

HR in the East Midlands

January 2019



2019 is an important year - marking the 100th birthday of Regional Employers' Organisations in Local Government. This milestone is providing the springboard for us to refresh and improve our services and support to you, starting with our inaugural People Conference – see below. This month's article from Darren Newman looks into the importance of the reason for dismissal and getting right the old chestnut of capability –v- conduct.

People Conference 2019: Managing & Developing People in a Changing World

On 6th February 2019, we are holding the first regional People Conference. This is a chance for HR and L&D/OD professionals to hear from national leads of organisations such as CIPD and IES and other key players in the world of HR and L&D/OD.

Chaired by Bev Smith, Chief Executive of North West Leicestershire District Council, the programme offers workshops and plenary sessions with speakers including: Ed Houghton, Head of Research, CIPD; Steve Whiddett, WHE/LGA; Dr Alison Carter, Principal Research Fellow, Institute for Employment Studies; Dr Martin Reddington, MD, MRA Ltd, Matt Gofton, Snr Employment Solutions Mgr, CIPD, Trayton Vance, CEO, Coaching Focus.

The issues covered during the day include:-

- The role of HR/L&D/OD in developing organisational culture and transformational change
- Managing people in a changing world: improving productivity and managing culture
- Moving to a Change-Ready, Change-Capable organisation
- 21st Century Public Servant: what drives performance?
- Using Coaching to develop performance and engagement
- CIPD Profession Map
- Team Coaching
- The Culture Change Journey

With over 50 delegates so far, the event's popularity has enabled us to extend our offer of 1 free place with every delegate booking. There is still time to join, learn and network with colleagues: just click [here](#) for more details and to book.

Projects with Local Authorities

During January we have provided support to councils on the following projects:-

- Disciplinary investigation
- Mediation
- Psychometric testing

To find out how EMC could support an area of work for you, then please contact Sam Maher at sam.maher@emcouncils.gov.uk or Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk



Learning & Development

With the current grey skies it is hard to think about the spring and summer months, but at EMC we have spent January planning our exciting offer of development for 2019. In this month's edition of the HR Bulletin we wanted to highlight some of the opportunities we have been busy working on for the forthcoming year.

Employment Law Update - early bird offer ends this week

EMC Employment Law, 13 March 2019

Darren Newman will deliver the 2019 EMC Employment Law update. If you book a place by close of play on 31st January 2019 the cost per delegate is just £99 + VAT for EMC members (£76 saving on each place). <http://bit.ly/EMCEmploymentLaw2019>

Wellbeing and Resilience – a Regional Priority

Coaching for Resilience, 7 March 2019

Employee wellbeing and resilience has been identified as a regional priority, and EMC's work programme over the year will be reflecting this important issue. We are therefore looking at resilience as part of our programme of support and development for coaches, and on 7th March we're holding a half day workshop for coaches that will explore the theme of resilience. The session has two specific objectives:-

- To support coaches develop their understanding of what personal resilience actually is; its core components and attributes.
- To help coaches learn about a variety of practical and evidence based techniques that they can integrate into their practise, to help their client's grow their own resilience levels.

For more information about this workshop please follow this link <http://bit.ly/2Re3OMP>

On the subject of Coaching

We're delighted to be able to announce the keynote speaker for our Annual Coaching Conference on 26th June 2019. Kim Morgan (Managing Director of Barefoot Coaching Ltd, one of the UK's leading providers of coaching and University Accredited Coach Training) will provide our keynote session on the theme of 'Coaching for Change', with her session 'No Stone Unturned'.



East Midlands LA Challenge

We're gearing up for the LA Challenge in March, we have 16 teams registered so far, there is still time to register a team (**the closing date is 7 February**).

As always the event will be non-stop, requiring teams to focus on their goals, but show versatility to respond to the challenges they face along the way. We're mixing the day up again this year, with teams playing the role of a unitary council (described as unitary plus). For more information about the Challenge visit our website: [Challenge](#)

If you are interested in getting involved with the delivery of the day, playing one of the Leaders or partners then feel free to get in touch with Kirsty Lowe:

Kirsty.Lowe@emcouncils.gov.uk

What else is coming up...

- **Writing Press Releases, 26 February** - this workshop helps delegates understand what makes news and how to increase the chance of press releases getting published or broadcast. [more info](#)
- **Writing for Results 27 March** – this workshop shows delegates how to write documents that get the results you want. [more 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.

The Importance of the Reason for Dismissal – Conduct or Capability?

We tend to think of an unfair dismissal claim as being simply a question of whether or not the employer has behaved reasonably in dismissing the employee. The employer must first of all prove the reason for dismissal – and then show that that reason falls within one of a number of specific categories – conduct, capability, redundancy, 'statutory ban' or 'some other substantial reason (SOSR)'.

In most cases this stage of the case is a formality – there is simply no dispute that the employee was made redundant, for example, or dismissed for gross misconduct. However, the category into which the dismissal falls may have important implications for how the tribunal goes on to assess fairness. Take for example the distinction between conduct and capability. An employee guilty of misconduct may be warned not to do it again or dismissed if warnings are ignored or the conduct is sufficiently serious. In a case of capability however a warning must usually be followed by a reasonable opportunity to improve performance – usually with appropriate support from the employer. Categorising an issue as one of misconduct when it should properly be treated as capability may lead the employer to take the wrong approach in deciding whether it is appropriate to dismiss.

That at any rate was the argument made by the employee in the case of **Burdis v Dorset County Council**. Mr Burdis was a Director of the Dorset Waste Partnership (DWP) – this was an entity sitting within Dorset County Council and bringing together a number of district and borough councils within the county to run their waste management services. Problems started to arise with procurement procedures in 2013 – and towards the end of 2014 a significant overspend was discovered. An investigation revealed serious weakness in financial management processes, and

press reports started to call on senior management figures to step down over the 'fiasco'.

At that time an independent report commissioned by the council described the financial management processes within the partnership as 'very poor'. A further independent report found that there was very little evidence of robust processes to manage finances within DWP. As a result, disciplinary action was taken against Mr Burdis and the disciplinary panel concluded that he had failed to initiate rigorous financial management and put in place an effective financial framework. They concluded that this amounted to serious misconduct and he was dismissed with notice.

He claimed that his dismissal was unfair. Essentially his argument was that he was being made the scapegoat for an organisational failure. It was wrong of the employer to categorise what had happened as misconduct on his part. He had not done anything deliberately wrong and if there were problems with the systems that he had put in place then that should have been dealt with as a capability rather than a conduct issue.

The Tribunal found that the dismissal was fair and the EAT agreed. Misconduct was not just a question of deliberate wrongdoing – it also encompassed behaviour that was grossly negligent or irresponsible. The employer had been entitled to place his failures into this category and act accordingly. His dismissal was therefore fair even though he was not personally guilty of wrongdoing in relation to the procurement failures or overspend that had occurred. It was enough that he was culpable in relation to the systems that he had failed to put in place to prevent such problems from occurring.

This case makes the important point that 'conduct' is not confined to deliberate wrongdoing. In relation to manual roles 'poor workmanship' has always been regarded as a conduct issue. Indeed, in the 2017 Court of Appeal decision in *Adesokan v Sainsbury's Supermarkets Ltd* it was held that a senior manager was found to have committed gross misconduct by failing to step in when a more junior manager tried to manipulate the results of an employee engagement



survey. His failure was found to be a 'dereliction of duty' justifying dismissal without notice.

Darren's Advice for Employers

It has to be said that the dismissal of Mr Burdis would not necessarily have been unfair even if the issue was one of capability rather than misconduct. While an opportunity to improve is normally essential before an employee is dismissed for poor performance, there are exceptions. There may well be circumstances in which the consequences of poor performance are so serious that an employer cannot reasonably be expected to allow the employee to continue in post in the hope that things improve.

Crucial to this case is of course the seniority of the employee involved. As the Director of the service, Mr Burdis was in a senior leadership role. As such he could be expected to be capable of putting the right systems in place to ensure that public money was properly spent and accounted for. Even if his failings had been categorised as a lack of capability rather than gross negligence, the Tribunal might well have concluded that dismissal was a reasonable outcome in the circumstances.

You could also make a good argument that the dismissal was for 'some other substantial reason'. Mr Burdis had argued that he had been made a scapegoat- but another way of looking at it is to say that where there have been serious failings in the handling of public money then it is important that senior leaders are seen to be held accountable. Holding the director of a service responsible for the effective delivery of that service might mean that it would be fair to dismiss if serious failings are uncovered – even if these cannot be attributed to the specific actions of the individual concerned. Such dismissals are not without legal risk – and each case will depend on its own particular facts – but it is entirely plausible that the Tribunal would uphold a dismissal in such circumstances.

More information can be found on Twitter:
@daznewman

Reminder Alert!



From 6th April 2019, **the right to an itemised pay statement** will extend to all workers, not just employees. Whilst most councils

will already provide this through their payslips, it is important to note the additional requirement that **where an individual's pay varies according to time worked**, the employer will have to include on the itemised pay statement **the total number of hours worked for which variable pay is received**. This can either be an aggregate figure or as separate figures for different types of work or different rates of pay. Now is a good time to liaise with payroll colleagues and identify if you need to be making amendments to the information provided in payslips to reflect these new requirements.

National Developments

Ethnicity Pay Gap Reporting

Thank you for your responses to questions relating to the Government's recent consultation on the proposal to introduce a requirement for Ethnicity Pay Gap reporting. Your responses informed a regional response to the consultation that was sent directly through to Government and to inform the LGA's response.

In brief, the regional response highlights the need to, as far as possible, mirror the approach required for gender pay reporting, ensure that data protection/privacy concerns are addressed, raises the potential costs/burdens of changing the categories currently used for data monitoring, and the importance of councils being able to publish contextual information in support of their ethnicity pay gap data. For a copy of the response, contact Sam Maher
sam.maher@emcouncils.gov.uk



Pay Spine Implementation Update

Late last year we supported a national survey on approaches to implementing the new national pay spine - thanks for all your responses. There were 129 responses from across the country and the key national findings were:-

- Excluding those on local pay, 98 councils had begun discussion with their unions while 17 had yet to do this – we would hope that in the time between the information being gathered and now that the number who had yet to begin any discussions will have reduced significantly.
- In terms of whether to assimilate and then award any increment or vice versa (including information from London's separate survey) the position was
 - Increment/assimilate 61
 - Assimilate/increment 37
 - Undecided 61
- In terms of the concern about issues arising from assimilation, there was slightly more concern about some very short grades arising than about very long grades, but in some cases councils were concerned about both. The general sense was that it was too early for any widespread pattern to emerge about how councils planned to respond to these issues, although several councils did indicate that they had decided to not use the 'non assimilation' spine points because of concern about lengthy grades.
- It was also too early for a clear pattern to emerge with regard to how councils who pay the Living Wage Foundation rate are factoring that into any discussions about their pay structures going forward – noting that the NJC minimum hourly rate in April next year will match the LWF national rate.

National Joint Guidance on Term-time Working

Last year, the national employers and unions agreed in principle to issue initial new Part 4.12 guidance on:-

- Guiding principles on calculation of pay and annual leave (including advisory model calculation)
- Calculation of redundancy pay

- Termination of employment or contractual change part way through leave year
- Payment for overtime and additional working hours
- School closure periods (including public holidays, special leave, public duties)
- Training and Career Development
- Participation in trade union activities and duties

This is subject to the unions conducting a 'light touch' consultation of relevant regional colleagues. The intention was to have the guidance published in the New Year, but the latest estimate is that it may be available in Spring. We have been assured that this will be Spring 2019!

Discussions between the employers and unions will continue on additional issues which are more complex that relate to sickness absence and pay and maternity/adoption/parental provisions before additional guidance on these matters can be agreed and published.

Apprenticeships

You can access the latest LGA Apprenticeship Newsletter via this link: [apprenticeships](#)

This month's edition provides information on:-

- The LGA's 2019 apprenticeship survey
- Request for information on problems finding training providers
- Announcement that National Apprenticeship Week 4-8 March 2019 theme is "Blaze a Trail"
- Launch of "Fire it Up" campaign (see below)
- Webinar on Inlogov's MSc Public Management & Leadership Degree Apprenticeship
- Youth Worker Standards Levels 2 and 3

The Department for Education's "**Fire it Up Campaign**" comprises a toolkit for employers to promote apprenticeships and raise awareness. DfE have suggested a few simple ideas:-

1. Post social media content using the suggested posts in the toolkit, including relevant handles/hashtags: Twitter - [@FireItUp_Apps](#) | Facebook - [/FireItUpApps](#) | Instagram -



- fireitupapps.** DfE will be looking out for your content and promoting across their own channels as well.
- Share case studies of your own apprentices and your apprenticeship programme on your channels. DfE have provided social media handles and hashtags to help you with this. DfE would also be interested in hearing about any apprentice case studies you have so please do share your case studies with Apprenticeships.CAMPAIGN@education.gov.uk The team will be in touch if they can feature them as part of the campaign.
 - Post your apprenticeship vacancies on www.findanapprenticeship.service.gov.uk This is a free service and receives over half a million visitors per month. Please encourage your organisation and partners to do the same. Instructions for how training providers can upload vacancies are available here: <https://www.gov.uk/recruit-apprentice>

In addition to the toolkit, a full campaign pack is available on the DfE partnership website here: <https://www.gov.uk/government/publications/using-the-apprenticeship-brand>.

LGA National Graduate Development Programme

The [National Graduate Development Programme](#) (ngdp) is the LGA's flagship two-year management trainee programme. It's an opportunity for talented graduates to fast track their local government career and gives councils the opportunity to nurture and develop their own talent.

Alongside their employment, the LGA provides a prestigious complementary learning and development offer. This is carried out in parallel so that the graduates can implement their learning whilst working on real projects. At the end of their two year programme the graduates will have developed a range of skills across a variety of services.

If the programme sounds like it could be of interest to your council, or you have any questions about the programme, please contact the NGDP team at ngdp@local.gov.uk or see the full brochure [here](#).

Some of the key benefits:

- Future proofing: ngdp is a fast track management scheme, so taking part means that you can grow your own talent who are in turn trained to develop quickly into management and leadership roles
- National network: your graduates join a cohort of national trainees, so will bring back learning and best practice from other organisations and help raise the profile of your council within the sector
- Recruitment: the LGA do the recruitment for you, putting the graduates through a rigorous process that includes online tests, video interviewing and assessment centres. You then get the opportunity to interview a group of individuals to help find the one that is the "best fit" for you. Everyone you see at that stage should be appointable.
- Learning & Development: the LGA provide a prestigious learning and development programme and qualification in partnership with SOLACE.

Key information:

Cost: The cost is £2,750 per graduate as a one off fee.

Duration: The programme lasts 2 years and you are asked to provide the graduate with a minimum of 3 placements in your council over that 2 year period. The LGA can provide support with planning those placements at the beginning, or can put your HR team in touch with a council who already takes part.

Salary: The minimum salary that the council pays is £25,295.

The options available are:-

- Full time national management trainee
- Shared national management trainee (shared with another council)
- Local recruitment: this is ring fenced to candidates from your area. You will be too late to do this option for this year, as applications closed for candidates on 3 January
- "Grow your own" – which is about encouraging your own staff to apply to take part in the scheme

