



# HR in the East Midlands

January 2016

In our first bulletin for 2016, we summarise the main developments in HR nationally and set out some of the learning and development opportunities available within the region. In this month's employment law article, Darren Newman depth-charges the issue of **consistency** when dealing with disciplinary cases. One case covered involves violent conduct amongst zookeepers. (Thankfully, no meerkats, monkeys or llamas were injured in the process.) Darren will be back by popular demand to deliver our employment law update seminar on 8<sup>th</sup> March (there are just a few days left to receive our **Early Bird Offer** - places booked by the end of January are discounted to just £99+vat for EMC members).



**information system, Xpert HR.** If you want to make sure your organisation is benefiting from this deal, then please contact Lisa Butterfill at [lisa.butterfill@emcouncils.gov.uk](mailto:lisa.butterfill@emcouncils.gov.uk)

## What's the latest with....?

We receive a number of queries from our HR colleagues across the region asking us for any updates on national developments. See our update article at the end of this month's bulletin for the latest news on the main issues affecting our sector.

## Projects with Local Authorities

We have been working with local authorities on a range of activities and issues recently. These have included:-

- Designing and delivering assessment centres
- Top team Development
- Facilitation Skills Workshop
- Personal Development Planning for Councillors

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).

## XpertHR Regional Deal

Once again, we have negotiated a significant discount for our councils and member organisations to subscribe to the on-line HR



## Learning & Development in the Region

### East Midlands Coaching Activity

This month EMC colleagues have embarked on a programme of Webinars to support the development of Coaching across the East Midlands. The January Webinar focused on supporting Coaching Champions within authorities to understand how the East Midlands Coaching Network and the Mye-Coach matching website can support their role in promoting coaching.

Future planned Webinars will support both Coaches and Coaches understand the benefits of the Mye-Coach matching site and how to maximize the benefits on offer. For details of how to find out more about these Webinars contact

[Kirsty.Lowe@emcouncils.gov.uk](mailto:Kirsty.Lowe@emcouncils.gov.uk)

### Events in the East Midlands ASPIRE - Strategic HR & OD Business Partner Programme

The East Midlands Aspire programme will kick off in February with the initial 360 Webinar, **the deadline for booking onto programme is 5 February.**

#### Report Topics from the 3<sup>rd</sup> Cohort

Central to the Aspire programme is the Reports that delegates complete. Details are included below of the subject areas of cohort 3.

Digital Strategies will become vital for both residents and employee interface not only for channel shift but doing as much as possible on line. What has been effect on those councils that have a digital strategy in place?

With devolution being the current buzz word, how would local government integrate with strategic partners both public and private? Is the time now ripe for "super councils"?

How do we encourage and develop more commercially based skills within our workforce with a focus on unfamiliar territories such as income generation and traded services?

Focusing on such research as the '21st Century Public Servant', what will future public servants be made of? How can we encourage the culture and behavioural changes required and the development of associated skills?

**For full details of this exciting opportunity and the new dates, please click on the link below.**

<http://bit.ly/1Mihywk>

### Employment Law Update, 8 March 2016

Darren Newman will be returning to the region to deliver our annual Employment Law Update in Melton Mowbray. The focus is on key developments in employment law and their implications for local authorities. Places booked by 31<sup>st</sup> January are discounted to £99 plus VAT. For details click on:-

[Employment Law Update Event Info](#)

### Contact Details

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

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# ‘In Deep with Darren’

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

## Consistency of Treatment

When employment law breaks through into the national press you can usually be sure that the emphasis will be on the sensational aspects of the story rather than the underlying legal principles. You may have read, for example of the case of *Westlake v ZSL London Zoo*<sup>1</sup>. That involved an employee who was dismissed following a fight at the employer’s Christmas party. The Tribunal found that the dismissal was unfair because the employer only chose to dismiss one of the participants and there were no grounds to find that one was more to blame than the other. There is nothing particularly dramatic or interesting about that but since the case involved a meerkat handler fighting a monkey keeper, over a colleague who worked with llamas that gave the headline writers lots of good material to play with.

In that case the Tribunal awarded no compensation on the basis that had the employer behaved reasonably it would simply have dismissed both employees and so the claimant had not really suffered any loss. The employer is therefore unlikely to appeal – although a finding of unfair dismissal based purely on inconsistent treatment is far from straightforward. At about the same time that that case was being heard in the Tribunal, the EAT was considering the issue of consistency of treatment in another case involving an incident at an office party.

In *MBNA Ltd v Jones*<sup>2</sup> the employer organised a night at the races to celebrate its 20<sup>th</sup> anniversary. As is now common, employees were specifically reminded that as this was a work event, normal standards of conduct and behaviour would apply. However two employees – let’s call them ‘A’ and ‘B’ – had already been drinking

by the time they arrived at 7pm. As the evening progressed they began to needle each other with A kneeling B in the back of his leg and B – rather surprisingly - licking A’s face. Later in the evening B had his arms around A’s sister and A came over and kned him in the leg again. At this point B punched A.

After leaving the event B went on to a nightclub with friends. A knew where they had gone and followed them there. Standing outside the club he began to send B text messages encouraging him to come out so that he could ‘rip your [expletive deleted] head off’. In fact there was no telephone reception in the club and B did not receive the messages until the next morning. After a while, A left without carrying out his threat – which is probably just as well.

The employer launched an investigation and B was ultimately dismissed for gross misconduct. A was given a final written warning on the basis that the employer believed he was just reacting to being punched and did not intend to follow through on his threats.

The Tribunal held that the dismissal was unfair because the employer had applied a different test of provocation to A and B’s cases. They had given A a warning because he was provoked by B’s punch but failed to take into account that A had kned B (quite hard it seems) in the leg. They also doubted the employer’s conclusion that A had no intention of following through on his threats.

The EAT overturned the decision holding that the dismissal of B was fair. The cases of A and B were not sufficiently similar for the lenient treatment of A to make B’s dismissal unfair. B had assaulted A while at a work event; A had merely threatened to assault B later in the evening after both of them had left – and had not followed through on the threat. The fundamental job of the tribunal was to assess whether the dismissal of B was reasonable rather than whether someone who was given a warning should also have been dismissed. I suspect that in the London Zoo case the EAT would also have taken the view that the Tribunal should not have interfered in the way in which the employer

<sup>1</sup> Case No: 2201118/2015

<sup>2</sup> UKEAT/0120/15/MC



distinguished between the conduct of the two employees involved.

Consistency is of course important in any concept of fairness. But the reality is that two cases are rarely so very similar that a direct comparison is possible. The employer is entitled – in fact, obliged – to take all of the circumstances of the case into account, including both aggravating and mitigating factors. As long as its approach is rational and it explains its reasons then it should be hard for a Tribunal to interfere.

There is an important way, however in which consistency of treatment does come into play. In deciding whether a dismissal is fair or unfair the tribunal will consider whether the employee should have realised that the conduct in question could lead to dismissal. That is straightforward in clear cases of gross misconduct such as assaulting a colleague. But in cases that are not so clear cut the way in which the employer has approached similar cases in the past may be important. If employees who over-claim mileage are normally given a warning then an employee who is dismissed for doing the same thing might well claim that there was no reason to expect that the conduct would lead to that outcome.

#### Darren's Analysis and Advice for Employers....

With large employers like local authorities, it can sometimes be difficult to show a consistent approach. Different departments can have a very different working culture and a completely different set of priorities. It is important that any differences in what is considered to be a serious issue are not based on managerial whim but on a clear understanding of the needs and priorities of the business. Careful communication is needed so that employees – and managers – understand why issues might be approached differently depending on the nature and context of the work being done.

Consistency of treatment is really about consistency of approach rather than consistency of outcome. Choosing to dismiss an employee – or just giving a warning – does not set a precedent that must be then followed in all future cases as long as the employer applies the same principles to each case, taking the particular circumstances into account. Clarity about how and why a decision was taken is every bit as important as consistency. Having said that, when

the conduct consists of a drunken assault on a colleague at an office party, justifying dismissal should not be too difficult.

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

## National Developments

### Local Government Pay

Trade unions are in the process of consulting their members on the pay offer for Green Book employees. In the absence of an agreement ahead of the introduction of the National Living Wage on 1<sup>st</sup> April 2016, we recently circulated advice to authorities to increase pay for those on scp 6, 7 & 8 from 1<sup>st</sup> April to £13,891pa until such time as a pay agreement is finalised.

### Removal of the Designated Independent Person (DIP)

National negotiations are continuing in order to agree new provisions in national conditions of service, following the removal of the Designated Independent Person as a statutory protection for Heads of Paid Service, Monitoring Officers and s151 Officers. As soon as agreement has been reached, we will notify you.

### Advice on the Use of Market Supplements and Job Evaluation

Joint advice has recently been issued to provide new guidance on the use of market supplements. To access a copy of the guidance, click: [Tech Note 15 Market Supplements Jan16](#)

