

HR in the East Midlands

September 2016



We've had great feedback from you about this bulletin since we launched it last year and we are really pleased that you find it so useful. We always value your views and suggestions, so if there is an area you would like to see covered, just drop us a line. This month we are focusing on the new proposals on exit payments and Darren Newman's article looks at reasonable adjustments.

EMC HR Bulletin Birthday

Incredibly EMC launched the HR Bulletin in September 2015 and we're now delighted to be celebrating its first birthday. We thought we would mark the celebration with a look back at what has featured in the first year.

Employment Law specialist Darren Newman has provided us with his expertise and advice on a variety of subjects, including:-

- Social Media
- Working Time Directive
- Zero Hours Contracts
- Sickness absence, reasonable adjustments and proportionality
- Age discrimination, redundancy and early retirement
- The Trade Union Bill
- Disability
- Trust and confidence
- Brexit implications

The HR Bulletin content over the last year just shows how busy it has been for HR professionals, and we've used the Bulletin to update you on:-

- Living Wage
- Pay negotiations
- Sickness absence figures and analysis
- Exit Payments
- Removal of the Designated Independent Person
- Use of Market Supplements
- Mediation
- Apprenticeship Levy
- Review of the National Pay Spine

You can access back issues on our website:

<http://www.emcouncils.gov.uk/EMC-HR-Bulletin>

Projects with Local Authorities

This month, we have been providing individual authorities with support on a range of projects and issues, including-

- In-house development using action learning
- Assessment of a local authority for the Councillor Development Charter
- Selection Testing & Candidate Feedback

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.



Events in the East Midlands

In this edition of our bulletin we are feature two of the development opportunities on offer from EMC over the next few months: our CPD workshops for coaches and the Local Authority Challenge, which provides a great development opportunity for managers and aspiring managers.

Coaching and Myers Briggs Type Indicator (MBTI)

The next CPD session for Coaches will take place on 1 December. This informal session will provide an explanation of Myers Briggs type theory and help you identify (in a fun and practical way) the preferences that describe you best*.

Within the session we will explore:-

- An understanding of Myers Briggs Type Theory
- The preferences that you feel best describe you
- The influence of MBTI type on your coaching style
- The value of MBTI in coaching and how you might use MBTI in coaching.

Our coaching clients who have understood their own preferences using MBTI have described how this clearer understanding of themselves (and others) has helped them when influencing and communicating effectively with others; when leading their teams and when problem solving and making decisions.

MBTI Online Assessment Offer

*For individuals in the coaching network who are interested in a more in-depth understanding of their preferences we can arrange for you to complete an online MBTI assessment followed by a 1:1 feedback session including a detailed report for a reduced cost of £145.00 + VAT. <http://bit.ly/2caJebA>

Telephone Coaching: Could less be more?

The East Midlands Coaching Network is holding a very practical CPD session for Coaches on 23 March 2017, on telephone coaching.

Ask any coach whether they prefer to work with a client on a face to face basis or on the phone – and a good proportion will quickly say that they prefer to work with someone in person. However, in today's world with pressures to reduce travel costs, and travel time and indeed leveraging the opportunity of working with people across different locations, coaching on the phone can be a really sensible option. The problem that most coaches anticipate is having to work without seeing the client's non-verbal behaviour. You will have the opportunity to share experiences about the challenges of this "virtual" working and how they can be overcome,

This session is designed to help participants realise how much more is actually available in a client's voice than we first realise. Participants will be invited to do some practical exercises that will help focus attention to the client's voice, to their choice of language and to their silences in a way which we normally don't have the capacity to notice when they are physically present. There will be time for general questions and to consider how the learning from the workshop could also be applied in day to day business phone conversation.

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

East Midlands Local Authority Challenge 2016

18 teams have now registered for the Local Authority Challenge, every county area in the East Midlands now has at least one authority entered. The closing date is getting closer, don't leave it until the last minute to enter your team, places are going fast!

The closing date to register your team is 10 October 2016, register your team by visiting [LA Challenge 2016](#)

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

Reasonable Adjustments

When it comes to reasonable adjustments, my experience is that local authorities tend to bend over backwards to do the right thing. If a disability means that an employee is unfit to do the job that he or she was employed to do then the employer will generally work hard to find another role that may be suitable – although there are inevitably fewer roles available in this age of austerity.

A question that often arises when a reasonable adjustment consists of alternative work is whether the employer needs to ensure that the employee’s pay is protected. If the alternative work is at a lower grade should the employee be paid for the job that he or she is now doing or be continue to be paid at the rate for the original job?

Hitherto I have been quite confident that the right approach is to pay the employee at the correct rate for the new job – at least when it is clear that the change is a permanent one. There is a good argument for maintaining an employee’s full rate of pay if they are being placed on lighter duties for a transitional period before returning to their original role – but the purpose of the Equality Act is not to provide charity to disabled employees but to provide a level playing field. There is no reason why an employee should be paid more than their work is worth, just because they happen to be disabled.

A recent case has, however, shed some doubt on that approach. In **G4S Cash Solutions (UK) Ltd v Powell**, Mr Powell was employed to maintain and repair cash machines - until a back condition meant that he was no longer able to cope with the heavy lifting and confined spaced that the work required. In order to allow him to continue working the employer gave him the role of ‘key runner’ which was a driving based role delivering parts and personnel to various sites. At first the new

job came at the same rate of pay and Mr Powell had every reason to believe that the change was permanent one. The employer obviously had second thoughts, however, because just under a year later, he was told that the role was being abolished, leaving him vulnerable to dismissal on the grounds of capability. He raised a grievance and eventually the employer had a change of heart. They agreed that the role of key runner could continue but that the pay would be set at 10 per cent below the rate he was earning in his original post. Mr Powell refused to accept any cut in his pay and the resulting deadlock was only broken when he was dismissed.

The Tribunal held that the refusal to maintain his original salary was a failure to make reasonable adjustments and the EAT agreed – or at least they held that the Tribunal was entitled to come to that conclusion, which is almost, but not entirely, the same thing. The EAT rejected the suggestion that pay protection was simply not something that fell within the scope of reasonable adjustment. It was well established that a reasonable adjustment could involve both a cost to the employer and treating the employee more favourably than others in order to remove the disadvantages to which they would otherwise be subject. In the circumstances, the conclusion reached by the Tribunal was a permissible one and could not be overturned.

At one level, you could argue that this case does not say anything very much. The EAT has simply held that it is for the tribunal to decide what sort of adjustment it is reasonable for the employer to have to make. In this case a measure of pay protection was reasonable, but in another case it might not be. It seems highly likely that the tribunal was influenced by the fact that Mr Powell was originally offered the new role with no cut in pay - and no suggestion that the arrangement was only temporary. It is not clear whether the 10 per cent pay reduction was a figure plucked out of the air by the employer, or whether it was the result of some sort of analysis or job comparison that gave a rational basis for the figure.

Implications for Local Authorities

When this issue crops up in a local authority it is likely that the alternative job has been properly evaluated and



has its place in the overall grading structure. Furthermore, there are likely to be other employees who are doing it already – it appears that Mr Powell was the only ‘key runner’ in the firm and that the role may have been invented specifically for him. It is likely, therefore, that it will be easier to justify paying an employee at the ‘correct’ rate in a local authority context. What is clear, however, is that the employer cannot simply take it for granted that a move to a lower graded alternative role can be accompanied by a commensurate reduction in pay. The employer will need to consider this issue carefully and decide whether it can avoid imposing a pay cut. The overarching objective is keeping the employee in work and the EAT has made it clear that a certain amount of pay protection can be part of the solution.

On the other hand, it is also clear that the cost of a reasonable adjustment is a factor that the employer can take into account. Paying one person significantly more than their job is budgeted to cost may simply be a step too far for some employers – particularly since this is an issue that is likely to arise on a fairly regular basis. There is also the question of fairness to other employees. How happy will other employees feel if they are paid less than their disabled colleague for doing the same work? Maintaining good employee relations is also a legitimate factor to consider in making a reasonable adjustment.

Predicting where a tribunal will draw the line between what is reasonable and what is not is just impossible. The best an employer can do is to trust its own instincts to do the right thing. If the question of reasonable adjustments is approached with an open mind and a genuine desire to find a long-term solution that will allow the employee to work in a role where he or she can thrive and succeed, then the package that the employer eventually offers should be a reasonable one.

More information can be found on Twitter:
@daznewman

National Developments

Further reforms to exit payments - Government consultation response

The Government is planning to go ahead with its proposals as set out in the original consultation document. It will set a common framework of upper limits which should be applied to the main elements of compensation provision across the main public sector schemes. The Government believes that applying these upper limits across the schemes will mean there will be greater consistency between the schemes and would bring public sector terms more in line with exit terms more commonly available in the wider economy.

The framework is as follows:-

- A maximum tariff for calculating exit payments of three weeks’ pay per year of service. Employers could apply tariff rates below these limits.
- A ceiling of 15 months on the maximum number of months’ salary that can be paid as a redundancy payment. Where employers distinguish between voluntary and compulsory redundancies there may be a case for maintaining a differential by applying a lower limit. Likewise, where employers offer voluntary exit packages that are not classed as redundancies there may be a case for applying a different maximum. Employers could apply lower limits, as some do at present.
- A maximum salary on which an exit payment can be based. As a starting point the Government will expect this to align with the existing NHS scheme salary limit of £80,000.
- A taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension retirement age.
- Action to limit or end employer-funded early access to pension as an exit term. As part of an overall package the Government will consider proposals appropriate to each workforce, including proposals to:
 - cap the amount of employer funded pension ‘tops ups’ to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled
 - remove the ability of employers to make such top ups, or offer greater flexibility to



- employers to determine the specific circumstances in which they would be available
- increase the minimum age at which an employee is able to receive an employer funded pension top up, so that this minimum age is closer to or otherwise linked more closely with the individual's normal pension age in the scheme in which they are currently accruing pension benefits

However, the Government does not want to introduce a cross-public sector scheme at this time. Instead, the Government proposes that each department responsible for a particular workforce will devise its own scheme within the framework. This will be introduced through negotiation with the trade unions, where existing schemes form part of a collective agreement.

The timescale for this is to draw up a scheme within 3 months from the publication of the response (therefore by 26 December 2016), following which there will be a period for consultation and negotiation. The Government has said that if a particular workforce fails to have implemented the reforms within 9 months (i.e. by 26 June 2017) it will consider making changes through legislation.

Comments from the LGA & Next Steps

Obviously, the issues are rather different in local government than the rest of the public sector. For most local authority employees the redundancy compensation regime is not set out in a collective agreement, but is contained in the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006. Each individual employer has to publish a policy on how it exercises its discretions to provide more than the statutory minimum redundancy payment, within the framework provided by these regulations. Although the regulations provide that an authority can pay up to 104 weeks' pay it is very rare that a local authority's redundancy compensation scheme approaches anywhere near the limits set under the new framework of 3 weeks/15 months. However, presumably, the DCLG will propose appropriate amendments to the regulations to reflect the new framework.

What is not clear is how this will be taken forward in terms of any negotiation. The language in the

response produced by HM Treasury appears to have been written with Government departments and bodies such as the NHS in mind. The LGA will be seeking clarification from DCLG as soon as possible, as to the implications for local government employees.

Similarly, the LGA will be anticipating contact with the Department for Education, in respect of teachers, and the Home Office, in respect of firefighters, in relation to compensation arrangements for these groups of staff.

Pension legislation will also need to be amended in relation to the early release of pension on grounds of redundancy or interests of efficiency. It is not yet clear how changes in this area will develop. Again, the LGA will be in contact with the relevant departments to ascertain their plans in response to the Government's announcement. EMC will keep you informed of any developments.

Pay Agreements

This week, EMC distributed Joint Circulars setting out the details of national pay agreements that have been reached for [Youth Community Workers](#) for 2016-17 and for [Teachers in Residential Establishments](#) for 2016. Agreement has also been reached for Soulbury staff for a 1% increase in both 2016 and 2017 – the circular will be issued with full details shortly.

Health & Local Government Workforce Integration

This month the House of Commons Health Select Committee issued its report on Public Health. Click here to access the report: [public health workforce report](#)

The report includes a number of workforce recommendations. Most notable for us is a call to improve the movement of staff between sectors, which of course covers continuity of service.

If you have any comments on the recommendations, please e-mail them to Sam at EMC at sam.maher@emcouncils.gov.uk and she will feed your views to the lead officers working on the issue at national level.



Adult Social Services – New Directors Programme

Skills for Care, with the support of the Department of Health is about to run a new cohort of the *New Directors Programme* which was developed in association with the Association of Directors of Adult Social Services (ADASS).

As well as recruiting new or recent directors of adult social services, the programme will also be accepting applications from aspiring directors, to support the creation of a talent pipeline for future directors delivering statutory services in the sector.

The New Directors Programme covers not only the issues arising from a broad span of control, but also the complexities arising from political governance and the need to exert leadership across a wide range of networks. The programme is also run over a sixth month period and includes a two day residential, action learning days, a two day workshop and the use of diagnostic tools.

Secondment Opportunity to work as a Policy Officer at East Midlands Councils to Support Strategic Migration

Colleagues in your authority may be interested in a secondment opportunity at East Midlands Councils for a Policy Officer working on a scheme to transfer Unaccompanied Asylum Seeking Children. We would therefore be grateful if you could share the following information with relevant teams:-

Unaccompanied Asylum Seeking and Refugee Children – National Transfer Scheme

Policy Officer – East Midlands Strategic Migration Partnership (EMSMP)

Grade H £31,288 to £35,093 (37 hours per week)

Fixed term secondment: November 2016 – March 2017

(with further extension subject to confirmation of funding)

You will assist with the co-ordination of the East Midlands Strategic Migration Partnership's responsibilities in the development and ongoing management of asylum and refugee resettlement issues, in particular those relating to the National Transfer Scheme for Unaccompanied Asylum Seeking Children (UASC). The work involved with this important and high profile programme will include working with local authorities to support participation, and the implementation and oversight of the transfer process in the region.

The ideal person will have experience of work within a local authority, partner regional agency or equivalent organisation, including responsibility for policy development, advocacy and partnership working. See below links to further information/how to apply:-

<http://www.eastmidlandsjobs.org.uk/jobsearch.htm?guid=cj1267>

<http://www.emcouncils.gov.uk/Jobs-EMC-East-Midlands-Councils/Policy-Officer---East-Midlands-Strategic-Migration-Partnership-EMSMP/44400>

