

# HR in the East Midlands

February 2017



What does “reasonable” mean? Darren Newman’s article looks at this question in the context of reasonable adjustments for disabled employees. Darren can answer specific questions you may be facing currently at our Employment Law Update next month – a few places are still available. In response to the need you identified of developing greater commercial awareness within the sector across the region, we are providing a further opportunity to participate in a popular regional programme “Making It Our Business - see our events page for more information.

## Flexing your Budget

If you would like to maximise your HR or Training budgets, we are offering again the opportunity of purchasing EMC vouchers within this financial year which you can spend with us during 2017/18.

The scheme helps councils boost funds for future projects without having to specify now what you wish to spend it on. A voucher purchased in this financial year can be redeemed against any EMC support provided over the next 12 months. It is a great way to maximise this year’s remaining budget. Contact Lisa Bushell for more information.

## Survey on Size of HR Teams

Results of our survey on the size of HR teams (including L&D, excluding payroll) are below, based on the ratio of HR: other council employees (headcount):-

	All	Districts & Boroughs
Highest	1:127	1:125
Lowest	1:29	1:29
Average	1:180	1:75
Upper Quartile	1:95	1:87

## Projects with Local Authorities

This month, we have provided individual authorities with support on a range of projects and issues, including-

- Restructuring support
- Disciplinary investigations
- Coaching

If you would like to know how EMC could support an area of work for you, then please contact Sam Maher at [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk) or Lisa Butterfill at [lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk).



## Events in the East Midlands

Thankfully January and February are now almost behind us and we can start to think ahead to warmer days and lighter nights. Similarly for development the spring offers an exciting growth of opportunities available through EMC, from one-day skills workshops to accredited programmes.

## Coaching Demand

In recent months we have noticed an increase in the level of demand and interest in coaching, something we at EMC are passionate about.

**Developing Your Coaching Culture** - We have received an increase in interest in the East Midlands Coaching Network, with a new local authority joining in April 2017. We are keen to spread the word about the Coaching network and are offering authorities an opportunity to attend a workshop on 20 April to learn more about the network, as well as hear from local authorities about what they are doing to support the development of a coaching culture. Details [here](#).

**East Midlands Coaching Network** - Demand in coaching through the East Midlands Coaching Network has increased, facilitated by our online matching site.

**ILM 5 Coaching and Mentoring** - Demand for development has increased too, EMC are now offering two cohort of ILM 5 Coaching and Mentoring to be delivered in coming weeks. Working collaboratively we have been able to respond to demand for coaching training in the north of our region with a locally hosted programme. Details [here](#).

## Commercial Awareness

Back by popular demand, EMC are offering the opportunity to take part in the 'Making it Our Business Programme' for operational managers. Already over 24 people take part in this programme across the region; modules include: Trading and Marketing in Public Services, Negotiation Skills, Practical Project Management, How to Write a Commercial Business Case, Customer Relations and Presenting Your Business Case.

In addition, delegates will take part in two half-day Action Learning sets. These sessions will provide delegates with dedicated time to work on and explore their commercialism project and provide a supportive environment to achieve progress on projects and explore the learning on the way. More [here](#).

## East Midlands LA Challenge Returns, 16 November 2017

On 16 November 2017 East Midlands Councils will once again bring the Local Authority Challenge to the East Midlands. Plans for the 2017 Challenge are well underway, with new scenarios and exciting twists being developed. At EMC we are always keen to embrace change and look to ways to improve. We have listened to delegates from last year and are looking at ways to increase the engagement of teams and to improve the flow from competition to the evening awards ceremony.

### Supporting Team Developing using MBTI

This year EMC is offering LA Challenge teams the opportunity to prepare for the challenge using Myers Briggs (MBTI). EMC are offering to facilitate the online questionnaire for team members and provide a development workshop where team members can explore their MBTI profile and consider what this means for them and how they interact with others.

This support is designed to support the 'team development' and assist individuals in their understanding of themselves and others. For more information about this additional support and the associated cost visit [here](#).

### LA Challenge Prize Draw

This year we are introducing a Prize Draw. Competition is a key part of the LA Challenge but certainly not the be all and end all of the day, we are keen to support the continuation of team development beyond the event and hope that the Prize Draw offers an exciting twist! Items in the draw so far;

- Team Development Day Provided by East Midlands Council
- Individual Coaching
- Personal Myers Briggs Personality Profile and Feedback

For more on the EM LA Challenge visit [here](#).

### Contact Details

For further information about any of our work please contact the Local Government Services Team. Either call 01664 502 620 or email:-

[Sam.Maher@emcouncils.gov.uk](mailto:Sam.Maher@emcouncils.gov.uk),  
[Lisa.Butterfill@emcouncils.gov.uk](mailto:Lisa.Butterfill@emcouncils.gov.uk),  
[Sarah.Short@emcouncils.gov.uk](mailto:Sarah.Short@emcouncils.gov.uk),  
[Kirsty.Lowe@emcouncils.gov.uk](mailto:Kirsty.Lowe@emcouncils.gov.uk)



## ‘In Deep with Darren’

Darren Newman’s in-depth analysis of a topical HR issue and its implications for local authorities

### What does “Reasonable” Mean when it comes to Adjustments for Disabled Employees?

One of the hardest questions to answer in employment law is how far an employer needs to go in making reasonable adjustments for a disabled employee. The main difficulty lies in the word ‘reasonable’ – just what does that mean? In other employment law contexts the concept of reasonableness works to the employer’s advantage. In unfair dismissal for example, the question is whether the employer has behaved reasonably in dismissing the employee. This gives the employer a great deal of latitude because there is a ‘range of reasonable responses’ open to employers and as long as dismissal is somewhere within that range, then the employer is entitled to dismiss.

When it comes to reasonable adjustments, however, the question is not whether the employer has behaved reasonably. If an employer decides that a proposed adjustment is too expensive or too difficult, the question is not whether that is a reasonable choice for the employer to make. Instead the Tribunal has to decide whether, viewed objectively, the adjustment was a reasonable one. In other words, was it reasonable to expect the employer to make the adjustment? If it decides that it was, then the employer’s refusal to make it will be in breach of the duty.

This was really brought home to me recently by the case of *The Home Office v Kuranchie*. Ms Kuranchie works in a quite senior position in the Home Office and has both dyslexia and dyspraxia. Dyspraxia is also known as ‘developmental coordination disorder’ and affects an individual’s ability to carry out a range of tasks requiring coordination - including typing. These two conditions affected her work in a variety of ways and one way in which the employer sought to accommodate them was through the provision of special equipment. At her request the employer also allowed her to work a compressed week so that she

worked 36 hours over four days in a week rather than five.

She nevertheless succeeded in a claim for failing to make reasonable adjustments because she was given the same workload as her non-disabled colleagues. The Tribunal found that the requirement to match the workload of her colleagues put Ms Kuranchie at a substantial disadvantage, because her disability meant that she had to work additional hours to get all of that work done. While substantial adjustments had been made, they had not addressed that particular disadvantage and so there was still more to do.

I think the difficulty that I have with this case is the whole thrust of the disability provisions in the Equality Act is to remove the barriers placed in the way of disabled people which prevent them from succeeding in the workplace. However that suggests that once the appropriate adjustments have been made and the playing field leveled, then the result is a successful employee. An adjustment which involves simply lowering the standard of work expected by the employer seems to go against this approach. Is an employer really obliged to tolerate a lower level of performance from disabled employees?

There is no question that a reasonable adjustment will involve cost. There may be the additional financial cost of specialist equipment or of alterations made to a building. But this case envisages a different kind of cost – the cost to an employer of ‘putting up with’ a level of work performance that is below the standard normally expected. Of course there are many jobs where the quality of work done is much more important than the quantity. Employees also vary in the contribution they make. A weakness in one area may be more than made up for by a particular strength in another. Acknowledging that a disability may require an adjustment to workload may well allow an employee to continue to make an outstanding contribution in other areas. But that won’t always be the case. Sometimes the fact is that if one person does less, that means that others will need to do more.

We don’t know the full facts of the Kuranchie case. We don’t know how much of an adjustment to the workload was needed and what effect that would have on her



overall contribution. Indeed it seems that the employer accepted that a reduction in workload was possible – but argued that it had done enough already. The problem was that they had not specifically addressed the disadvantage caused by the employee’s overall workload. The fact that they had worked hard to address other disadvantages did not, in the end, help them.

### Implications for Local Authorities

This case does not mean that employers simply have to put up with lower output from employees whatever the consequences for the organization – or other employees. But it does emphasise that there is no area that is simply ‘out of bounds’ when considering what adjustment to make. Employers need to take a problem-solving approach and that means a focus on identifying and then removing the disadvantages that a disabled employee suffers as a result of the way in which the work or working environment is organised. It is not enough to sit back and wait for the employee to request a particular adjustment. If there is a reasonable adjustment to be made then the employer must make it – even if it has never occurred to the employee to ask for it.

Once the measures that could remove the disadvantage have been identified, the employer has to decide whether or not it is prepared to make them. Legal advice is of limited use here. The employer simply has to make a decision and be prepared to defend it if necessary. If the employer is ruling out an option – like a reduction on workload – then any Tribunal will want to know why. To persuade the Tribunal that the adjustment was not a reasonable one to have to make, the employer will need to show what the impact of the adjustment would be on the organization or on other employees - and persuade the tribunal that such an impact would be disproportionate. An employer that has taken a proactive approach to considering what adjustments to make, and made a genuine attempt to quantify their impact, is much more likely to impress a Tribunal. Perhaps just as importantly, the decision emerging from such a process is much more likely to be a good one.

More information can be found on Twitter:  
[@daznewman](#)

## National Developments

### Increases to Statutory Redundancy Pay and Unfair Dismissal Compensation

From 6 April 2017 the maximum amount of weekly pay for the purposes of calculating statutory redundancy pay will increase by £10 to £489. From this date, the maximum compensatory award for unfair dismissal will also increase from £78,962 to £80,541

### New Trade Union Balloting Rules from 1 March 2017

[Regulations](#) effective from 1<sup>st</sup> March 2017 will introduce the new rules on strike votes, picketing and union subscriptions arising from the Trade Union Act 2016.

A key provision is the requirement of a 50% turnout for a successful vote for industrial action. In certain important public services, such as emergency medical services, certain teaching services and passenger rail services, 40% of members entitled to vote must vote in favour of striking. The “important services” relevant for local government include:-

- **Education:** Teaching services at non-fee-paying schools and academies for students aged 16-19 ([Important Public Services \(Education\) Regulations 2017](#)).
- **Fire:** Firefighting services ([Important Public Services \(Fire\) Regulations 2017](#)).

Additional rules for information that must be included on voting papers, restrictions on when strikes can take place following a successful vote and a requirement that unions appoint a picketing supervisor will also come into effect on 1 March.

### Exit Pay Cap & Recovery

There are no further developments to report regarding the proposed legislation regarding recovery and capping of exit pay within the public sector. As soon as there is any news or information regarding an implementation date, we will make sure it is passed on to authorities.



Last week DfE published the following documents as part of its work seeking to remove unnecessary teacher workload:-

- The report of the findings of the 2016 **Teacher Workload Survey** (+ research brief + technical report)
- DfE **Action Plan** – provides a full update of work and outlines future commitments to help reduce teacher workload, including an offer of targeted support for schools
- A downloadable **poster and pamphlet** - endorsed by the teaching unions and Ofsted, these summarise the principles and recommendations of the independent review groups on teacher workload
- A re-issue of the DfE **Protocol** which commits the DfE to giving schools a minimum lead-in time for significant changes to policy in accountability, curriculum and qualifications

DfE also published the following associated documents:

- **Working Longer Review Interim report**
- **Flexible Working Guidance**
- **School Staffing Advice**

