



HR in the East Midlands

June 2017

This month's HR compendium includes an update from our recent meeting with regional trade unions, sickness absence benchmarking results and an item on our work to keep representing councils' interests at EU level within the context of Brexit. Darren Newman's article looks at the issue of protection for whistleblowers and gives useful advice for local authorities. Our national update includes JE profiles and a new technical note, along with a pensions update.

Reminder – Pay Consultation Meeting

Many of you have already booked a place, but we're taking the opportunity to remind you of our regional pay consultation meeting. The meeting will be taking place at 10.30am on **19th July 2017** at Pera, Melton Mowbray. If you wish to attend, you can book a place by following this link: [regional pay consultation meeting](#)

The meeting will discuss the outcome of joint work to develop a new pay spine in order to be compliant with National Living Wage projections for 2020, as well as the pay claim submitted by trade unions for 2018/19. The LGA has estimated that meeting the pay claim in full would increase the national pay bill by £559m. A copy of the claim in full is available at:

<http://bit.ly/2uhe902>

Workforce Integration – Social Care & Health

The Regional Employers' Board met on 4th June 2017 and discussed how the region's councils can learn from innovative approaches to the integration of social care and health. As an outcome, EMC is linking with our counterpart in the East of England to track and learn any lessons on projects taking place there to trial self-managed local teams, based on an approach known as Buurzorg which runs successfully in Holland. For further information, contact sam.maher@emcouncils.gov.uk

Projects with Local Authorities

During June EMC supported councils on issues such as:-

- Restructuring support
- Chief Executive Appraisal facilitation
- Investigation relating to whistleblowing

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.



Regional Joint Council

The Regional Joint Council met on 4th June 2017 and welcomed the new Staff Side Secretary, Adrian Morgan from Unison. The meeting received an update on developments regarding the new **apprenticeship regime** and agreed to work jointly at regional level on this issue. The meeting also discussed **check-off arrangements**, the trade union **pay claim for 2018** (see the previous page).

Caretakers' Letting Fees

The meeting also agreed to increase **caretakers' letting fees** by 1% with effect from 1st April 2017. A copy of the updated caretakers letting fees are available at the following link: [caretakers letting fees 2017](#)

Influencing EU Directives in the Context of Brexit

You will be no doubt aware that EU Directives are developed through negotiation by Social Dialogue Partners. CEEP is the social dialogue partner representing public sector employers, and EMC represents the interests of our local authorities through our membership of CEEP and CEEP UK.

This provides us with an opportunity to influence EU Directives, which has been maximised through EMC's Regional Employers' Board Chair, Cllr Tom Beattie, Leader of Corby Borough Council who is President of CEEP UK and Vice-President of CEEP.

We are looking at appropriate options to maintain our influence in the run-up to Brexit, given that any new European legislation and/or changes to existing legislation that require implementation before the date the UK leaves the EU will also have to be implemented by the UK.

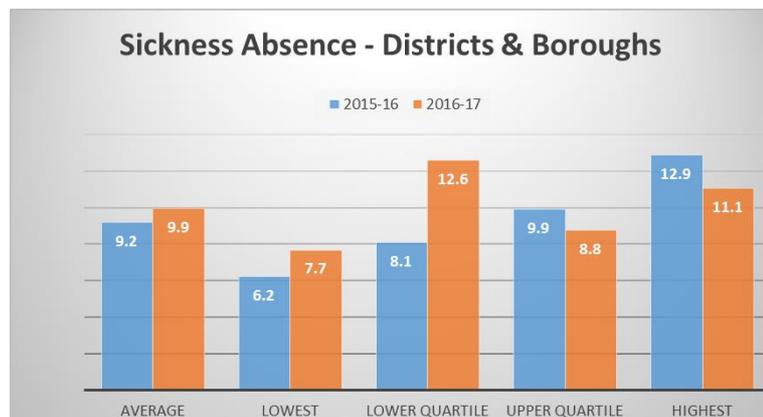
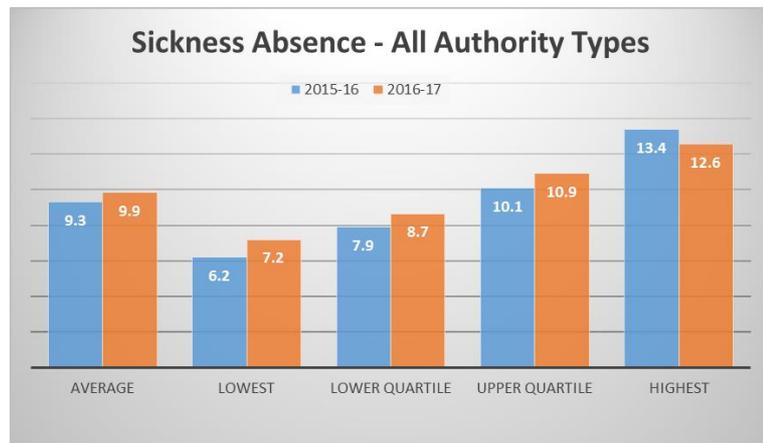
The EU is currently working on issues such as a Work-Life Balance Directive, a Refit evaluation of the Written Statement Directive and a Refit evaluation of Directives which give effect to the social partner framework agreements on fixed-term and part-time work, etc. The timescales for completion and implementation of these issues is not yet known, but could be applicable to the UK.

Sickness Absence Benchmarking Results 2016/17

We had a great response to this year's regional sickness absence benchmarking survey, so thank you to everyone who has participated by sharing your data.

The compiled results are set out in the following charts, showing average days lost per FTE. From these, it can be seen that there was a slight increase in average sickness rate compared to the previous year's results.

This is the third consecutive year in which rates of absence have increased.



Events in the East Midlands

Summer holidays are coming up quickly, at EMC we're already planning the autumn programme of development offered to our member authorities. For the second year running our flagship development event will be the East Midlands Local Authority Challenge on 16 November.

Trend for More Coaching & Support

Coordinating the East Midlands Coaching Network provides EMC with an overview of activity both across network members, and the East Midlands as a whole. With this perspective we can see a trend of increasing requests for coaching, with more organisations and individuals looking for support from qualified coaches. This demand for coaching has come from all levels within organisations, from first line managers to Directors and Executives, both inside local authorities and beyond.

To support the continuing development of coaches we are offering two CPD session in the autumn:-

Coaching Creatively, 27 September 2017 - The Autumn CPD session will be a practical workshop on 'Coaching Creatively', provided by one of the independent Coaches on the network Sandra Whiles. <http://bit.ly/CoachingCreatively>

Exploring Learning through Supervision, 13 October 2017- Coaching Supervision is an important element of developing as a coach. EMC is therefore providing a coaching supervision session as part of our CPD programme for coaches in the network. For more <http://bit.ly/2qHDP3T>

Employment Law Update 2018, 8 March 2018

Before you become alarmed and check the date, yes we are announcing the Employment Law date for 2018! This is one of our most popular events and so that you can save the date, we've organised and let you know about it as early as possible. This also gives you even more time to take advantage of our early bird offer.

Employment Law expert and monthly contributor to this Bulletin Darren Newman will be returning again to deliver an Employment Law Update. The seminar is focused to be relevant to HR people within our sector

and covers the prevailing hot topics and issues we are grappling with. Further information on the programme for the event will be issued nearer the time.

Early Bird Offer - If you book a place before the end of January 2018, the cost per delegate is just £99 + VAT for EMC members (available until 31st January 2018. After this date the charge will be £175). [click here to book](#)

East Midlands PA Conference

EMC is proudly introducing a one day conference designed to support Office Managers, Secretaries, PAs, Team Administrators – in fact anyone who organises others to achieve their goals. It's a development and networking day, based on the theme of personal and organisational change.

Keynote - Nurturing yourself is not selfish, it's essential for your performance and wellbeing. This session helps us explore the importance of caring for ourselves, how we might do this and what impact it will have on the work we do and the life you lead.

<http://bit.ly/EMCPAConference>

EM LA Challenge 2017

Work on the 2017 East Midlands LA Challenge is well underway. One of the many things we have change to keep things fresh is the awards, the 2017 awards are;

- East Midlands LA Challenge, Winners and Runners up Awards
- Best Chief Executive Officer
- Best Presentation
- Best Residents Magazine (previously Best Recovery Plan)
- Best Partnership Working Award (new award)

Team registration is now open, so register here

<http://bit.ly/EMLAChallenge2017>

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

Protected Disclosures – Whistleblower protection?

We all know that whistleblowers are important. By bringing attention to wrongdoing that would otherwise stay hidden they perform an important public service. In extreme cases what they do can save lives and few would begrudge those with the courage to stand up and say that something is not right the employment protections that they enjoy. Dismissal for making a public interest disclosure (the legislation never uses the word ‘whistleblowing’) is automatically unfair and there is no qualifying service required. Nor is there any cap on compensation – this is essential to ensure that whistleblowing protection is meaningful to even the most senior and well remunerated employees, for whom a normal unfair dismissal claim has little to offer.

But there is a problem. By their nature, those likely to make a stand on what they believe to be right are not always the easiest people to work with. From the employer’s point of view the difference between an employee who is always complaining about something, and an employee who is making a protected disclosure can be difficult to see. The employer may also feel – quite genuinely – that a complaint is being made maliciously as a way of attacking colleagues or the employer itself. Making deliberately false allegations is of course gross misconduct, but a recent case shows the need for employers to treat such a case with real caution.

In **Beatt v Croydon Health Services NHS Trust** Dr Beatt, was (appropriately enough) a heart surgeon. He worked in a department characterised by very poor working relationships, which extended to senior figures accusing each other of professional misconduct. Dr Beatt worked closely with a particular nurse who was called into an investigatory meeting prompted by allegations that she had been abusive towards some colleagues. Dr Beatt accompanied her to the meeting but was forced to leave to carry out an emergency

procedure. While he was away she was suspended and sent home. Unfortunately the procedure was not successful and the patient died. Dr Beatt said that the death of the patient was in part caused by the fact that the nurse was suspended during her shift meaning that she was unable to assist. An internal investigation reached the firm conclusion that there was no basis for this, but Dr Beatt persisted. The employer believed that he was making unfounded allegations in an attempt to have the nurse’s suspension lifted rather than out of any concern for patient safety. He was eventually dismissed.

The Tribunal found Dr Beatt to be an impressive witness and accepted his version of events. They upheld his claim of automatically unfair dismissal and the NHS Trust appealed. The employer’s argument was that they had genuinely believed that the allegations made by Dr Beatt were unsubstantiated and made in bad faith. They relied on the classic case from 1974 of *Abernethy v Mott Hay and Henderson* where the Court of Appeal held that the reason for dismissal was the “set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee.” The NHS Trust argued that on this basis the reason for dismissal was not a belief that Dr Beatt had made a protected disclosure, but rather a belief that he was guilty of gross misconduct.

The EAT rejected this. There were two separate issues: firstly, whether Dr Beatt was dismissed for making the disclosures in question and, secondly, whether those disclosures were “protected”. The *Abernethy* case applied to the first issue but not the second. Once it was established that the reason for the dismissal was the disclosure, the question of whether the disclosure was protected or not was a matter for the Tribunal.

Implications for Local Authorities

So if an employer believes that an allegation is deliberately false and decides to dismiss as a result – then it takes a risk. The issue for the tribunal will not be whether the employer’s conclusion was genuine or reasonable – but whether it was correct.



If the Tribunal reaches a different view of the facts then the result will be that the dismissal is unfair even if the employer genuinely believed that the employee was guilty of making malicious allegations.

The lesson is obviously that the employer must be very sure of its ground before proceeding against an employee for making false allegations. There is good reason for this. If we accept the importance of protecting whistleblowing then we should not make it too easy for employers to escape liability by hiding behind their genuine belief that the employee was behaving maliciously. Whistleblowers can be difficult and awkward people to work with – but that just means that employers must be careful to look beyond that fact and consider whether the substance of their allegations qualifies for protection.

This is particularly the case given recent changes in the law. At the time of Dr Beatt's dismissal, any disclosure made by a whistleblower had to be made "in good faith". That meant that if the employee was motivated by hostility or resentment towards the employer then the disclosure would not be protected. That requirement was removed in 2013. What matters now is not why the disclosure is made (that may affect compensation) but whether the facts disclosed, in the reasonable belief of the employee, do tend to show the required legal wrongdoing. If the same case arose today, the issue would not be Dr Beatt's motivation but whether he genuinely believed the substance of his allegations.

There is, however, a new requirement. To be protected the disclosure must, in the reasonable belief of the employee, be made in the public interest. There is no doubt that Dr Beatt's allegations – which involved the death of a patient – would meet this test but there are many other disclosures made by employees where the issue is far from straightforward. The Court of Appeal is currently considering this issue in the case of *Chesterton Global Ltd v Nurmohamed* where the allegation concerns the calculation of an employee's commission. The EAT held that the allegations were in the public interest because they concerned a group of about 100 employees as well as the employee himself. Is this the sort of allegation that the whistleblowing legislation was designed to protect? We should have an answer to this question in the next few weeks.

More information can be found on Twitter:
[@daznewman](https://twitter.com/daznewman)

National Developments

Job Evaluation

A new technical note has been published on Using Role Profiles to Implement Job Evaluation (Technical Note 16). This can be accessed at: [Technical Note 16](#)

A new batch of model role profiles has also been issued this month. The profiles cover Commissioning, Family Support, Home Care, Public Health, Residential Care, Principal Social Worker and Support Time Recovery jobs. Copies are available at [Circular](#) and [Profiles](#)

Pensions Scheme Update

LGPS annual report

The annual report for the LGPS in England and Wales has been launched, providing an analysis of scheme trends and a summary of valuations for 2016, as well as the compendium of individual funds' reports. Some key points from the report are:-

- Total membership grew by 2.5% to 5.3m members in 2016 and the number of LGPS employers increased by 22% to 14,435.
- The total assets of the LGPS held at £217bn.
- The net return on investment over 2015/2016 was +0.1% compared with +12.1% in 2015. The 2016 figure reflects less favourable market conditions.
- The scheme remained in a cash-flow positive position in 2016, including investment income.
- As at 31 March 2016, LGPS liabilities were estimated at £254bn indicating an overall funding level of 85%, (it was 79% at 31 March 2013). The funding level means there was an overall reduction in the cash deficit from £47bn in 2013 to £37bn in 2016.

The report is available at www.lgpsboard.org under Scheme Annual Report 2016.

