaluating the level of support provided and ensuring that dismissal is



# Evolution of Work

In discussing the current office work scenario, Simon mentioned that, as an example, office workers have a schedule of two designated days in the office, with an additional flexible day. This arrangement appears common among various office-based workers, representing an improvement from the five-day remote work during the pandemic. Simon acknowledged that although there are now fewer days in the office than before, it is a notable shift from the complete remote work situation. Simon highlighted an interesting development related to the National Policy Forum (NPF) of the Labour Party. He encourages to explore the NPF agenda, particularly its implications for future employment laws, expressing concern about certain proposed changes.



Discussing potential changes in employment laws, Simon, while refraining from passing judgment, noted that as an employment lawyer, he envisions continued business, especially if the Labour Party implements its proposed reforms. One significant change being suggested is the abolishment of the qualifying period for fair dismissal. Simon provided historical context, mentioning that under the last Labour government, the qualifying period was a year, while under a previous Tory government, it was two years. Currently, it stands at two years. Labour's proposal aims to reduce the qualifying period to zero. Simon emphasises the importance of this discussion, particularly the freedom to adopt different approaches for individuals with varying lengths of service.

## Rethinking Probationary Periods

Simon anticipated a shift in the nature of conversations related to performance management, as the traditional understanding of probationary periods may no longer hold true. He suggests that the distinction between probationary and long-term employees may be reconsidered, marking a potential revolution in performance management practices. He discussed the common approach taken in performance management, noting that many individuals tend to manoeuvre situations to create a redundancy scenario instead of directly addressing poor job performance. While he does not endorse this approach, Simon shared his

observation that people often attempt to avoid terminating employees explicitly due to inadequate job performance. Instead, they may opt for restructuring initiatives to facilitate the removal of undesirable individuals on grounds that are perceived as less challenging.

## Fostering Engagement

Jill underscored the importance of best practices, urging HR professionals to encourage people managers to maintain regular one-to-one meetings. Referencing a Gallup survey, she emphasises that engaged employees often result from line managers being well-informed about individual work. Jill acknowledged the challenges posed by matrix management and virtual teams, suggesting that while walking the floor is beneficial, it is challenging in virtual settings. She introduced the concept of "skip level meetings," advising line managers to engage with their boss's boss and vice versa to foster effective communication and understanding within the organisational hierarchy.

Jill emphasised the significance of regular career conversations to assess how individuals are managing their talents. She noted the importance of constructive feedback and the general desire for employees to feel valued. Jill pointed out that amid busyness, the simplicity of expressing gratitude is often overlooked. She humorously mentioned the popularity of pizzas and other foods during lockdowns and highlighted the trend of companies enticing employees back to the office with creative food offerings. Jill encouraged documenting and addressing every issue promptly, stressing the importance of preventing problems from festering within the organisation.

Jill highlighted recurring concerns about unclear roles and responsibilities stemming from blurred lines, a phenomenon that emerged during lockdowns. Jill encourages line managers to build trust, delegate decision-making authority, and provide engaging contracts, tools, and projects. She reiterated the significance of regular one-to-ones, advocating for a more coaching-oriented approach. Jill acknowledges the challenge within HR of determining the appropriate depth when inquiring about employees' personal situations.



# Maximising Potential

Jill acknowledged the difficulty faced by new line managers, people managers, and those in HR who are managing teams remotely without face-to-face interactions. Building rapport is identified as a challenge, and Jill stressed the need for caution in discussing personal situations.

Expressing her support for competency or behavioural frameworks, Jill noted their tendency to be overlooked amid the busyness and reactive work culture. She advocated for HR's support in promoting these frameworks, drawing on her training with SHL. Jill stressed the value of implementing competency frameworks from day one, integrating them into recruitment, onboarding, and ongoing training processes. She emphasised the benefits of having clear expectations regarding behaviours, skills, and competencies. Jill pointed out that such frameworks greatly aid virtual performance management.

## High Performing Cultures

Jill discussed the challenge of managing poor performance while fostering a culture that encourages top talent. Acknowledging the common desire for high-performing teams, she addresses the impact of underperformance on team dynamics, emphasising the potential for decreased engagement and morale. Jill expressed her enthusiasm for utilising objectives to enhance company culture, hinting at the complexity of establishing a remote company culture. She shared anecdotes from her clients, some of whom advocate for branding everything in a remote work setting, from company mugs to backgrounds, to create a sense of belonging and connection among employees.





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