

Human Resources With Donna Obstfeld

APM: Tonight's CPD, we're not doing clinical stuff tonight as I'm sure you're, by now, aware. We're going to be talking about administrative matters in the clinic. I've got a very, very experienced guest with me, a lady who has had 20 years of experience in human resources but actually started out life wanting to be a physiotherapist. She's got a connection with us in the physical therapy straight away. She didn't do that. Unusually, as well, she's not a lawyer, for which I'm extremely grateful, but she has got, as I say, a great connection with our therapy. She's got clients on her books who are chiropractors, podiatrist, osteopaths, as well as having worked for some very big companies in an HR role.

In 2012, she was voted to be one of the Top 100 Mums in Business. In 2015, her company was awarded the best HR consultancy award. In 2017, she herself was voted onto the top 100 Sage Global Business Influencers List. She actually came in at number 35, and there were only six women ahead of her in that list. That is quite an achievement. Her name is Donna Obstfeld. It's a delight to have in the studio this evening, Donna.

Donna Obstfeld: Thank you. Thank you.

APM: As I said to you early on, when you came in, you don't like to call yourself an HR expert, do you? You like to call yourself a businesswoman who specializes in HR.

Donna Obstfeld: Yes.

APM: You're not a lawyer, but you think that's really important in what you deliver to your clients. Why is that?

Donna Obstfeld: It is. We come at HR from a very different perspective. While there is all of the need for the legal compliance, there is also the need to look at the

business, and to look at the culture of the business, and to look at where the business is going in the next five years because unless you understand what you're trying to reach, your HR strategy is never going to line up with what you're trying to achieve. That's where we start.

APM: Do you find that's just as important with small businesses, not quite the one-man band, because, obviously, they're going to have to have some staff, really, to want your services? Does it apply to them to the same extent or to similar that it does to TK Maxx, where you were for a long time, remember?

Donna Obstfeld: Yeah. In the large companies, there is usually a whole team of people that look at business strategy. In the SME sector or the micro-businesses, it comes down to the business owner. When the business owner sets up a business, it's all in their head. It can take them a number of years to actually, A, be able to verbalize it to themselves, and B, to be able to communicate it to staff. If you're trying to get the right people performing the way that you need them to perform and bought into your vision, then actually being able to verbalize that is really, really important, and to be able to have a really clear picture of what you need this person to do.

In very small businesses, you will have a office manager, receptionist, but actually, they'll be doing the job of three or four different people because that's what the business needs. Communication is really important. You've got to be able to let your staff get inside your hide so that they know what you expect for them so that your business is pushing forward the whole time.

APM: We used to call it mission control in the military, which is that you don't tell people what to do. You tell them what you want to achieve, and therefore, they pursue your aim and with that in mind.

Donna Obstfeld: Recruiting the right people is really important to be able to achieve that. There's a saying that you recruit people who are better than you. You identify what you need being done, and then you almost bring in an expert. You bring in the best possible person that you can afford to help you achieve it.

APM: Yeah. Well, we've got a number of avenues to look at this evening, haven't we? Because we're primarily looking osteopaths and chiropractors businesses. We've got some physios on our list as well, people who are watching us, and then maybe others. I'm not sure, but those are the three key members of the academy. We also got to look at it from the business owner's perspective as well as from the associate's perspective, and we've got to look at how we address the administrative staff, as you said, the receptionist, the practice manager, whoever else we might have onboard.

Some of the businesses will be a single room where the practice manager or the owner of the business will work some days and their associates on others. Some will be multi-room, multi-disciplinary clinics with a whole range of different operating in a business. There's quite a range there. What I didn't tell people is we actually booked you to come on this show, I mean,

it must be three or four months ago now, originally. We've only rudely put you on, but it turns out that that was a really good move because, in February, the Supreme Court heard a particularly relevant case. They only delivered their decision on the 18th of June, last month-

Donna Obstfeld: It took them a long time.

APM: ... Which was the, from our point of view now, infamous Pimlico Plumbers case, which specifically addressed the business of self-employment or employment, and whether a Mr. Smith could regard himself as being employed for the purposes of holiday, and sick pay, and so on so forth.

Donna Obstfeld: Yeah.

APM: It's not something which very often raises its head, but it's an area where, I think, we need to explore quite deeply because there will people out there who are quite concerned about it.

Donna Obstfeld: Yeah.

APM: I know it's been raised in osteopathic forums over the last few weeks, particularly since that Pimlico Plumbers case.

Donna Obstfeld: Yeah.

APM: What I should also say is that there is a button below the video pane where, if you want to, you can download an example contract for one of your associates. Now, that is not a contract which has been run past Donna yet, but it's actually very similar to the contracts which we use in my own clinic. I'm going to run through that with a view to explaining why we've done certain things, and perhaps, getting from Donna how we should do things better. As always, when we bring experts like Donna into the show, by the end of it, we're going to have coaxed out of her some sort of offer, so that if you need HR help, you can turn to Donna. Hopefully, by that time, you would've worked out because she is genuinely an expert in this field, and you share the views that we have here at the academy, which I hope most of our members share as well. Our strapline is to think differently, and you said that earlier on.

Donna Obstfeld: Yeah.

APM: Also, it's about focusing on what your client, your customer needs to achieve, isn't it?

Donna Obstfeld: Yeah.

APM: It's not about ... Well, we've been to a number of providers. As you've said, it is your boilerplate contract. Just go out and use that.

Donna Obstfeld: Yeah.

APM: It's pretty much what you could download from the internet.

Donna Obstfeld: There are two sides to it. There is the compliance side, and that will give you, in most cases, the statutory minimum. On holidays, the best example of that where you've got for a full-time employee 20 days holiday plus 8 days bank holiday. Most contracts that you download off the internet will give you that, whether you get it from an association, whether you get it from a legal document source. What it doesn't tell you is how to be more generous. What it doesn't tell you is how to apply that to your business.

A lot of our clients will say, "Well, actually, we want to give people 25 days plus their bank holidays, or we want to give them the 28 days, but they can't always take them on a bank holiday because we're a retailer and we're open on those bank holidays," so getting the rules right above and beyond the statutory minimum, how do you apply it to your particular environment, how do you enable your business to still function on a bank holiday Monday when half your staff want the day off, and things like that.

APM: Also, something which Clair, my wife, fellow osteopath, pointed out to me earlier on is that this isn't a hostile, antagonistic relationship between associate and principal. This actually should be a cooperative relationship, shouldn't it? The contract should work both ways.

Donna Obstfeld: Absolutely.

APM: We're not trying to rook people, although there are some examples we might talk about later on where practices have not looked after their associates, in fact, who had done some civil disservice.

Donna Obstfeld: A lot of people are scared of the contracts of employment. A lot of business owners, generally, don't want to give a contract of employment because they feel that it would be a noose around the neck. We have a lot of people who come to us with a problem, and we'll say, "Well, what does your contract of employment say," because that's always the first protocol, regardless of what the law says. What's in the contract of employment? At the point where they around and say, "Well, we haven't got one," or "We don't understand it," if they say we haven't got one, that's when you have to look at, "Well, what happens in practice? What's your custom and practice, and then what does the law say?

If they say, "Well, we don't understand it," that's when we have to actually start looking at the detail and saying, "Well, actually, do you realize that you're meant to have done this." It's a protection for the employer and a protection for the employee. It clarifies the expectations on both sides, and it also defines the culture. Again, going back to that holiday, if you have employees and you want to give them 28 days plus bank holidays, that's a very strong cultural statement about the type of employer you are.

APM: Yeah.

Donna Obstfeld: I was talking to somebody last night, and their partner gets the 28 days plus two days a month flexy days. That's an extra 24 days holiday a year potentially. That's about the culture of the organization that they're working.

APM: What's a flexy day?

Donna Obstfeld: That they can use it when they need it. If they've worked extra hours on a particular day, or if they want to take time off for something particular and make up the time, however they do it, they've got those extra 14 hours, 16 hours that they can use as they need to within a month.

APM: I remember somebody talking. It must've been a forum where you were present, actually, where I think they were saying that one of the dangers with contracts is that if you put something into a contract but you don't enforce it, you run the risk of that contract becoming, not necessarily invalid, but less credible in law. For example, you say you don't get sick pay, but then you pay it, all of a sudden, your contract becomes less viable because you aren't applying your own rules.

Donna Obstfeld: It depends how the contract is written, but potentially, immediately, it puts you into breach of contract, even if you think you're doing the right thing and it's to the benefit. The other thing that it can do, and it's normally if you've got more than two or three employees, but if you say to one person, "Oh, well, you broke your leg, so we're going to pay you holiday time because, actually, you can't come on work with a broken leg. There's no way you can treat clients or whatever it is," but you say to a receptionist, "Well, actually, you've broken your leg, and we're not going to pay you," you then got the risk of a discrimination case.

APM: Yeah.

Donna Obstfeld: If you've got rules and they're documented in the contract of employment, they must be, A, stuck to, and B, applied consistently.

APM: Is that the case ... You just talked about two different things there now. We need to talk about the difference between self-employed and employed. If your receptionist is employed, then he or she could have one contract, which might say you have to come to work with broken legs, and the self-employed contract ... Maybe it's not called a contract. It's an agreement.

Donna Obstfeld: Not a contract, ultimately.

APM: Not a contract. Sorry. The self-employed agreement doesn't say that at all. The allowance for a time off is different.

Donna Obstfeld: Actually, if you pay sickness, maternity, holiday, anything like that to somebody who is self-employed, then, actually, you're almost negating the agreement that you've got because all you're doing is demonstrating that, actually, they should be an employee.

APM: Yeah.

Donna Obstfeld: If you've got somebody who is self-employed, or who is on a contract, or is a freelancer, then you have to make them look as little as an employee as possible.

APM: Yeah. We'll come onto that later because I went through that Supreme Court judgment and there's whole load-

Donna Obstfeld: You're a brave man.

APM: Well, actually, there is a lot of legal bollocks in it, but I mean, it is surprisingly clearly written. You'd expect people at that level of the law to be able to write the English language very, very well. It's not written like a book-standard lawyer's contract. It's very well-written.

Donna Obstfeld: I'm not convinced that we've heard the end of it. Charlie Mullins, who is the head of Pimlico Plumbers is actually taking advice at the moment on whether or not he goes to the European Court of Justice because he's still saying that the law is broken. I don't disagree with him. The way I'm describing it is there's black and there's white. There's this gray mush in the middle.

APM: Well, absolutely, yeah.

Donna Obstfeld: You're either employed, or you're not employed. This worker status in the middle just brings so many ifs, whats, maybes that, actually, he'd had really good advice. I've had the opportunity to hear him speak on two or three occasions about this. On one occasion, he was incredibly emotional about it. It was before the Supreme Court hearing. It was after the Employment Appeals Tribunal that he lost. Yeah, there's an argument that said he shouldn't have been talking about it because it was so raw and he was so angry about the outcome, but he'd had advice from accountants. He'd had approval from HMRC, and he'd had lawyers look at it.

APM: He had gone through an initial hearing somewhere. He had gone to a tribunal.

Donna Obstfeld: Yeah.

APM: He had gone to an appeal court.

Donna Obstfeld: Yeah.

APM: He ended up with another appeal court, and then the Supreme Court.

Donna Obstfeld: Then the Supreme Court.

APM: Yeah, I can understand his frustration.

Donna Obstfeld: What's coming out of this is that he had given his staff, and let's just use that term at the moment whether they're employed or workers, he had given them the option of being employed or self-employed. In this case, the now classified worker had chosen to be self-employed and for five years had got all the benefits of that.

APM: Yes.

Donna Obstfeld: What they hadn't looked at is what I called the duck.

APM: All right.

Donna Obstfeld: If it looks like a duck, waddles like a duck, and quacks like a duck, it is a duck, regardless of whether you call it a chicken, a hen, or a goose. Just because Mr. Smith wanted to be classed as self-employed, and just because Pimlico Plumbers wanted him to be classed as self-employed, and the accountant said, "Yes, it's fine. He can be classed as self-employed because he ticks all of these boxes," what they haven't looked at is the actual working relationship, and who controls that relationship, and who is providing the uniform, and the staff, and the jobs, and that's probably the key when you're looking at osteopathy, chiropractics, clinics.

APM: Yeah, and I think I still want to come back to that a bit later and go into that in a bit more depth. Should we deal with support staff, administrative staff first of all, which would be a fairly simply employee contracts, isn't it?

Donna Obstfeld: They are employees. Yeah.

APM: There are practices who have receptionists who they say are self-employed. Is that reasonable, or cleaning staff are self-employed?

Donna Obstfeld: Let's start with cleaning staff because it depends how you engage them. If they are engaged directly by the practice. They are told when to be there, Monday to Friday between 5:00 AM and 6:00 AM to do X, Y, and Z, and the materials are provided by the practice, then, actually, they're a part-time employee.

APM: Okay.

Donna Obstfeld: If the cleaning is contracted out to a cleaning company and the staff come in, and the staff, if they're on holiday, someone else is sent in.

APM: They bring a Henry because they always have a Henry.

Donna Obstfeld: They bring a Henry, and they might bring their own cleaning equipment, or actually, the cleaning agency have their own chemicals and whatever is in the practice they can use, then, actually, they're not employees.

APM: Right.

Donna Obstfeld: It depends how those cleaning staff are engaged. I've seen both models.

APM: Yeah.

Donna Obstfeld: The other thing that happens, and there's this awful piece of legislation called TUPE so that if you have outsourced the cleaning to a contractor and you're not happy with the way in which the cleaning is done, you can change the contract company. You can't necessarily change the people who are coming in and doing the cleaning. You can't discipline them because they're not your staff.

APM: Yeah. Okay. I bet you're really glad we got an HR expert. Sorry, a businesswoman who specializes in HR in to talk about all this because it's a minefield. I mean, I was looking through that, that judgment earlier on. Of course, it has the Employment Rights Act. There's the working time legislation. There's the European Human Rights Acts, doesn't it?

Donna Obstfeld: Yeah.

APM: So many things, the anti-discrimination. What's it called, the anti-discrimination legislation?

Donna Obstfeld: Equal opportunities, yeah.

APM: Equal opportunity. You have all these things that you have to take into account.

Donna Obstfeld: Yeah.

APM: Some of them, one of them, the equal opportunity, I think, it's 250 pages long.

Donna Obstfeld: Oh, it's huge.

APM: I mean, it's just obscenely difficult to read.

Donna Obstfeld: They don't make light reading.

APM: Yeah.

Donna Obstfeld: At the end of the day, what I have found is that my clients don't care which bit of legislation it is that applies. They just want to know what they can do and what they can't do.

APM: Yeah. Yeah.

Donna Obstfeld: It's how people like me and how people like lawyers actually make it manageable and workable for somebody who actually doesn't really care, just wants to run their practice.

APM: They want to run it legally and efficiently and make sure it's all properly documented.

Donna Obstfeld: Yeah.

APM: Yeah. The big problem is if you don't have contracts when you should, then if something goes wrong, then you could find yourself, presumably, facing hefty disciplinary proceedings at some sort of court or other.

Donna Obstfeld: Yeah. You've got no defense. At the back of your mind, you should always be thinking, "If I need to defend this, can I?"

APM: These poor buggers out here. I mean, they're constantly thinking that. They're constantly thinking, "All right, am I going to get reported to the General Council for some minor misdemeanor which led me to struck off the register, or is there going to be some employment law thing that sneaks up on me," when all they want to do is fix patients, of course, which is ...

Donna Obstfeld: Yeah. The other thing that you've got, of course, is you've got all of the tax legislation over in this ... I imagine it as a Venn diagram. You've got the tax legislation and accounting requirements here. You've then got the employment law stuff here. You've then got from your own professional bodies here, and you've got immigration, borders and immigration here.

APM: Of course, it's in all contracts now, you have to check people's eligibility to work, don't you?

Donna Obstfeld: Absolutely. What you're trying to do is operate, if you cast your mind back to school, in that little bit in the middle, where will four of those overlap?

APM: Yeah. Yeah.

Donna Obstfeld: That's where you're aiming all the time.

APM: Yeah, that sweet spot in the middle.

Donna Obstfeld: You've got to aim within that sweet spot in the middle.

APM: Yeah. We're back to our employed staff, our reception staff or whoever. Are contracts for those fairly straightforward?

Donna Obstfeld: They are fairly straightforward. There are two different ways that you can do it. There's a statement of main terms and conditions, which would just have the absolute minimum in, where they have to work, what they get paid, what their holiday is. They're okay, but they don't really protect the employee or the employer, and they don't provide enough clarification for actually managing that relationship properly.

APM: Okay.

Donna Obstfeld: We always encourage people to have a proper contract of employment where they actually ... What's the process for sickness? What's the process for maternity, for a disciplinary, for a grievance? We also say write them in plain English. Don't put them into legal jargon because, actually, as soon as

you put them into legal jargon, as I said before, nobody cares which piece of employment legislation says that you have to have a contract. Nobody cares which says if you want to work more than 48 hours in a week, you have to opt out. What they want to know is what they can do and what they can't do, so plain English.

APM: Would you know the reason that we put you back, postponed your thing, was because the GDPR suddenly reared its ugly head? It wasn't long before it actually came into force, maybe a month or so. One of the things which everybody watching will know is that I can't stand gobbledygook legalese. I mean, our professional body, the Institute of Osteopathy has put out some guidance on how to comply with the GDPR. It's all legalese stuff. We put a whole other stuff. My privacy notice has got a picture of a naked man and a puppy and a biscuit in it. I just think people, they might not be interested. They might just read it just for the fun of it.

Donna Obstfeld: Yeah.

APM: It doesn't have to be complicate, doesn't it?

Donna Obstfeld: It doesn't have to be complicated. What you need to do is to make sure that it covers all of the bases. What we were finding as an HR profession is that we are being inundated with people who are saying, "We're experts in GDPR. We're experts in GDPR."

APM: Yes. Yeah.

Donna Obstfeld: How can they be?

APM: Some of the people in my profession went off on £300 courses to learn about the GDPR. You think, "Well, why?"

Donna Obstfeld: If you spoke to two solicitors, you were being given conflicting advice.

APM: Yeah, we did.

Donna Obstfeld: Even people from the same law practice were giving different advice on GDPR.

APM: Yeah.

Donna Obstfeld: I think it's one of those things that, unfortunately, until we've got some case law, and until there are some cases that are going through that we can look at how the ICO are going to apply it, we don't actually know.

APM: Yeah.

Donna Obstfeld: All we can do is take a really common sense approach. Protect privacy of our employees and our clients.

APM: Yeah, our patients. In terms of contracts, let's say I need a contract for my receptionist and I call you, Donna. Do you call yourselves DOHR or DOHR?

Donna Obstfeld: DOHR.

APM: DOHR. DOHR sounds quite good though, isn't it? It's got a nice play on initials.

Donna Obstfeld: It does.

APM: Yeah, but if I call you and I say, "Right, I need a contract for my receptionist," how much is it going to set me back?

Donna Obstfeld: For us, we charge £350, but that is a bespoke template that can be used for multiple staff. Now, bespoke and template doesn't normally sound like they go together.

APM: Yeah, I know what you mean.

Donna Obstfeld: What we'll do is we'll-

APM: It's bespoke to the practice.

Donna Obstfeld: It's bespoke to the practice, and we will talk about culture. We'll talk about holidays. We'll ask what you want people wearing, what hours they have to be in. We go through whether or not they're allowed to smoke e-cigarettes or vaping or everything to the detail so that what you end up with is completely bespoke for your practice.

APM: It will be readable.

Donna Obstfeld: It will be in plain English.

APM: The employee can work their way through it, and there won't be any doubt.

Donna Obstfeld: If you have got a cleaner, they will understand it. If you are the owner of your business, you will understand it. It's got to be plain English. Yeah.

APM: What are the pitfalls if I turn to the internet and say, "Sorry, I just want to download a contract."? There are plenty of them around. I've done it myself. I've downloaded contracts, and then just played around with them because you talk about people being frightened of contracts. I think people are frightened of anything that looks legal, and they're worried they'll get the page numbering wrong or the paragraph numbering. Of course, none of that is relevant at all.

Donna Obstfeld: Yeah.

APM: It's just how you divide it. Even how you divide it up doesn't matter, as long as the paragraphs are in there, doesn't it?

Donna Obstfeld: Correct. We don't number the paragraphs because then if people do need to change things, you don't have to worry about whether or not you've referenced the wrong thing. The most important thing is if you're downloading something off the internet is not to amend it in such a way that you make the contract illegal or that you are exposing yourself to risk. If you look at it, and again, I'm going to use holiday because it's the one that most people are familiar with, if you look at it and say, "Well, actually, I want that 20 days to include public and bank holidays," and you change your contract to that, it's now illegal. That clause is now illegal.

The other one that we quite often see is around notice periods where people say it's a month's notice on either side, which is fine for the first four years. Once people have got five years, six years, up to 12 years service, actually, the employer needs to give an extra week's notice for every completed year of service. The employee can still only give a month. That's not a problem.

APM: Can you write it into the contract that they have to give a week extra if you want to?

Donna Obstfeld: You can. That's where we will bespoke it. We will say, "Well, actually, do you want to start off with four weeks? Do you want to have it less during the probation period? Do you want to have it equal so that at every point down the first 12 years, if the employer has to give eight weeks notice, then the employee also needs to give the eight weeks notice? Now, that means that if you want to fire somebody through a proper disciplinary process, but if you want to get rid of somebody, it means that you need to pay them that eight weeks notice to get them gone.

APM: Right.

Donna Obstfeld: There are downsides to it, and we will have that discussion so that the employer, when they're having the contract drawn up actually understands the implications of those notice periods and what the risk may be to them within the business. Now, giving somebody three months notice on either side in their first month of service is a huge risk. You can end up paying them four months, and they'll have worked just about a month with you.

APM: Yeah.

Donna Obstfeld: It's about getting that balance. It's also about understanding the negotiation process because increasingly few people would just accept the contract and say thank you very much. They'll come back and they'll negotiate. They may be negotiating on holiday, on sick pay, on notice pay, and it's about understanding why they want it, and also then what that means for your business. Yeah, that negotiation part is quite important as well.

APM: When you say this negotiation ... It is obviously going to take place before it's signed.

Donna Obstfeld: Yes.

APM: Would you expect that when I take on a receptionist and she's starting on Monday, I've got a contract ready for her on Monday, we can still have a little bit of fudge period in there while we negotiate over the terms, or should we have all got it done by Monday?

Donna Obstfeld: In an absolute ideal world, you want the person to have had that contract ahead of time to have signed it, returned it with their reference details and with all of their documentation showing that they have the right to work in the UK.

APM: How often does this happen?

Donna Obstfeld: We try and work with our clients really proactively, but I know that when I speak to new clients, or when I speak to people, they'll say, "Oh, well, this person started last Monday. Can you do a contract for me?"

APM: Last Monday. How about people who started months and months ago?

Donna Obstfeld: Right. You're supposed to provide it within the first couple of months.

APM: Right. Okay.

Donna Obstfeld: If you then try and enforce a probation period and the person hasn't been given a contract and they don't know that they're on a probation period, that makes that process much harder to manage.

APM: Sure. Of course, they can argue that they didn't know even if they did because they didn't sign anything, yeah.

Donna Obstfeld: Correct. We would always say, "Try and get it to the person in advance. Make sure they're happy with the terms. Get it back. Check that they have the right to work in the UK. Once you're clear about that, then you can get references." If you build in your probation period properly, if the references come back bad or if they don't pass a CRB check or a DBS check or something like that, then you've still got the opportunity to get rid of them during that probation period. Probation periods are absolutely essential. They're not a legal requirement.

APM: How long can they be?

Donna Obstfeld: We would always say start off at six months because it takes somebody three months to learn the job, and then three months to demonstrate it. They can only fake it for so long, whether that's the journey to work, turning up on time, or actually being able to do the job. We would always say a minimum of three months ... Six months, sorry. What you can then do is extend it if you need to as long as your contract gives you permission to do that.

APM: Right.

Donna Obstfeld: As long as you-

APM: You have to have a reason to do it, or ...

Donna Obstfeld: You don't have to. Sometimes, somebody is just quite not where they need to be. Sometimes, something might have happened within the business where you haven't had the opportunity to see them or that the job has changed significantly. We would always say extend for up to three months. As soon as you start pushing a year, you really need to be thinking, "Is this person right for my business?"

APM: Yeah.

Donna Obstfeld: It's one of those things where you hire slowly and fire quickly. If you're looking at six months, nine months, and they're still not right, or you're still not sure, then, really, you need to be looking at exiting that person.

APM: Right. Okay. You talked about checking the people eligible to work in the UK. How?

Donna Obstfeld: It's really hard.

APM: There's no law that says they have to have a passport or a driving license, is there?

Donna Obstfeld: No. If you go onto the government website, gov.uk, I think that's right, there is something called a List A and a List B. You need to have a certain number of documents from List A and a certain number of documents from List B. As an employer, you need to see the originals of those documents, and you need to take photocopies of them to prove that you have seen the originals and sign them and date them to say that you've seen the originals. Again, it's about being able to defend yourself should you need to.

APM: Yeah.

Donna Obstfeld: As long as you have taken all reasonable efforts to make sure that you have done what you need to do, then you can defend yourself should you need to. Now, I've got a horrendous situation. A client of mine phoned me on a Sunday morning. To say ... And I don't normally work Sundays, but if I'm in on Sunday morning, to say that he's just been told by one of his staff that another of his staff has been detained by Borders and Immigration. We were like, "Okay. He's worked for you for five years here and you've been paying his tax and NI." And, and, and.

APM: Yeah.

Donna Obstfeld: Anyway, so I went in and saw them and he produced the file which had a photocopy of the slip that he'd been given by the embassy to say that he had rescinded his original passport, photocopy of his British passport which said that he was an overseas citizen and that was the problem. That even as an overseas citizen, he had the right to be in the UK, he didn't have a right to work. So we were like, "Well, did you take a copy of the work permit?" There was no work permit. What then transpired is that Borders and

Immigration had been writing to the employee saying you can't work, you can't do this. HMRC had been quite happy to take all the taxes.

APM: Yeah. I was going to say. This is-

Donna Obstfeld: He had a proper NI number. He had a proper NI number. He had been working for five years. Nobody had thought to contact the employer to say there might be a problem. The employee had this letter and was regularly going for checks, was regularly going to an office — I can't remember the detail — to present himself. Originally, every two weeks, then every four weeks, then every eight weeks and the employer knew about this and thought that the situation was getting there and he was eventually going to get his right to remain and all the rest of it. Oh, no. He had his right to remain.

APM: Just couldn't work.

Donna Obstfeld: He just didn't have the right to work.

APM: Yeah.

Donna Obstfeld: So how did the government think that he was supporting himself? And he had no passport to go back home because he had rescinded his passport and he had a British passport. So it's something that you have to check.

APM: It's an astonishing lack of join-up-iness isn't it?

Donna Obstfeld: Absolutely.

APM: Because if you think you can take the man's tax, surely you've checked that he's already entitled to work.

Donna Obstfeld: Yeah. And people cannot-

APM: And hopefully they gave it all back to him.

Donna Obstfeld: No. He, as far as I know, has been deported. And my client had originally a £15,000 fine, I managed to get it reduced to £10,000 almost immediately by presenting all of the evidence that we had to say, "Look. We had tried to do this and actually it was before we were involved, but my client had done this." And then it was reduced to £7,000 for prompt payment, but he still had to pay £7,000 and that is a small high street shop. Very small high street shop. If you're taking on non-UK staff, even if you take on UK staff, you still need to check your list A, check your list B and check that they have the right to work.

APM: I suppose there may be a lot of people who would feel, "Well, it's obvious when somebody's foreign." But I guess it isn't that obvious, is it? Nor is it obvious that because they have a foreign name or a foreign accent, a slight accent that they aren't eligible to work in this country.

Donna Obstfeld: But they may be British.

APM: Yeah, exactly. Yeah.

Donna Obstfeld: But there may be some reason why they're not eligible to work. So as long as you've got your list A, your list B, your photocopies of your originals, yeah, that's your defense.

APM: So in other discriminatory law, obviously, none of us would employ women of childbearing age because we know they're going to go off and have babies and we'll be paying them for ages.

Donna Obstfeld: Or men.

APM: Or men now.

Donna Obstfeld: Who may take shared parental leave.

APM: Exactly. So now, tell us what is the liability in terms of-

Donna Obstfeld: Oh, it's fun.

APM: ... parental leave. Who ends up paying people when they're off on pregnancy leave, paternity leave?

Donna Obstfeld: Okay. So this is still a little bit of the gray area.

APM: Oh, God. Not another one.

Donna Obstfeld: It is because they haven't really been any test cases, so people have interpreted the law. I believe there's been one case recently but I don't remember the detail of it. But, you have to separate maternity pay and maternity leave. So somebody, a woman in this example can have a year off but they only get paid for 39 weeks. So what happens in shared parental leave is that-

APM: Can I just go back there?

Donna Obstfeld: Yeah.

APM: How much do they get paid and by whom?

Donna Obstfeld: Okay. So again, completely varies from organization to organization. If you are in the health service, if you are an NHS employee, you're going to have a much more generous package which may be up to and including full pay for the whole time that you're off. Small businesses-

APM: What's the legal requirement?

Donna Obstfeld: Right. So the legal requirement is 30 ... No. It's 6 weeks at statutory rate or 90% of your salary if it's below the statutory rate and then 33 weeks at the

statutory rate, which changes every February and I don't hold those figures in my head-

APM: No, no. No, that's fine.

Donna Obstfeld: ... but you know.

APM: But that is paid by employer.

Donna Obstfeld: That is paid by the employer. And in some circumstances, you can claim that back through your PAYE, but in some circumstances, you can't. I'm not a tax expert. I keep well away from tax and payroll.

APM: That's kind of worrying isn't it?

Donna Obstfeld: Yeah. It's to do with-

APM: If it's truly pregnancy is pregnancy.

Donna Obstfeld: Yeah. It's to do with how much your PAYE bill is I believe.

APM: Right, okay.

Donna Obstfeld: But I'm not a payroll expert and I'm not a tax expert, so I ...

APM: Well, I'm sure. I'm sure a lot of the people watching this will be delighted if they could pay their receptionist a year's full pay to go off and ...

Donna Obstfeld: I believe it's only the statutory bit which can be claimed back if it can at all. So other organizations-

APM: My point was that that sort of amount of money would kill most of the small businesses that we're talking about here.

Donna Obstfeld: Absolutely. Yeah, absolutely.

APM: I'm not sure about the statutory, which makes me [then 00:06:21] what the statutory rate is.

Donna Obstfeld: It's ... I'm going to embarrass myself here. I have a feeling it's something like £149 a week, but I'm not so sure.

APM: Okay. So it's somewhere around there. It's sort of 150, 200 quids, somewhere around there. But even so, that's quite a lot to come out of your pocket when you still got to find another person to do the job.

Donna Obstfeld: Especially if you're having to replace that person as well. Yes.

APM: And what then are the legal rights of the person who's coming for a year. Presumably, you state in the contract that it's a fixed-term contract and it lasts until the person on maternity leave comes back.

Donna Obstfeld: Yeah. So the terminology that we generally use is it's currently anticipated that this will be for a year, but we will be discuss this with you at the point where we know the employee is coming back. But what you can't do is just get to the end of the year and say to the person, "Thank you. Goodbye. You've done your year." You actually have to make them redundant.

APM: By getting rid of the job.

Donna Obstfeld: No. By ... Providing the original person has said that they are coming back and they're coming back into the job that they were in before for the hours and all the rest of it, in effect, the person doing the role is now redundant.

APM: Oh, I see.

Donna Obstfeld: So you have to enter a consultation with them. The job still exists but the person is redundant.

APM: Yes, I see. Yeah.

Donna Obstfeld: You have to enter a consultation with them to see whether or not there is something else suitable for them within the organization. Now, for example, if your original receptionist decides that they want to come back part-time, what you could then do is offer your one year fixed-term contract person a new contract for the other part of the part-time.

APM: Right.

Donna Obstfeld: That would be a suitable alternative that they could consider. They may turn around and say no. They may actually turn around and say, "Oh, yes. That would be lovely. Thank you very much" and take it, but there has to be that discussion. People think, "Oh. I don't want to have to pay the redundancy pay." Redundancy pay is actually only due after two years of service. So although you go through a process where you make them redundant-

APM: There's no

Donna Obstfeld: ... you're not actually paying the redundancy pay. What you do need to do is pay them their notice. So again, if you ... And we're just going to use January to December here. If the person is due back on the 1st of January, you need to serve notice on the 1st of December so that they then work their full week's notice, rather than you get into the 31st of December and then paying them their full week's notice, so it takes a little bit of planning. And that's great as long as that person hasn't sacrificed their maternity leave for shared parental leave. So you can take the 52 weeks that they have as their leave entitlement and the mother and either the father or the partner, because this goes for same sex as well, can split that leave between them. So they-

APM: Ah, okay. So they don't both get leave. It's the same leave but just split between ...

- Donna Obstfeld: It's the same 52 weeks but how they use it can be done in all sorts of different combinations. So they may decide that they're both going to take the six months together and after six months, both partner A and partner B are going to return to work because they've used up ... They've been off together for six months with the new baby and they've used up the 52 weeks. But what they could do is partner A can take the first three months, then partner B can take the next three months-
- APM: And then they alternate.
- Donna Obstfeld: ... Partner A can take the next three months and partner B can take the next three months. Now, that means that any business, A, needs to liaise with the partner's employer and there is no proper legal framework for doing that — they set up these rules without putting the frameworks in place — but B, it means that as a business owner, you could have a member of staff coming in and out two or three times and that's a challenge for any business to manage, especially a small one.
- APM: Yeah. And actually, you might find yourself paying for 12 months unemployment, whatever it might be, when in fact the person's only entitled to six but you don't know what their partner's doing.
- Donna Obstfeld: Right. And the pay is ... Potentially, they've got that 39 weeks pay and the 39 weeks pay should be split between the two of them. So if they're both taking off the first six months, actually you can't pay them for six months because you'll run out of money or they will run out of money, but you have to be talking to the partner's organization. Now, there's also another complication in there. So what happens if one of those employers pays an enhanced maternity package. So if they say, "Well, actually we're going to do three months full pay and six months half pay for maternity." And that's the bit where people aren't sure what's happening. So does somebody taking shared parental leave have to be given the same pay package as somebody taking maternity leave? And at the moment, it looks like no, they don't.
- APM: That would be ridiculous if they did. There's no way. Let's say that you work for the NHS or in fact, we can take the example of my assistant here, Anna who is absolutely delightful and worked for Ford, and they gave her full pay for a year. When I say that, you are in that position and your husband works for me where he's on minimum wage because that's all I can afford, I couldn't match that.
- Donna Obstfeld: No, you couldn't but then that influences ... So if the person working for Ford were to give up their maternity pay and take shared parental leave and shared parental pay, should the employer be paying it at the statutory rate or at the same rate at which they pay maternity? And that's the bit that isn't yet clear.
- APM: Sorry I asked that question really. I've had a couple of questions come in actually. Because you talked earlier on about what used to be called the CRB checks, criminal records.

Donna Obstfeld: DBS.

APM: Right now it's called DBS, isn't it? God know what it stands for. Somebody sent in a question saying that they're a multidisciplinary clinic. They wanted a CRB check on self-employed workers and was told they couldn't do that on anyone. They had to apply themselves. Is that the case?

Donna Obstfeld: Yes. Yeah. So I am a business advisor at a school and I have to get my DBS done every two or three years. I have to apply for it, and then I have to provide the school with the number, and they can then go on and check that my DBS is clear.

APM: So all we know the situation where a single DBS clearance applies whatever job you're going for. You have to do a different one every time you apply for another job.

Donna Obstfeld: Depending on how people apply for it, but it can be a single one.

APM: Right.

Donna Obstfeld: Yeah.

APM: Okay.

Donna Obstfeld: Because you give them the code. So as long as ...

APM: Because the old days, each organization, they have a separate DBS, didn't it? It's ridiculous.

Donna Obstfeld: I had five at one point. I had five at one point because I was involved with scouting. I'd been away with my daughter, looking after her brownie pack. I still had a valid one from when I worked with [SecureCorp 00:14:18] in a prison and I had to go through the Ministry of Justice. That was three. Maybe it was just three. I can't remember. I had two or three at one point that were all still valid, but I had to keep applying.

APM: The next question that I've got here is from [Robin 00:14:36] and it's kind of the meat of where I wanted to go with this evening, which is the whole business of employed, self-employed associates. I'll read the whole thing. We'll probably deal with it in sort of separate little chunks but Robin, thanks very much for the question because it is one that must be on many associates and many principal's minds at the moment. He says, "I'm more likely to get involved in taking on an associate. Are they employed or self-employed? Is there a fair or going rate that they would pay the practice? Would it be a contract or an agreement? Presumably, they're considered self-employed and the practice would not need to worry about sick pay, holiday, et cetera. Also, is it fair and enforceable to have a no-compete agreement or clause?"

Donna Obstfeld: Okay. Can you break those down? A way that we answer one at a time for...I can-

APM: So let's start with the self-employed, employed part of it. What are, first of all, the benefits of being one or the other to both parties in this?

Donna Obstfeld: Okay. So if you are an employee, then your employer is responsible for you. So that means that they will pay your tax, your national insurance, that you will receive your salary from them at an agreed rate regardless of what happens on a day-to-day basis within the practice.

APM: Paying tax is fine, isn't it? Because that's going to come out of your salary anyway. National insurance contributions.

Donna Obstfeld: National insurance, yup. So you've got employers and employees. So the employee would have to pay that. You would get holiday entitlement. You would get ... As an employee, you would receive it. As an employer, you have to give it. So you've holiday entitlement. You've got the maternity, paternity, shared parental benefits — adoption also in that group — and you've got the sick pay elements. So that's part of the relationship. If the associate is coming to work in the practice every Monday and Tuesday from 9:00 to 5:00, they're provided with clients to see, they turn up-

APM: I'm going to stop you because we're going to go down that route in a minute.

Donna Obstfeld: Okay.

APM: Because this is what constitutes somebody ... Well, how you might determine somebody is self-employed or not.

Donna Obstfeld: This is it. So if-

APM: Well, what I was going to ask is okay, we've done ... This is the negative side of us employing somebody. We've got all these obligations. Is there a positive side to us employing?

Donna Obstfeld: The positive side is you have more control over how the person performs. You can build a stronger relationship with that person. You can agree when holiday is taken which might mean that they provide cover for you when you go away or that they're able to provide cover if you've got a training course or anything like that, and that you can require them to make certain criterias. Now, one of those might be a non-compete, one of those may be to do a certain amount of CPD, either in line with or over and above, requirements to take on additional responsibilities within the practice to help with sales and marketing, all sorts of things. As an employer, if someone is an employee, you have a lot more control over that relationship and about how that person performs.

APM: It's very much still I think the norm osteopathy. I can't speak for chiropractic but I think it's still vastly the norm that most of the people working in a practice where there are several practitioners of the same, operate as associates, not as employees. And I think it's because as you said earlier on, a lot of people are frightened of the employment contract. As soon as you

say, "Oh my God. I've got to pay them whether or not they see any patients. I've got to cover their national insurance. Oh my God. Pregnancy leave, sick leave, holidays." And so on. But as you said, there is a benefit in building that environment with them, isn't there? That relationship with ...

Well, as they say in the military very often, no plan survives first contact with the enemy. There you have it, [inaudible 00:18:44], new trial of the new streaming service. Hopefully, you're back with us now on the old system which looks like the thing we're going to have to revert to which has a number of drawbacks from my perspective, but the key thing is you get to continue with the stream. And I'm told that you left us at the point where we were breaking down a very long question from Robin. We were talking about the benefits and otherwise of being employed or self-employed, so you've got to recap a little bit if you don't mind.

Donna Obstfeld: Okay. So if you are an employee, you will benefit from sick pay, maternity, paternity, adoption, shared parental leave, you will benefit from holidays and that all comes as part of your package. If you are an employer, it means that you need to pay national insurance and that you need to provide your staff with sick pay, family leave pay, holiday time, et cetera.

APM: And people are frightened by this, aren't they? Because when you say to a principal of a relatively small business, they're all relatively small businesses, "You're going to be responsible for these things. You're going to pay for people when they're pregnant. You're going to pay them when they're sick. You're going to pay them for their holidays."

Donna Obstfeld: And you're going to pay them regardless of whether or not you've got paying patients coming through the door.

APM: Yeah, and you'll pay them ... So what is the advantage? Why would I want to do that with my associates?

Donna Obstfeld: So one advantage is that you have more control. So you can control the way in which they work, the way in which they treat the patients, the way in which they follow up, keep records, et cetera, but also if they are an employee, they have to request time off. They can't just tell you, "Oh. I'm not going to be in the whole of July or the whole of August." And as the principal, you can arrange for them to cover your holidays because you have that relationship and you have that control. The other thing that ... I've just lost my train of thought. But the other thing that comes into it is an insurance element. So if you are an associate, you have to have your own insurance, you own professional indemnity insurance. If you are-

APM: As opposed to medical malpractice insurance. Because every osteopath and chiropractor is required to have that anyway.

Donna Obstfeld : Might be the same thing. They might be wrapped up together. Normally, anybody who is a professional would have for treating, a professional indemnity insurance but it's probably-

- APM: Okay. We call it the medical malpractice insurance and it's a requirement to be registered, so that's not really an issue for them.
- Donna Obstfeld: Right. As a employer, then you are required to take insurance for your staff and for your practice. So if somebody comes in and falls over a cable, it's the employer-
- APM: Employer's liability insurance.
- Donna Obstfeld: Employer's liability insurance or the public liability insurance. So sometimes, they'll look at where the insurance sits to help determine whether or not somebody should be an employee or an associate, or a worker, or whatever. The other thing that's really, really important to say here and this is the bit that I guess to some extent, Charlie Mullins and Pimlico Plumbers have fallen foul of, neither the employer, the business owner or the person doing the work, should be able to choose the way in which they want to be engaged and the nature of that relationship. So if you look at the way in which somebody is delivering the service, it should be really clear as to whether or not they should be a zero-hours employee, part-time employee or whether they should genuinely be a self-employed associate, or contractor, or freelancer. And some of the things that will help determine that are if you want somebody to be a freelancer, they must work for other people. So if they are working for you, Monday to Friday, 9:00 to 5:00, seeing your clients, you can't decide that you want them to be an associate. They are an employee.
- APM: Can I just clarify this? Because I think there is a subtle difference to that. If they worked for me three days a week and they chose not to work for anyone else on the other two days, that's their choice and that's not my problem.
- Donna Obstfeld: Then, they should be a part-time employee.
- APM: Even though it says in their contract, they can work someone else? I think in the judgment from the Supreme Court, it says that if they exercise that choice, then it's their choice and they're not required to do it.
- Donna Obstfeld: Right. But if you're receiving invoice number one, invoice number two and invoice number three and they're always for a £1,000 a month and they are always there Monday, Tuesday, Wednesday, then they are a part-time employee.
- APM: Now, this is going to be an area which is ... When I looked through that judgment from the Pimlico Plumbers case, I was thinking to myself, "My God. How on earth can we continue to justify calling our associates, self-employed?" Because so many of the things in the Pimlico Plumbers didn't apply ... I'm sorry. Applied to them.
- Donna Obstfeld: Applied. Yeah.

APM: Now, you talked earlier on about logo clothing, so let's start with that. If you provide logo clothing, is that going to immediately see and say you must-

Donna Obstfeld: If you provide it, then that looks like they are an employee. If they have to purchase it from you, then they put it through their accounts as a business expense, then that is one of the ways in which-

APM: It's just an extra bit of evidence.

Donna Obstfeld: It's an extra bit of evidence. But again, it comes back to this duck. If it looks like a duck, waddles like a duck and quacks like a duck, you must make it look as little like a duck as possible.

APM: Yup. So I'm thinking now there are practices that do use logo clothing, whether it's for osteopaths on white coats or sports therapists in whatever they might wear or psychotherapists in polo shirts, so we've got that one. It ought to be they ought to buy it rather than we provide it.

Donna Obstfeld: Or that you have something which potentially isn't branded but just you say like all of our staff have to wear black or all of our staff have to wear white, then you kind of get away from that issue.

APM: The other issue which was ... They spent a lot of time in covering this in that Pimlico Plumbers case was the issue of who provided the work.

Donna Obstfeld: Yes.

APM: Now, they argue that if it had to be the one person who provided the work, then they had a very strong case for calling themselves employee. If you simply said I'm contracting you to do this job and you can appoint an appropriate alternative should you need to, then that is also a useful way to go.

Donna Obstfeld: So the right of substitution.

APM: Substitution, thank you.

Donna Obstfeld: That's the bit that you're referring to. So there have been some other cases which are well worth just raising here, not that I'm expecting anybody to go and look at the legislation on this. One is Deliveroo and the other one is Uber. So Uber are having the battle at the moment. Deliveroo, they've had a couple of their delivery people win cases to say that they are self-employed. And the reason they've been able to do that is because they've been able to prove the right of substitution. So somebody will say to them, "Are you going to work on this day?" And they say, "No, I'm not working but this person is covering my shifts." Now, there is a pre-approved list of cyclists, delivery people, I don't know what their terminology is.

APM: Deliveroo-ers.

Donna Obstfeld: And they can use anybody on that list because they've got the right insurance and the right training and whatever else, but they physically themselves don't have to do it. If that work is given to them, they can subcontract it out to somebody else and that's the right of substitution. So the Deliveroo cyclists have been able to prove that they are genuinely self-employed, whereas-

APM: Which they wanted to do?

Donna Obstfeld: Which in that case, they wanted to be. Yeah. There are financial benefits. So if somebody can put all of their expenses through their company and they can claim mileage and they can claim all sorts of stuff back, then ...

APM: You can't do that, can you? You can't claim mileage from homes to your place of work.

Donna Obstfeld: Depends if your place of work is your home address.

APM: Ah, okay. So if you're self-employed and you do it in your ... You're a osteopath or chiropractor at your own home, that's your primary place of work.

Donna Obstfeld: Right. And then if you're traveling to-

APM: Someone else's clinic to provide a service.

Donna Obstfeld: ... someone else's clinic ... Right.

APM: Okay.

Donna Obstfeld: The ideal situation is that you have your own patients at home on a Monday, that some of your patients can come and see you at practice say on a Tuesday, that you're in [Holly 00:27:50] Street on a Wednesday and you practice there but they are your clients coming to see you at those various locations and that you are hiring a room as part of that practice. And in that case, it's really, really clear because you are self-employed. You're hiring a facility. You might potentially be wearing your own clothes, your own branded company, whatever it is and you can prove that you're bringing your clients in to that practice and that just happens to be the room that you use on that day of the week. And in those circumstances, then it's really clear that they are an associate. They are there. And there may be an arrangement where you see one or two of the patients for the practice or that you cover a holiday or that sort of thing, but the majority of the time, there is that genuine-

APM: I don't think the term, "associate"-

Donna Obstfeld: ... relationship. And I don't think that that's very typical within either the osteopath or chiropractic world.

APM: No. And I think it's not typical for a very good reason. Because actually rather as was argued with Pimlico Plumbers, they wanted to portray ... We want to portray an image of a single entity providing cover, even though there are a half a dozen, dozen different people working in the practice.

Donna Obstfeld: And as I said, it doesn't necessarily come down to choice. It's not for the employer or the business owner and the worker to decide what that relationship should be. There are increasingly, although still a lot of gray in the middle, black and white rules that say actually if you're there Monday, Tuesday, Wednesday and you see the patients of the practice and you write up your notes in the practice system, you are in effect a part-time employee whether you like it or not and that's ... I think that there will be a shift in the industry.

APM: I think there could be. I would still argue. If I had to use a painter and decorator analogy that I used earlier on just talking through this with somebody else, actually when I get a painter and decorator in, he doesn't bring his own walls, I've given him the walls to paint and you can use that analogy for treating patients. Yes, I've got some patients who need treating in my practice and I want to subcontract you over there to come and do it. And if you need someone else to do it because you've got another more lucrative contract somewhere else, then you can do that, provided they are suitably qualified and appropriate. But in our practice-

Donna Obstfeld: But they will bring their own tools.

APM: Well, yeah.

Donna Obstfeld: And you probably have to pay for materials as well. So that's one of the other things that has been looked at in a couple of cases, and I have a feeling somewhere in the back of my mind that it was something to do with either an air conditioning or an electrician or something like that, where the way in which they've got it set up for the staff who genuinely want to be self-employed, is that they have to bring their own materials, and they have to purchase their own materials, rather than the materials being supplied by the company.

Again, if you're using an ultrasound machine to treat somebody, is that provided by the individual that comes into the practice, or is that provided by the practice? If it's provided by the practice, again, that makes you look like an employee. If you're bringing in your own ultrasound machine, then again, that makes you look more like a contractor.

APM: If you write into the contract, "The fee that you're paying me is actually to cover the use of my equipment," does that help?

Donna Obstfeld: It could do, it could do, but again, it's about making it look not just on paper, but in practice, as little like an employer/employee relationship as possible.

APM: I was going to bring up an example that I worked through earlier on, which I showed you, because I got a couple of pictures that we'll show to the

viewers here this evening. I took the example of this young lady who's an associate something at my practice, and she's going to work three days a week, which is not unusual, 9:00 until 6:00, an hour for lunch, 30 minutes appointments at 45 pounds an appointment, therefore she could see 16 patients a day.

I predict she's going to be 70% full, so she's going to see 11 per day, more or less. That's what I'm working on. If she's self-employed, as the way most of our associates are at the moment, and she takes 28 days holiday, which we don't have to put in an agreement, because she can just use that-

Donna Obstfeld: She can take holiday whenever she wants?

APM: ... she can take it whenever she likes, it means that she's going to have 139 days in the clinic at three days a week, which means ... you work out the figures, she's going to earn 68,805 pounds and if for simplicity's sake, my commission is 50%, we won't call it commission, because I'm sure that's a poor term. Let's call it room rent, because actually that is what we want this to be seen as, her take home pay is 34,400 and a bit.

That would be probably typical of many of the self-employed associates who are working ... no sorry, the percentages, but the mechanism by which it works, and there will be an agreement in place that says that they do what they do, and then the money they're giving me is for the room for the heat and light, for the equipment that they borrow, and for the use of my receptionist, and all the rest of it to get the patients sorted.

If we were to employ that same lady and we give her 28 holiday days a year, pro rata of course, so it comes down a little bit, but she still ends up effectively working 139 days in the clinic, because that's the way it works out, but we're going to have to pay her for 156, because she gets-

Donna Obstfeld: You have to pay holiday.

APM: Because we're paying her holiday pay. Given that the minimum wage is 7 pounds 83 an hour, that means we're going to pay her 9,700 and a bit quid every year, regardless, whether or not she sees a single patient. Well, I don't know there are many osteopaths or chiropractors who would work for that, so it's not going to be a great incentive to come in and just do nothing for all that time.

What we need is a commission which works out so that she ends up with the same sort of money. I worked out, and I may have got the sums a bit wrong, because it did it on the back of a [inaudible 00:03:23] packet, but if we paid her commission as 35.8%, and again, we're not going to call ... well, we are going to ... we could call it a commission in this case, so we say 35.8% for every patient she sees, that would bring her up to the same salary, the same take home pay as she got as a self-employed person.

The risk here of course is that we get the sums wrong, and we predict that she'll see more patients than she does, or fewer than she does. That's a reasonable way to presume ... to see it, presumably.

Donna Obstfeld: That's one way to do it. Paying a commission or paying some kind of bonus based on performance is quite a common way of doing it, but that minimum wage is the absolute minimum, so where people say, "Oh, well, they're commission only," then you need to look very carefully-

APM: Because that's effectively a zero hours contract, isn't it?

Donna Obstfeld: No, some organizations will say, "Well actually, we don't pay the national minimum wage to start with, but you're on 50% commission for everything, but there's a threshold. So every month, you have to have earned this amount of money and then you start getting your commission."

APM: Right.

Donna Obstfeld: So that's a very typical way in which people will set it up, because they'll say, "Well, they're commission only," but actually they'll put a threshold on it.

APM: That works well for a sales person, doesn't it? Because they can effect the number of sales they make. When it's an osteopath working in someone else's clinic, they don't really have any control over the number of patients they see.

Donna Obstfeld: They don't, but that's what indicates them being more as an employee rather than a self-employed.

APM: But that's what we were talking about here, is the employee getting commission, and you can't do that, you only get commission after so many patients, when it's my role as the principal.

Donna Obstfeld: You could still put a threshold in. There's no reason why you couldn't put a threshold in.

APM: You could, I just don't think it would be seen as reasonable, since it's my job, the principal, to provide you with the work, so it's not up to you whether you see this many patients, which is why I'm taking that view on that particular one.

"Self-employed," and I'm going back to Robin's questions here, "Presumably because they're self-employed, sick pay and holiday, et cetera is it fair and enforceable to have a no-compete clause in their contract?"

Donna Obstfeld: If they are self-employed, they have to be able to go and work somewhere else. You cannot prevent somebody from earning a living. Even when you have full contracts with non-compete clauses, "Once you've left our employment, you can't work as a chiropractor anywhere in the UK for the next 12 months," somebody could challenge that in an employment

tribunal, and despite the fact that you've got it in an agreement or anything else, it would be ruled-

APM: It's an unreasonable clause, isn't it? Yeah.

Donna Obstfeld: ... unreasonable. If you wanted to say, "Actually, you can't practice in a practice within a five mile radius of where we currently are," then you might be able to argue that that was enforceable, but then again, you're making it look like more of an employee contract. The whole purpose of having an associate is that they actually have to go and work somewhere else, because they have to look as much like a freelancer and a contractor as possible.

APM: But the terms I've seen in a lot of contracts, including the Pimlico Plumbers, were not that you couldn't work, it was that you mustn't do anything which impacts adversely on the principals' business interests. Now, just working even two miles down the road doesn't impact on my interest, but what people will really ... what they're really concerned about is, "Are you going to take the patients you saw at my practice and go and see them somewhere else?"

Donna Obstfeld: Yeah.

APM: I think that's something that has happened. I know it's happened in a couple of cases [inaudible 00:06:52]-

Donna Obstfeld: So you can put restrictive covenants in which say that you can't poach staff, and you can't poach clients.

APM: It's a tough one, that though.

Donna Obstfeld: But it's really hard to enforce. Now I have seen, and I've had this debate with a couple of people, and in some cases we put them into our contracts, but it hasn't actually been fully tested in an employment tribunal, or I hope it never is, but what we say is, "You can't do these things, so you can't take staff, and you can't take clients, but if you do, this is the financial penalty for doing so, and we will raise an invoice for it."

APM: Yeah, which is what we do in our clinic.

Donna Obstfeld: Then what it becomes is a ... it doesn't become a breach of contract, it becomes a financial transaction, and you can go through debt collection, because in effect, you've got a contract that says they're not going to do this, you can see that they've done it, and you can then bring a claim over non-payment of an invoice.

There would still be huge hoops to jump through, because you would have to prove that it was the osteopath, for example, who has poached the client, as opposed to the client who's been on Facebook, seen that the osteopath has opened up somewhere else, and decided that they want to go five miles down the road, or two miles down the road to see that person by free choice. That's where you're always going to have that argument.

APM: But of course, the other way of looking at this is that it's not a penalty. We're not saying, "I'm going to penalize you if you take patients," you say, "Well, if you bought my practice I would charge you good will for that. If you want to take these patients, because you know them, they love you, and all the rest, that's fine, but there's a good will involved in this."

Donna Obstfeld: Yes.

APM: And actually, the sums don't need to be great. When you consider the long-term value of a client or a patient, actually, it's not unreasonable to say, "Well, a few hundred quid per person that you take from my practice," and then we have a nice amicable relationship and we can [inaudible 00:08:54]-

Donna Obstfeld: It can't be seen as a penalty, because that isn't legal, so it has to be seen on commercial measures. The way in which we look at it when we put it in this ... against poaching staff is, "Well, what would a recruitment agency charge? We're just going to charge you the same sort of fee as a recruitment agency would charge if you were to take staff from our business."

APM: Somebody else has just sent in an observation about this, so it was kind of what we were talking about, because they said, "I'm a principal, and my last associate set up down the road from me. I don't want to be an ass about the situation," says this person, "but equally I helped him build relationships with his patients and resent what he's done. Is there anything I can do about it?"

Donna Obstfeld: Not really, no. I've also spoken with a number of chiropractors who have had exactly the same situation within four miles, I think it probably is, and the original principal had done all the training, done all the supervision, had provided the clients, and then he'd gone and set off up the road and taken a whole bunch of clients with, and they're really ... unless you're about to get legal, and unless you're about to try and legally enforce through injunctions what's written in your contract of employment, to some extent, the contract of employment isn't worth the paper it's written on, because it's there as a deterrent, and unless you're willing to go to court and have it enforced, which you can do, then it's only a deterrent. That's the reality of the situation.

APM: Interestingly though, if I have that financial clause in the contracts at my clinic, and so if I ... actually, we have a discussion when associates leave us and they say, "Look, this patient wants to follow me," well actually, we say, "Works, that's fair enough. You've talked to us about it, and we've agreed, and it says in the contract, 'Unless prior agreement with ...'"

Donna Obstfeld: Yes.

APM: If someone were to deliberately poach patients, and I've got two examples of people who have worked as an associate, they have implied, in fact, they've stated that they wanted to buy the practice, because they knew the principal wanted to move on, and they have then under the counter, they

have approached the patients, set up down the road from the principals. They don't have to pay the good will, they just take the clients with them.

I mean, you can think that there are probably GDPR implications in this, if you're taking that patient's data from a database, because you don't own the data. Especially if you're employed, you don't own the data. If there is that financial arrangement in there, and I'm not going to use penalty, because we mustn't use penalty, then there's that financial obligation in the contract that if you take the patients, you're going to pay me X hundred pounds per patient.

I then claim to our professional counsel, to our statutory body, "This person owes me X thousand pounds." Now, that should become significantly more worrying for the person who's pinched the patients, because they're not allowed to do that. They're not allowed to operate their business in an improper manner, and it hasn't at this stage gone through a court, but they've got six invoices owed to me, and X thousand pounds, and they are paying them. I think that the professional bodies would take that quite seriously.

Donna Obstfeld: That's interesting. I haven't ever thought about it from that perspective, actually. The perspective I thought about is that potentially you've got recourse through the small claims court for unpaid invoices, but you're right. If you've got professional standards which say that actually, "This is your code of conduct and you must comply with that," then that may be even stronger ... I mean, it shouldn't-

APM: It's a disincentive to nick patients, isn't it? Yeah.

Donna Obstfeld: Absolutely. As long as it's enforceable, and as long as the professional body is prepared to get involved and be an arbiter in that process. That's of course the other route that you could end up with, is actually having to go down some kind of arbitrational mediation between the original business owner and the associate that's pulled away.

APM: Of course it only works if the contract or the agreement was between the associate and an osteopath or a chiropractor. If it's with a practice manager, who is neither of those things, you can't take the practice manager to a professional body, because they don't have to adhere to those standards.

Similarly, it was one of the questions I was going to ask you about, the contracts or the agreements with our staff. Should those agreements be between the business and the associate, or should they be between the principal and the associate? Does it matter, is there a difference?

Donna Obstfeld: It will matter depending on the legal status of the business. If it is a limited company, for example, then it is far better for it to be through the limited company, for all sorts of reasons, and all sorts of protections of that principal. It's the limited company that's contracting with the associate, rather than a personal relationship. I would always say make it through the limited company, unless there's a very good reason not to.

APM: In which case my cunning ways about ... well, I suppose you can still take the associates to court, because they are outside the bounds of their own professional body if they don't pay your invoices, or whatever else. It still works.

Donna Obstfeld: But it's the business that issues invoices, rather than you as an individual, and therefore it's the business that has the professional indemnity insurance, or has the Directors and Officers Insurance, or whatever it is. If you are a limited company, I would keep it through the limited company.

APM: As also, you mentioned invoices, and we both mentioned invoices earlier, a really good point. I had this discussion earlier on, and completely confused myself. If you have a contract with a self-employed associate, and we've gone through enough steps to reassure ourselves that they fit the mold of the self-employed, it's actually important in that contract that it says that they are invoicing your practice, not the practice is invoicing them. Because like a painter and decorator, you don't give invoices to the painter or the decorator. It's slightly different, because in the practice, we might have taken all their fees until the end of the month.

Donna Obstfeld: Right, so there are a couple of things that you need to look at. If you are renting out the room, or renting out equipment, or renting out a uniform, then you should be sending them an invoice for that rent, because it's money that you are claiming from them. If they are then sending you an invoice for 20 patients seen in this month, and 30 patients seen in that month, then they should be sending you an invoice for the patients that they've seen at the agreed rates.

In effect, you want to show that there are proper business transactions taking place between one and the other, and that also means that if for example in July, somebody does a full month, and it's three days a week, you're going to potentially invoice them for 15 days room hire, and in August if they take two weeks off, then potentially you're only going to invoice them for nine days room hire.

Again, that's what potentially an employment tribunal would look at to say, "Well actually, this is a proper contractual arrangement, it's not a way of getting around employment status." If you were every single month saying, "Regardless of what happens, we're going to charge you a thousand pounds, and you have to offset that a thousand pounds from the invoice that you sent us," it becomes really difficult to be able to prove that there's been fluctuations, whereas if you're invoicing for different amounts every month, and they're invoicing for different amounts every month, that gives you much better protection.

APM: Right, so just to clarify that, they should be invoicing for the full amount of the fees on all their patients, and we should then separately invoice them for the rental of the room and everything else, which comes to whatever we used to call a commission, or whatever we should call it a commission. That way that sounds like pretty solid evidence that they are self-employed to me, much better than do you wear a logo coat or not.

Okay, that's quite interesting. It's a bit early to say thank you, because we're not finished quite yet, but I've been asked to thank you, because our APM baby, who belongs to Robin, has slept all the way through the show. [crosstalk 00:17:19].

Donna Obstfeld: Aww, hopefully I'm not that boring then.

APM: Well, I'm not sure you could interest a baby we talk about HR, could you? We have some more stuff here. On the subject of taking patients with you as we currently discussed, principals still face the issue that a patient could simply decide to follow the health professional as their relationship has developed. How can you enforce any financial agreement, either legally or with a regulatory body association? Well, I guess ...

Donna Obstfeld: Okay, so one of the things I'm going to say here, and I'm going to take the example actually from a gym that I worked with. The owner of the gym came to me and he said to me, "I need new contracts of employment that prevent our personal trainers taking away clients." I was like, "Okay." He got very, very emotional about this, and I was like, "Okay, let's talk about your business." This is again where I go back to my business hat, and a little bit of my business coaching.

It's like, "Why is this such an issue for you? Why have you so ..." He said, "Well, it keeps happening." I said, "Okay, well tell me how it's happening." What emerged is that the people who were training were phoning the personal trainer to book in their sessions with the personal trainer. If the personal trainer was on holiday, the person didn't come in and train, so they weren't training with anybody else.

The person being trained had the personal mobile number of the trainer, and therefore there was no relationship between the person coming into be trained and the gym. Therefore, what the gym owner was trying to do was to try and fix an operational issue with a piece of paper, AKA, a contract of employment, and that was never going to work. What I would say is that it's actually really, really important that the business owner, the principal, is the one that holds the relationship with the clients.

APM: Is it okay to write in the contract, "You may not have any personal contact with a patient outside the business-"

Donna Obstfeld: Yes.

APM: ... so they can't give them your mobile phone number and things like that?

Donna Obstfeld: Again, depending on how that relationship ... in an ideal world, the associate is bringing in their own clients and seeing their own clients in your practice, and in which case, then it's fine for the client, the patient, to have the associate's mobile details, because they're their client.

However, if they're seeing your clients and your patients, then actually, they shouldn't be handing out their personal mobile numbers. They shouldn't be

using personal email addresses. All bookings have to be made through the receptionist. If the associate isn't there, somebody else will see them, that they're getting your newsletters, they're getting your communication, and they just happen to come in and see Joe Blogs.

APM: An important part of healthcare is that you try to continue that health pathway with the same professional.

Donna Obstfeld: And it might be that you hold some kind of once a month education evening and invite all your patients there. There are things you can do as a principal to build and maintain the relationship with your patients, so that you control that relationship, rather than the person actually hands on, rather than the associate, so that if the associate does go on, you've still got that relationship.

APM: A couple of quick questions. What stops an associate from suddenly deciding that they're employed, if it suits them financially or for some other mischievous reason?

Donna Obstfeld: That's exactly what happens with Pimlico Plumbers, so Gary Smith had been more than happy for five years, or actually three years. He'd taken home over 500,000 pounds over three years, I think are the figures that were quoted, and had been completely happy with the relationship until he got sick, until he had a heart attack and was no longer able to work, at which point he then claimed sick pay, at which point he then claimed that he'd been an employee, and that he should have been entitled to holiday and all the other benefits over the last few years.

APM: This is the shortcoming of the legal system-

Donna Obstfeld: It is.

APM: ... because I mean, a strong argument to me would be, "Well, if you were happy with it for the five years, then that's your status. You should have complained earlier, because the contract's been there for five years," although their contract was full of manuscript changes and all sorts, so he wasn't as robust as a proper ... a properly put out one.

Donna Obstfeld: There is nothing stopping somebody turning around and challenging their employment status, and that's where I'm saying that actually, as a business owner, and as an individual delivering a service, you don't really get to choose what your employment status is. If you look like a duck, you waddle like a duck, and you quack like a duck, you can't choose to be called a goose. Your employer can't choose to call you a hen. You are an employee, you are a duck.

APM: His Worthiness, Lord Chancellor whatever the hell the head of the Supreme Court inquiry was, Lord somebody or other, he actually admitted that in law, it's a great shame, but many words can mean different things, and often different words can mean the same thing. It's not quite as duck-like as we might like it to be in that sense. We have to do all these things-

Donna Obstfeld: It's the bit that I call gray mush. It sits between the black and the white.

APM: Another question, is it the same rules for self-employed receptionists, that they have to work elsewhere, which was the case when they started, but then they chose not to, and now only work three days a week as a receptionist? Are they then considered part-time employees?

Donna Obstfeld: Yes. They should be part-time employees.

APM: And there's no way of getting out from that? If they only work for you and you do it three days a week, even though you said you can go and work elsewhere, that they still can be called self-employed?

Donna Obstfeld: You know, it's only a problem if you get caught-

APM: Or if someone complains.

Donna Obstfeld: ... or until the relationship goes sour.

APM: Yeah, exactly, yeah.

Donna Obstfeld: At the end of the day, as long as you understand the risks that you're taking as a business owner, and the risks that you're exposing your business to-

APM: Well, I guess [inaudible 00:23:26] is HMRC will come chasing after them and say, "Well, are you doing ..." But actually, if they're self-employed and paying tax, and we're doing what we required as businesses to pay tax, they don't really care, right?

Donna Obstfeld: Yeah, it can be really annoying and stuff that they will. I think that we're going to see HMRC picking off industries where they know that this is happening.

APM: Which they've done in the past.

Donna Obstfeld: I think that they are going to pull off all the plumbers because of the Pimlico Plumbers case. I think they're going to look at increasing numbers of taxi companies, and minicab companies, whether it's Uber, whether it's whoever, because so many of these drivers are self-employed. I used to work in the minicab industry. Every single one of our drivers was self-employed.

Whether it's hairdressers, because that's another one where people rent a chair, but actually they'll take the clients that come in off the street. They're not necessarily bringing their own clients with them, so I think that there's an issue potentially there. Podiatry, physios, chiropractors, plumbers, electricians. Anybody who's working what they call the gig economy.

APM: But it's not all bad news, is it? Because actually, we do a little work example there which could probably work for an employed person. I suspect however, that where people will be worried is that a lot of osteopaths and

chiropractors are relatively young, and that whole business of maternity, pregnancy leave, shared family ... whatever it was called.

Donna Obstfeld: Shared parental leave.

APM: Shared parental leave, could be a real issue for a small clinic. And maybe two practitioners go. Maybe the husband and wife both go at the same time for six months.

Donna Obstfeld: Another challenge I guess that you've also got, and this could happen whether somebody's employed or self-employed, is the ... I've gone blank ... the parental leave. So you've got shared parental leave, which is linked to newborn baby or newly adopted baby, but you've also got parental leave, where parents with children up to the age of 18 have 13 weeks that they can take at any point during the first 18 years of the child's life, up to four weeks a year.

APM: For each child.

Donna Obstfeld: For each child. An employee has a right to ask, the employer does not have to grant it, but they have to have a business reason why it wouldn't work.

APM: Right.

Donna Obstfeld: Again, if they're an employee, you have more control and you don't have to grant it to them when they want it, you can agree that you'll grant it at another time, whereas as an associate, you can just tell them, "Well actually, I'm taking the whole of the summer off." So again, it's about being able to control who's delivering in the workplace.

APM: I've heard one long question sent in. I'm going to do this one, because we had a break in the middle, so we're running over a little bit of time. "Do the associates pay the same fees for their own patients as for practice patients? I thought the point was for the associate to grow their book and strive to become a senior associate at a more favorable rate, because the practice is now able to take on a junior associate. Does that make sense?" They're going to pull off the plumbers, lucky plumbers. Sorry, I ... sorry. Let's ignore that last point. Did you take [inaudible 00:26:48] from that point? The idea is that they're growing their practice by-

Donna Obstfeld: I think what they're saying is that if they bring ... if an associate is genuinely an associate, and let's work on that basis rather than confusing it with somebody who should or shouldn't be employed, if they are genuinely an associate and they are seeing patients delivered to them by the practice, do they charge a different rate to if they are seeing-

APM: Their own patients.

Donna Obstfeld: ... their own patients in the practice? That's going to come down to the numbers. That's going to come down to the numbers. I mean, it makes-

APM: But it's legal to do that, if you could set the different rates?

Donna Obstfeld: As long as the agreement, the associate agreement stipulates that, and that you've both signed to that. You can agree to anything, as long as both sides agree and that it's fair.

APM: Yeah, okay. All right, this is the last question, I'm not taking anymore, but this is a very simple answer, I hope. "One of my associates sends me sequentially numbered invoices, even though I know she works at two other clinics. I've raised it, but she says it's okay and checked with her accountant. Can I force her to change it?" You can't really, can you?

Donna Obstfeld: You can't force her to change it. What you can do is ask to see the accountant's advice, because what they might do, there's something called contract ... I've got it in my accounting software, that for client A, you can send them sequential invoices for client A, and then you send client B sequential invoices, so there may be reasons that you can do it, but if you look at their accounting system, you can see that there are other invoices. It would just be worth checking for the advice.

APM: So there are two observations now. Thank you, this has been really helpful, Donna. Bloody hell, and it's made life terrible.

Donna Obstfeld: I like complicating things.

APM: This is more than likely this is, "Wow, I've worked with and trained seven people over the years. All word is good enough contracts." I mean, listen to this. "I will not be employing anyone else ever again." Now that leaves me on a quote. You scared the shit out of everybody here, saying you know-

Donna Obstfeld: Sorry.

APM: What can you do to help us, and what are you going to do that's special for my members? I haven't even warned you about this, I didn't tell you this before we came on the air.

Donna Obstfeld: Okay, so what I have done is I've put a-

APM: We've got a link on the website.

Donna Obstfeld: Yeah, a landing page on that link where you can literally just put your name, and email address, and telephone number. I've put a bonus document that we'll send you an email where you can download a document called Seven Secrets to Recruiting and Retaining Superstars, that's the short version, but linchpins within the organization.

What we'll also do, is we will offer you a free 20 minute consultation, so one of my team will contact you, book you in at an appropriate time for me to have a conversation, or one of my seniors to have a conversation, and there's a free 20 minute conversation. That might be, "Have I got a risk?" Or,

"I don't think I've got a risk," and we can just talk through if there's anything that needs to happen.

APM: I think I'm taking away from this that actually, it's all very well as having the contracts that we've got, assuming the status that we want to assume with our associates and with our principals until the relationships break down. Then we run the risk of something going wrong ... and building up something where we can hope to minimize the extent to which a practitioner can steal practice patients, practice patients that have been built up through the advertising and efforts of the principal or of others in the practice through careful relationship building, which is why you're not just an HR person-

Donna Obstfeld: Correct.

APM: ... it is why you're doing ... your a businesswoman who does HR because you're talking about how you established that relationship, which is really, really important. I think 350 quid for a contract might sound like a lot of money, but actually, it's probably a good investment, given that you can relate it to multiple employees or associates.

Donna Obstfeld: Yes.

APM: And presumably as part of that consultation you might be able to advise people on whether to take on associates or make them employed.

Donna Obstfeld: Yeah, so that's the contract employment. If somebody genuinely needs an associate agreement, that we'll do for 150 pounds, because it's a different type of document. It's about four pages rather than 18.

APM: Yes, and it's very definitely not a contract [crosstalk 00:30:57] contract.
Yeah.

Donna Obstfeld: It's not a contract, it's an associate agreement.

APM: I've posted, as you know, the contract, the agreement that we use in my own clinic for associates on the website, which you're more than welcome to have a look at. Apply what Donna has said to that contract, but bear in mind what she has said, that downloading stuff from other people without expert advice could stand you into deep water. We're not lawyers, I'm not offering that as a document which will stand up in court, it's just what we have felt has worked up until now, and there's a few changes I will be making to it over the next few years.

Donna Obstfeld: Can I just add one more thing?

APM: Please.

Donna Obstfeld: The law changes, and best practice changes over time, so even where you've got something which may be five years or 10 years ago was fine, the law has changed, and it's always worth just keeping those contracts and those

documents under review to make sure that they are still valid, that the provisions that you've got in them are still relevant.

APM: Which actually, you can download. If you're an osteopath and you're a member of the Institute of Osteopathy, you can download a contract from the Institute of Osteopathy site from the Practice Development page, but when you do it, you will see that it refers to the Data Protection Act of 1998. Of course there's a clause that says, "And all its successor acts," and so on, so just be aware that the employment law does change, and therefore some of the terms in there may be [crosstalk 00:32:13].

Donna Obstfeld: Yeah, and actually with GDPR, whereas with Data Protection when you issued a contract of employment, you could get the employee to sign to say that they would agree with the Data Protection Act and all its subsequent policies. With GDPR, you can't do that within the contract of employment. That has to be done separately.

APM: Separately.

Donna Obstfeld: Yeah.

APM: That's useful information, I didn't know that. Right, we'll make sure that that's publicized to all our GDPR contacts as well. We'll be [inaudible 00:32:37] that update. So anyway, you've learned a lot of stuff today. I hope it hasn't scared you too much, I hope you found it really, really useful. I know I found it a little bit scary, but also extremely useful for my own business, both here at APM and in my own clinic. I'm really grateful to you, Donna, for coming in and sharing your time with us like this.

Donna Obstfeld: Thank you.

APM: And for the offer that you've made to help people out to our own members.