

# HR in the East Midlands

March 2019



The LA Challenge held at the Derby velodrome last week was a great success – with even more teams taking part this year. The results are in the Learning and Development section – but the most important outcomes are the learning, relationship-building and fun that participants get from the event. That section also gives of a workshop coming in April on Improving Productivity & Performance through the PACE toolkit, which was introduced at the People Conference. Our recent employment law seminar with Darren Newman was as popular as ever, and Darren gives more practical advice in his article this month looking at positive action.

## Pay Spine Implementation

So far, 22 authorities from the region have responded to the short survey on implementing the new pay spine. Thank you to those who have replied already. For those who haven't done so, there's still time. The closing date is **5pm on 29 March 2019**. Visit [here](#).

## Regional Employers' Board and Joint Council Meetings

The Regional Employers' Board and the Regional Joint Council met on 6<sup>th</sup> March. At the Employers' Board meeting, there was particular interest in the research by Durham and Bradford Universities on "Forgotten

Workers" – those on low pay and in multiple employment. This issue will be explored further at a future regional event, which will also feature the Good Work Plan – the Government's response to the Taylor Report.

The Regional Joint Council meeting was focused on information sharing on pay spine implementation and also received a presentation on how councils can maximise their support to reservists and former Armed Forces members through the Armed Forces Covenant.

## Reminder Alert!



Caretakers' letting fees continue to be negotiated by the Regional Joint Council. Last year, the Regional Joint Council agreed to a 2-year award, which included an increase in caretakers' letting fees by 2% with effect from 1<sup>st</sup> April 2019.

## Projects with Local Authorities

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

- Assessment centre and recruitment support for a Director role
- Mediation
- Coaching

To find out 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)



## Learning & Development

### EM LA Challenge - the Results

19 teams took part in this year's EM LA Challenge, engaging with a range of exercises designed to develop and test teams. The day is most definitely about development, the competition adds to the excitement and we're delighted to share the results:

- **Local Authority Challenge East Midlands Winner 2019 – South Holland District Council**
- **Runners up – South Kesteven District Council**
- **Best Chief Executive - Jason King, South Holland District Council**
- **Best Partnership Working award – City of Lincoln**
- **Best Presentation – Lincolnshire County Council**
- **Best Media Award – Corby Borough Council**
- **Outstanding team player Award – Samantha Thomas, Derby City Council**

EMC would like to thank all those on the day who played the crucial roles of Council Leaders, Partners and Media representatives. Full details [here](#).

### Future Development Events

Spring is in the air and we're channelling the positivity of the new season through a range of events scheduled to take place over the next few months outlined below.

### Improving Productivity and Performance – A practical workshop for organisations and managers

This highly informative and practical workshop on **25 April 2019** will be extremely beneficial for senior managers, who are leading service improvement and culture change, to understand how these performance outcomes can be managed at an organisational level to ensure alignment between the 3 key factors that affect people in the workplace.

Facilitated by Steve Whiddett, consultant business psychologist and former chair of the Association for Business Psychology (ABP), this workshop will make it possible to identify the causes of issues and how to prioritise them using an approach called *PACE – Productivity and Capacity Enhancement*. PACE includes a suite of tools, including a diagnostic for use at organisational level, as well as techniques managers can use to manage situations to improve

performance and productivity. For information visit [here](#).

### Charting your course: How to define success and achieve it!

**Wednesday 12 June 2019** - This 1-day workshop will help delegates to explore what it means to them to be successful; the psychology behind goal setting; how to set goals they could achieve and how to quieten negative thoughts.

Suzanne Ross from 2thrive, delivered an extremely popular session at one of EMC's conferences last year. In response to this positive feedback, we are offering this workshop, in which Suzanne will expand on the theme of personal development and goal-setting. For more information visit [here](#).

### East Midlands Coaching Conference 2019

We're delighted to announce details of our 7th annual coaching conference that will take place **on 26 June 2019** in Melton Mowbray. Kim Morgan will provide a keynote on 'Coaching for Change', with her session '**No Stone Unturned**'.

**Positive Psychology and Coaching** - The conference will start with an interactive and engaging session on Coaching and positive psychology by Ana Paula Nacif.

Positive psychology has a lot to offer to enrich coaching practice across a wide range of contexts. In this session, Ana will talk about positive psychology principles and how to apply them in our coaching practice. She will share some practical examples of how positive psychology approaches can support individuals, teams and organisations.

**Interactive skills development workshops** - The Conference will include a range of practical workshops that will support the continuing development of coaches. For more information 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),  
[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.

### Positive Action

Positive action has always been a controversial area. Even the label is the subject of debate. Should we be talking about positive action or positive discrimination – is there a difference between the two? And when, if ever, is it justifiable to recruit or promote somebody because of their protected characteristics? There are those who would argue that all appointments should be strictly on merit. Others would say that the only way to ensure that public services better represent those they serve is to engineer it so that a larger proportion of underrepresented groups are selected by recruitment processes that may otherwise be tainted by structural discrimination and unconscious bias.

The Equality Act has provisions dealing with what it describes as positive action. This allows direct discrimination in favour of underrepresented or disadvantaged groups - so calling it positive discrimination would not be completely unreasonable. However, the employer must be able to show that the positive action is justified as a proportionate means of achieving a legitimate aim. When it comes to recruitment and promotion the scope is even more limited. As well as the general requirement for justification, Section 159 of the Equality Act limits any discrimination in this area to cases where the candidates are 'as qualified' as each other to be recruited or promoted and where the employer 'does not have a policy' of treating those who share the protected characteristic in question more favourably than those who do not share it.

If the precise meaning of these terms does not leap out at you, then join the club. S.159 is infuriatingly imprecise and the difficulty of determining when it can

and cannot be used is one key reason why most employers have steered well clear of it. It must be said however that one of the reasons for the ambiguity is that the policy aims of the Minister putting it through parliament – Harriet Harman – were curtailed by the requirements of EU law, which limits the extent to which positive action is permitted. In **Abrahamsson & Anderson v Fogelqvist**<sup>1</sup> a Swedish Regulation dealing with the appointment of academics required suitable qualified women to be selected in preference to men. The ECJ held that this was a breach of the Equal Treatment Directive, but that it would be permissible for positive action to be taken when the candidates possessed 'equivalent or substantially equivalent merits' and where the assessment took account of their specific personal situations. This is the concept that the phrase 'as qualified as' is clearly intended to capture.

Some have argued that the requirement for candidates to be 'as qualified as' each other means that positive action can only be used as a tie-breaker – a final criterion to be applied when the employer can't think of any other basis for distinguishing between candidates. This probably goes too far. S.159 does not just apply to the final selection of candidates – it covers any direct discrimination in the context of recruitment or promotion. It could apply to the initial sift of applications, or the way in which selection criteria were applied to arrive at a short-list. At these earlier stages the employer has not completed its assessment of candidates and does not know which of them might turn out to be the best - all it knows is that each is as qualified as the other on the basis of the selection criteria that have been applied at that stage.

On the other hand, Government guidance on the application of S.159<sup>2</sup> specifically warns against an employer setting an artificially low threshold for candidates to qualify for a job and then claim that everyone who clears that threshold is equally qualified. This is just guidance of course, and it is ultimately for the courts to determine what 'as qualified as' means.

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<sup>1</sup> [2000] IRLR 732

<sup>2</sup> [government guidance](#)



They may soon be asked to do just that. We now have a Tribunal decision in the case of **Furlong v Chief Constable of Cheshire Police**<sup>3</sup>. In that case an applicant for a role as police constable was rejected in favour of candidates who were either women, BME or LGBT and successfully claimed discrimination on the grounds of sex, race and sexual orientation. The employer claimed that they were entitled to favour underrepresented groups under S.159, but the Tribunal rejected this defence.

What the police tried to argue was that everyone who passed through the selection process – which included a combination of written assessments and an interview - was suitable to be recruited and could therefore be 'deemed equal' - with the result that the employer was thereafter free to give priority to those candidates from underrepresented groups. The Tribunal disagreed. It could not really be said that everyone who had 'passed' the selection process was as qualified as anyone else to be recruited. Within that group there were those who had passed with flying colours and those who had just scraped through. Indeed, the employer's argument was seriously undermined by the fact that once the favoured candidates had been selected the remaining positions were offered according to how well the individual candidate had done in the selection. In any event, the Tribunal found that the positive action taken in this case was not a proportionate means of achieving a legitimate aim. The force should have waited to see how other positive action measures designed to encourage a more diverse range of candidates to come forward was bedding in before resorting to this more extreme measure.

### Darren's Advice for Employers

This is an important point. Selecting candidates on the grounds of their race, sex or sexual orientation is highly discriminatory and should generally be a last resort once other positive action measures have failed. This could include targeted advertising campaigns, outreach to local schools and colleges or a careful review of selection criteria to ensure that they are not needlessly

detering women or minorities from coming forward. Employers should also of course think carefully about the culture of organisations and ask whether they are as inclusive as they should be. Actual discrimination in the selection of candidates should only be a last resort.

It is important to stress that Furlong v Chief Constable of Cheshire Police is just a Tribunal decision. It does not set a legal precedent and I would expect an appeal. Indeed, this could be an important opportunity to clarify just what the rather ambiguous phrase 'as qualified as' actually means. If employers are allowed to discriminate in favour of underrepresented groups among all of those candidates who meet the requirements of the job and are suitable for selection, then this would allow public services to improve the diversity of their intake in large-scale recruitment exercises. If positive action in recruitment is confined to choosing between two candidates who have been assessed as essentially equal, then large-scale positive action will be practically impossible.

While I understand the attraction of insisting on equality of treatment, the reality is that more than 40 years after the introduction of discrimination legislation we still see huge inequality and job segregation. If that is to be addressed – particularly in large public services such as the police or fire and rescue – then we need the courts to take a wider view of when positive action is permissible than the Tribunal took in this case. There is no point in interpreting the Equality Act in such a narrow way that employers could rarely be confident that positive action would be lawful. Hopefully the Furlong case will – eventually – provide us with some clarity.

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

3

[Mr M Furlong v The Chief Constable of Cheshire Police 2405577.18 judgment and reasons](#)



## National Developments

### Revised Green Book

This month, we circulated information and copies of the revised Green Book, which has been updated to include the recently agreed joint guidance on Term-time Only Employees within Part 4 of the Book. The Green Book is available on line for all employers where email addresses end “.gov.uk” via the following link:-

<https://www.local.gov.uk/local-government-services>

### Government Consultations

#### Extending Maternity Leave Employment Protection

The Government is currently consulting on proposals to widen the employment protection currently offered to women on maternity leave. The consultation document considers the possibility of extending the time period of protection for a period after returning to work from maternity leave, as well as offering the protection to other employees, eg those on/returning from adoption leave or parental leave. The consultation closes on 5<sup>th</sup> April 2019.

#### Confidentiality Clauses

The Government has also launched consultation on the use of confidentiality clauses, with a view to understanding how they work in practice and what reforms are required to prevent their misuse. You can access the consultation document here: [link](#)

If you wish to provide your input to a regional response, please contact Sam [sam.maher@emcouncils.gov.uk](mailto:sam.maher@emcouncils.gov.uk)  
The consultation closes on 29<sup>th</sup> April 2019.

#### Reporting Trade Union Facility Time

The Cabinet Office is reviewing the guidance and on-line reporting of facility time, which will be due to be reported again by local authorities in July. A survey is being used to gather views on the experiences of those reporting facility time data so that improvements can be identified to the digital service and guidance.

The survey, which takes around 10 minutes to complete, is open until 5th April 2019. You can access the guidance and survey through the following links:-

[guidance](#)  
[survey](#)

Queries about this can be sent to Anton Guy via [facilitytime@cabinetoffice.gov.uk](mailto:facilitytime@cabinetoffice.gov.uk)

### Increases in Statutory Payments

On 6<sup>th</sup> April 2019, the cap on a week's pay for the purposes of calculating redundancy pay etc will increase to £525. There will also be an increase in the maximum compensatory award for unfair dismissal from to £86,444. From this date, statutory sick pay will increase to £94.25 and the lower earnings limit will increase to £118 per week. The standard rate of statutory maternity, adoption, paternity and shared parental pay will be £148.68 per week from 7 April 2019.

### Review of National JE Scheme Guidance

National Joint Guidance relating to the operation of the National Job Evaluation Scheme – both the paper-based and Gauge versions – is currently under review. The basic aim of the review is to ensure that the operation of the scheme is set out as clearly as possible. No changes will be made to the scheme's factor level structure and associated weighting / scoring. The language in the scheme will be updated to reflect changes in jobs since the guidance was launched, eg to reflect new technology. You can access the circular explaining the aims of the review through the following link: [here](#).

EMC will ensure that any information about the revised guidance is provided to local authorities as quickly as possible.



# Apprenticeships

## Maturity Model: 2019 Relaunch and Part 1 of the LGA Toolkit

This month the LGA relaunched its Apprenticeship Maturity Model for the sector. Fully updated with the latest best practice (including additional tips for managing your provider base) and to reflect changing policy priorities and developments (such as Levy Transfers), the Maturity Model will continue to be the LGA's flagship self-assessment and benchmarking tool for local authority apprenticeship programmes.

The LGA has also released the first part of the Maturity Model Toolkit, which is designed to help you implement the Maturity Model and grow your apprenticeship programmes, with advice, guidance, tools and templates to help you along the way. The toolkit will bring together all of the existing work we've done – from guidance notes to webinars and our standards mapping tool – alongside new material and case studies from around the sector.

The first part is an introduction to workforce development and how to use hotspot analysis to identify apprenticeship opportunities in your workforce. There's a short guidance note complete with a case study from Tameside Council, plus a webinar, slide pack, template spreadsheet and hotspot checklist to get you on your way.

More material will be added on an ongoing basis, and will be mainly published on the LGA's website and will remain downloadable via the KHUB.

You can view the Maturity Model and the above files [here](#) on the KHUB.

## Results of the LGA's 2019 Apprenticeship Survey

A webinar took place this in March on the results of the LGA's 2019 Apprenticeship Survey. A recording of the webinar can be accessed [here](#) and the slide pack is also available for download from the KHUB [here](#).

Go to EMC's website for the latest LGA Apprenticeship newsletter: [Apprenticeships](#)

