



HR in the East Midlands

May 2018

We hope you feel relaxed and refreshed from the sunny bank holiday weekend and in the perfect frame of mind to read this month's round-up of HR news and information. There is nothing further to report with regards to ongoing pay negotiations for craft, chief officers and chief executives, but our national news section gives you links to the revised Green Book and other developments. Darren Newman's article is about constructive dismissal.

Pay Spine Workshop

Many of you attended our workshop on 23rd May on implementing the new national pay spine on 1st April 2019. The meeting is being used to inform the development of national guidance for local authorities. Sam will be circulating a summary of the main questions and answers from the session.

We will soon be providing information on further workshops that were suggested from participants. These will be on pay modelling and equality impact assessments. EMC will also be offering discounted a pay modelling service and sharing information, advice and practice on pay protection. In response to the level of interest in sharing information and advice virtually and through occasional workshops, we are establishing a dedicated pay and rewards network. To sign up, contact sam.maher@emcouncils.gov.uk

Research & Information – Investigations

We recently ran a survey on behalf of a council in the region on different approaches to investigations – specifically who carries out investigations within organisations, eg HR or a line manager, and any issues that arise. You can access the results of the survey here: [investigation survey results](#)

Our respect for your data

A key role of East Midlands Councils is to keep you informed of important updates, stories, best practice and events that directly impact your work through our HR Bulletins, Policy Brief and e-mails. We take privacy seriously, we will keep personal information private and secure and will not supply your details to any organisation for marketing purposes. Our privacy policy is available on our website: [here](#)

Projects with Local Authorities

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

- Top Team Development
- Psychometric testing
- Disciplinary investigation

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



Learning & Development

The summer is fast upon us, the highlight of our summer will be the annual **Coaching Conference on 3rd July**. This year's conference will include a session on **Team Coaching**, the new buzz words in coaching. For those new to **Team Coaching**, the session will provide a practical exploration of how it works and what you will need to consider before embarking on your first session. For information on the conference visit <http://bit.ly/EastMidlandsCoachingConference2018>

Recruitment and Selection Training

This month we wanted to share with you our in-house recruitment and selection support, an area with increasing demand from local authorities.

Working with several local authorities EMC has developed a two day recruitment and selection programme. EMC has developed a practical and interactive workshop that can be tailored to focus on any particular elements of the recruitment and selection process that the Council wished us to concentrate on, for example the issues that your managers tend to struggle with and would like more guidance on.

In advance of the day, we can send out to the delegates a confidence questionnaire which asks them to rate their level of confidence against the above areas – that helps us to ensure that we keep the day focussed on where people feel they need the most support. At the end of the day we ask them to revisit this to see if their confidence has improved and to what extent. Each delegate is also provided with a recruitment and selection handbook containing more information for reference than we will be able to cover on the day. For more information on this support contact Lisa.Butterfill@emcouncils.gov.uk

#Love your HR Conference

Don't forget that next month the West Midlands Employers are holding the #Love your HR Conference, 27 June 2018 at The Vox Resorts World, Birmingham.

The cost is £220 + VAT and includes a Free GC Index assessment worth £100. Details available [here](#).

Don't forget to mention that you heard about the event from direct mailing from your Regional Employers' Organisation - EMC!

LEAN Practitioner Training

This two-day module training has been designed to develop delegates understanding of how using a variety of LEAN thinking and improvement tools can achieve improved services and outcomes. It will also address the wider **cultural** and **people** factors that affect organisational improvement and performance.

Course Content:

- Overview of BPI, Change and Improvement and the LEAN approach to service improvement and reviews and the key principles
- Understanding of customer value and process waste in the context of service improvement and service review and redesign activities.
- Introduction to the core BPI and LEAN Change and service review and service improvement tools and techniques
- Understand the practical application of BPI and LEAN Change and Improvement tools in a service review and redesign environment.
- Practical exercises to provide experience of applying BPI and LEAN tools and techniques to carry out a mini service review
- Overview of the change management approach to implementing improvements, service review and service redesign.

Day 1 focuses on LEAN Sigma tools and techniques and offers practical activities including: the Quad of Aims, Voice of the Customer, Value Stream Mapping, service review and redesign, 5s, DMAICT, variation, and PDCA.

Day 2 Mini Lean service review applying learning from day one.

The course dates are 19 & 20 September, details [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:-

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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.

Constructive Dismissal

A constructive dismissal may be prompted by a single breach of contract by an employer or by a series of incidents that, taken together, amount to a fundamental breach. When that happens the 'last straw' incident that prompts the employee's resignation need not be a breach of contract in its own right – it is the employer's overall conduct that matters. In *Kaur v Leeds Teaching Hospital NHS Trust* the Court of Appeal had to consider whether that last straw could reactivate complaints made by the employee that the employer thought had been resolved long ago.

The employee had struggled from the outset with her performance and had been subjected to formal capability procedures over a two year period. She also felt that she was being bullied by a number of her colleagues leading her to make a formal complaint against one of them in 2012. In April 2013 there was an altercation between the two of them in which each alleged they were assaulted by the other. That led to an investigation which concluded in July that disciplinary action should be taken. A hearing then took place in October which found that both employees were guilty of 'inappropriate behaviour' but there was no finding made on the issue of assault. The decision to issue them with final written warnings was based on them shouting at each other in an area of the hospital close to where patients were being treated. The employee's dignity at work complaint about the incident was 'folded in' to the overall investigation and rejected.

Soon after receiving the warning, Ms Kaur went on maternity leave. This meant that her appeal against the final written warning was not heard until July 2014. When it was rejected, she resigned and claimed constructive dismissal relying not just on the rejection of the appeal but also the events of April 2013 more than a year earlier.

The Tribunal struck out her claim as having no reasonable prospect of success.

The Tribunal judge found that it was clear that the employer had reasonable grounds for initiating the disciplinary procedure following the 2013 incident and that it was 'quite proper' of the employer to deal with Ms Kaur's dignity at work complaint about that incident in the same procedure as the disciplinary allegation. It was also clear that Ms Kaur had indeed 'raised her voice' near a hospital ward and there was no reasonable prospect of her establishing that the decision to give her a final written warning was unreasonable.

The Judge accepted that a 'last straw' in a constructive dismissal claim did not in itself have to amount to a breach of contract. However, he held that it could not have the effect of reviving earlier breaches of contract that had been waived when the employee chose to remain in post. Ms Kaur could not therefore argue that the incident in which she alleged that she was assaulted – or any of the preceding allegations about the employer's treatment of her – were part of an overall course of conduct that undermined mutual trust and confidence.

The issue that reached the Court of Appeal was whether a 'last straw' in a constructive dismissal claim could effectively revive issues that had previously been resolved. The Court held that it could. It was true that the normal rule in constructive dismissal is that an employee who chooses to remain following the employer's fundamental breach of contract (what is called 'affirming the contract'), loses the right to resign and claim a constructive dismissal based on that breach. However the Court held that it was possible for the last straw to 'revive' earlier breaches of contract even after the contract had been affirmed. The question was whether, taken as a whole, the employer's conduct should be regarded as amounting to a fundamental breach of the implied term of mutual trust and confidence.

Darren's Advice for Employers

The spectre this raises is of an employee raising a grievance and the employer dealing with it and considering the matter closed, only for it to be brought up again following a relatively innocuous incident months or even years later. That is an obvious concern for employers, but what has got lost in some of the



commentary on this case is that the employee still lost. Despite holding that, in theory, a 'last straw' can revive a previously resolved issue, the Court held that the Tribunal judge had been entitled to strike out the case as having no reasonable prospect of success. There was nothing in the handling of the disciplinary process that could be said to have contributed to a fundamental breach of contract.

It may in theory be possible for an employee to re-open previously resolved issues in a constructive dismissal case but only if, overall, the employer's conduct amounts to a fundamental breach of trust and confidence. It is difficult to think of situations in which that would be the case. Constructive dismissal cases are hard cases for employees to win anyway - and the more time has passed the harder it will be for the employee to argue that the 'last straw' should be seen as part of the same overall course of conduct as the earlier incidents.

In practice I don't think this is a case that employers need to worry about too much.

The other point to make about the case is that there was never a full hearing of the merits. The Employment Judge struck out the claim without hearing all the evidence because the claims being made had no reasonable prospect of success. That advantage of striking out a claim is supposed to be that it deals with the case quickly and efficiently. But that certainly hasn't been the result here. Three years later and the employee is still challenging the decision and trying to get permission to go to the Supreme Court.

This might be one of those cases that was always going to last years and go all the way – but I suspect that what has really egged the employee on is that her case was never properly heard. Ironically, given all of the hearings that have taken place, she has never really had her day in court. It is just possible that if the Tribunal had listened to her evidence, rather than dismiss it 'on the papers' she might have had some sense of closure despite ultimately losing.

More information can be found on Twitter:
@daznewman

National Developments

Updated Green Book

The 'Green Book' has been updated to include the recently agreed payscales and allowances for 2018 and 2019 along with other changes. A circular providing further details can be accessed [here](#). The Green Book itself can be accessed through the following link (LGA password required): [Green Book](#)

National Workforce Strategy

There is still time to comment on the priorities included in the LGA's draft workforce strategy which is currently out for consultation. The short survey closes on 15th June. To find out more, go to: [draft national workforce strategy](#)

Apprenticeships

LGA Apprenticeship newsletter for May 2018

The latest edition of the LGAs Apprenticeship Newsletter is available from [here](#). This month's edition includes the latest news on Trailblazers and Standards.

It also provides details of the **LGA 2018/19 Support Offer**: a general support offer for all councils (including a 24/7 Queryline, webinars, regional workshops, fortnightly KHUB Q&A Sessions, guidance and toolkits) and a bespoke offer for 20 councils to develop apprenticeship programmes including at least 2 days' free LGA support. More information about both programmes can be found in the announcement section on the KHUB [here](#)

Gedling's Apprenticeship Event, 27 June

Gedling BC has organised an event: **Get in, Go Far with Apprenticeships, Wednesday 27 June 2018**. Although it is aimed at public sector partners, schools, SMEs and apprenticeship providers within the D2N2 LEP area but participants from across the wider EM region are welcome. For more information or to book a place visit [here](#).

