



HR in the East Midlands

May 2016

May has been dominated by pay – with agreements being reached for some employees and pay claims being received on behalf of other groups. See our national round-up for all the details. We also outline results of recent surveys into policies on grievances and harassment/bullying and redundancy pay. Those of us who draft and implement HR policies, statements of particulars and employee handbooks will find Darren Newman's article useful, as he focuses on how policies may or may not be contractual.

Review of the National Pay Spine

The National Employers have announced that they are undertaking a longer-term review of the national pay spine to meet the challenge set by the National Living Wage and the Government's target for this to be 60% of median earnings by 2020 (estimated to be approximately £9.00/hour.)

EMC's Sam Maher will be part of the national group working on this project and Cory Laywood from Leicester City Council will be providing his expertise to the group as a payroll professional. This work will feed into the joint working with the Joint Trade Unions once terms of reference are agreed. As well as aiming to find a way to fairly and affordably meet the

challenges of the National Living Wage and maintain differentials, time will also be spent identifying what issues local authorities will want to see explored as part of the review.

Regional Sounding Board – Your Opportunity to Influence Developments Sam will be liaising with authorities in the region to seek their views and ensure these are fed into the national project. Please contact Sam at sam.maher@emcouncils.gov.uk if your authority would like to participate on this regional sounding board or if your organisation has issues that it would like to see raised as part of the pay spine review. The first national meeting has been arranged for 20th June and Sam will provide an update following the meeting.

Projects with Local Authorities

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

- Mediation
- Outplacement support
- Job evaluation appeals
- Psychometric testing

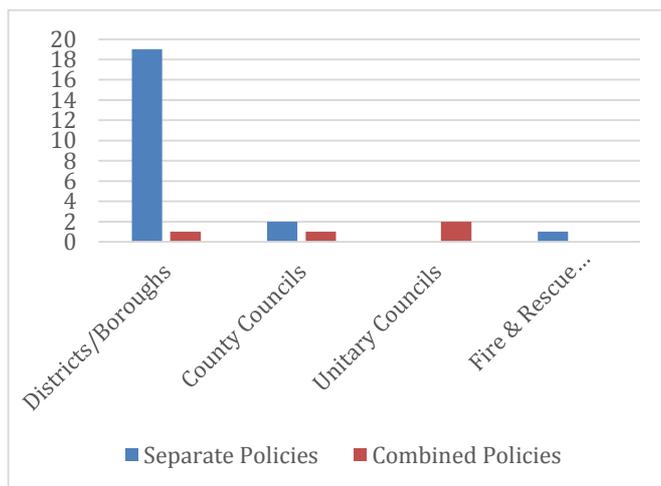
If you would like to know how EMC could support an area of work for you, then please contact Sam Maher at sam.maher@emcouncils.gov.uk or Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk.



Survey Results:

Separate or Combined Grievance & Harassment/Discrimination/ Bullying Policies?

At the request of a local authority in the region, we asked whether organisations had separate grievance and bullying/harassment policies or whether these complaints are combined into a single policy. Of 26 responses, 22 had separate policies. Those who had a combined policy were mainly county or unitary authorities.



Redundancy Pay

We also had a great response to our recent query on whether and how your organisation enhances redundancy pay.

Of the 24 responses, 22 organisations use actual pay to calculate redundancy, rather than apply the statutory cap of a week's pay. Just over half of respondents (14) enhance redundancy, most commonly by applying a multiplier to the statutory formula. The anonymized results of the survey will be circulated next week.

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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Events in the East Midlands

Supporting local authorities with development has always been a key area of work for EMC, either with in-house development or regional workshops. Recent in-house work has included:-

- **Appraisal Training for Managers**
- **Senior Leadership Development Centre** - a rounded assessment and development approach to support personal and top team development planning
- **Facilitation Skills Workshop** - a programme of bespoke Facilitation Skills workshops

CPD for Coaches

The East Midlands Coaching Network is in its 5th year and continues to grow and develop, offering coaches across the East Midlands with a variety of coaches to choose from. The continuing development of coaches is a central element of the network and EMC works hard to understand the needs of coaches and future trends in coaching to develop its CPD programme, which is open and free to all network coaches. The 2016-17 programme of development for coaches encompasses:-

[Team Resilience - 15 September 2016](#)

[MBTI and Coaching - 1 December 2016](#)

[Coaching on the Telephone - 23 March 2017](#)

Local Authority Challenge - 24 November 2016

The challenge is open to teams of six people from any area of local authority work and provides a rare opportunity for aspiring managers to gain exposure to what senior management is like. As well as competing to be the overall winner, there is also the opportunity to win a range of team and individual awards, including: Best Media Interaction, Best Chief Executive, Best Presentation, and Best Recovery Plan

For more information about the event visit [EM LA Challenge 2016](#)



‘In Deep with Darren’

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

Are HR policies contractual?

The most common answer I give to an employment law question is ‘well, it depends. What does the contract say?’ That’s not a total cop-out; it reflects the fact that employment relationships are built on a contract between employer and employee and that the contract is the first place to look when deciding what the obligations of the parties are.

When I talk about a contract, however, I am not usually talking about a single written document signed by the parties. A contract is a legally binding agreement and the agreement between an employer and an employee is usually found not just in the written statement of terms and conditions but also in other documents – particularly the employee handbook. There are also lots of implied terms that aren’t written down anywhere – but that’s another story.

While an employee handbook usually sets out lots of contractual terms, not everything in it will be contractual. Some parts of the handbook will merely set out procedures that the employer currently has in place, or give administrative information about working for the employer. It is crucial, however, to be clear about what aspects of the handbook are contractual and what aren’t. Since a contract is a legally binding agreement, an employer is bound to abide by a contractual term until the employee agrees to change it. If a policy is not contractual then the employer is generally able – subject perhaps to some implied terms – to replace it with another policy without the need for an agreement.

The consequences of being unclear about what is and isn’t part of the contract are shown by the case of **Department for Transport v Sparks**¹, decided recently by the Court of Appeal. In that case, the employee handbook set out a detailed absence management procedure to be used when an employee’s periodic short-term absences became a problem. However the handbook specifically provided that the policy would not be invoked until the employee’s absences reached the ‘trigger point’ of 21 days. The employer sought to amend this threshold without reaching an agreement on the point, but was challenged in the High Court by the employees’ trade union. The High Court granted an injunction preventing the change from taking place and the Court of Appeal upheld that ruling.

The key issue was whether the 21-day trigger was a contractual term or simply part of a non-contractual procedure. The employer pointed to the earlier case of *Wandsworth LBC v D’Silva*² in which the Court of Appeal held that a sickness absence policy was not contractual. The Court in that case said that it was desirable for such policies to be flexible and operated with compassion and common sense, rather than being treated as part of the contractual obligations of the parties. On this basis the employer argued that the policy was not ‘apt’ for incorporation into the contract of employment.

The Court of Appeal disagreed. The fact that it was desirable for absence management policies to be non-contractual did not outweigh the contractual language used in the handbook. In a case dealing with a redundancy policy – *Keeley v Fosroc International Ltd*³ – the Court of Appeal had held that ‘the fact that the staff handbook was presented as a collection of ‘policies’ does not preclude their having contractual effect if, by their nature and language they are apt to be contractual’.

The problem for the Department of Transport was that the language used in the employee handbook was the ‘language of entitlement’. The chapter on sickness

¹ [2016] EWCA Civ 360

² [1988] IRLR 193

³ [2006] EWCA Civ 1277



absence began with the phrase ‘this chapter sets out your terms and conditions of employment relating to sick leave’ so it was a bit difficult to argue that what followed was not part of the employee’s terms and conditions. It then mentioned the 21-day trigger point and said ‘Only if you have exceeded these ‘trigger points’ and... will [your manager] take the matter forward in accordance [with] the procedures set out in Annex A’.

The Court of Appeal held that the employer had given employees a contractual right not to be subjected to the absence management procedure until the trigger point had been reached. As this was contractual the employer did not have the right to change the trigger point without agreement.

Darren’s advice

The employer’s problem could have been avoided in two ways. Either the policy could have included a general right to amend the trigger point, or it could have been phrased in such a way as to make it clear that the trigger level was not part of the contract.

If, for example, instead of saying ‘this policy sets out terms and conditions’ it had simply said ‘this policy sets out [the employer’s] approach to managing sickness absence’ it would have been much harder for the Court to find that the trigger levels were contractual. Similarly if the handbook had said that the procedure would ‘usually’ not be applied unless the trigger point had been reached – or if had said that the trigger point is ‘currently set at 21 days’ – it would have been clear that the employer had a discretion to apply the policy flexibly or change the trigger point altogether. Less subtly of course, the handbook could have included a paragraph under which the employer reserved the right to change any aspect of the policy – including the trigger point – or which specifically stated that the trigger point was not part of the contract of employment.

In a non-unionised environment, using this sort of phrasing is straightforward. I regularly see handbooks that make it clear that the employer isn’t really bound by anything they contain, to the point that it hardly seems worth having them. When policies and procedures have to be negotiated with a trade union on the other hand, the language of entitlement can

be difficult to avoid. Unions are likely to be alert to language that gives the employer ‘wriggle room’ to go back on assurances given in a negotiation.

At the very least, however, a handbook should be clear about what is and what is not contractual and employers should be careful not to let careless wording give rise to unwanted contractual obligations. A discretion to adapt policies to meet special cases and changing circumstances is something worth negotiating for.

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

National Developments

2016-17 Pay Award Agreed for Green Book Employees

Agreement has been reached for Local Government Services (Green Book) employees for a 2-year pay award. The agreement provides a 1% increase from 1st April 2016 and a further 1% increase from 1st April 2017 for spinal column points 18 and above. For spinal column points below 18, the pay increase varies in both years. A copy of the agreement can be accessed at:-
[Green Book Circular Pay Award 2016-17](#)

Other Negotiating Groups

Other national pay agreements in Local Government that have been reached are for Craftworkers (a copy of the agreement is at [Craft Agreement](#)) and employees of Blind Workshops (click on [Blind Workshop Agreement](#)) These are both 2-year deals.

National Employers have received claims from the staff side of the negotiating committees for Soulsbury and Youth & Community Workers. Click on the following links to access the documents: [Soulsbury Claim Y&C Claim 2016](#)

