



HR in the East Midlands

March 2024

We are pleased to see the arrival of Spring and are looking forward to a long weekend that is likely to include chocolate! In the world of HR and L&D/OD, the latest developments are provided in this month's bulletin as a single point of info for you. It was great to see many of you at our recent Employment Law update earlier this month with Darren Newman. We get another helping of Darren's advice in his article which this month looks at a recent tribunal that resulted in the largest compensation award against a local authority - £4.5m.

Regional Pay Briefing

This week, EMC hosted the regional pay briefing, providing an opportunity for councils to meet with national negotiators and representatives of the Employers' Side of the National Joint Committee. The meeting discussed the pay claims received from the different bargaining groups. You can access the claims here: [Pay and Rewards \(emcouncils.gov.uk\)](https://emcouncils.gov.uk)

EMC is collating information from Councils regarding pay which will feed into the National Employers' deliberations and help inform any response to the claim. The National Employers will be meeting on 16th April to discuss the feedback, so **please send your council's responses to Sam Maher ideally by 2nd April or by close of play on 4th April at the latest .**

Regional Employers' Board & Joint Council Meeting

The Regional Employers' Board and Joint Council met earlier this month. The Board reviewed the regional councillor development programme for 2023-24 that had been designed with input from the Board and the Councillor Development Network. 238 councillors attended events within the programme, one of which was provided in-house. Feedback from delegates was excellent.

The Joint Council received a presentation on an LGA pilot project in the North East, to promote local government as an employer – [see the national news section](#). Evaluation on the project is taking place now, and it is intended to roll it out to other regions through the regional employers' organisations from Spring/Summer. The meeting also discussed the unions' national pay claim.

Projects with Local Authorities

During March, EMC has supported councils with:-

- Mediation
- Chief Executive appraisal facilitation
- Pay benchmarking

To find out how EMC could support an area of work for you, then please contact Sam, Lisa, or Mark.

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Learning & Development

Opportunity to be a Facilitator at the Challenge Event – 23rd April

We are pleased to welcome 14 councils from across the region who are entering teams to learn, compete and have fun in this year's Challenge event at Leicester Racecourse on 23rd April.

Due to the popularity of the event, we are seeking further "facilitators" to enable teams to have the best experience and ensure the day runs as smoothly as possible. By playing one of our valuable facilitator roles on the day you will be supporting the development and investing in the potential of aspiring middle managers from across the region.

In brief, this role involves playing the part of a range of different stakeholders with the various teams throughout the day at short meetings of no longer than 5-10 minutes each time.

For each stakeholder, there is an outline script and detailed information in advance about the teams/organisation. We also provide a virtual briefing ahead of the day to fully explain the role and give you the opportunity to ask any questions too.

Every year we see our regular facilitators return because they enjoy supporting others and being part of such a positive environment. They also benefit from the networking opportunities it provides, as well as being fed and watered all day – all enhanced by such a great venue too!

If you are interested and available to support the region on this day, please contact lisa.butterfill@emcouncils.gov.uk

Regional Councillor Development Programme 2024-2025

Review of 2023-2024 Programme

The regional development programme for 2023-24 has come to a close this month. We have evaluated the programme to help inform our approach for the coming year. 238 councillors attended events within the programme last year and their feedback and evaluation was extremely positive.

Development of 2024-2025 Programme

We are in the process of developing this year's programme of support with councillor development and will be using the input and suggestions of our councillor development network and the Regional Employers' Board to shape the programme.

Our aim with this year's programme is to focus on the popular skills-based sessions and events that are valuable for councillors taking on new roles in the coming civic year, eg the Role of the Civic Head, and Charing Skills events.

We are also offering a further free session for councillors newly elected last year – a one year on workshop in June that will provide an opportunity to network as well as focus on issues that are relevant to them. We are designing the content based on the feedback from the cohort of councillors elected in 2023 to ensure that it is relevant to their needs and interests.

To link with a general election during the year, our programme will also include knowledge briefings on emerging policy areas.

To be involved in the councillor development network, please contact Lisa Butterfill at lisa.butterfill@emcouncils.gov.uk



In Deep with Darren

Darren Newman's article this month looks at the largest compensation award made against a Council in an Employment Tribunal.

The award of some £4.5 million in compensation for a former employee of Hammersmith and Fulham after she was dismissed during her sickness absence following a panic attack and the recurrence of PTSD symptoms has certainly raised some eyebrows. It is perhaps the largest award even made against a Council in an Employment Tribunal – at least in relation to a single claimant.

It is important to be clear that the employee in this case will not have £4.5 million to spend. Most of the sums she was awarded will be taxable. To make sure that she is properly compensated for the losses she has suffered, a calculation is done to 'gross up' her award so that she is left with the correct amount after tax has been paid. In this case, roughly £2 million will go towards her tax liability, so the employee will effectively only receive about £2.5 million in compensation. That of course is still a hefty sum and eye-wateringly expensive for the council concerned.

How did the Tribunal come to such a massive figure?

The facts of the case – as found by the Tribunal back in 2021 – are straightforward enough. The employee was the newly recruited Head of Public Service Reform at the Council and was employed on a salary of £125,000. She was dismissed, according to the employer, for failing her probation. The Tribunal found however that the dismissal actually amounted to disability discrimination. The employee had ADHD and also post-traumatic stress disorder which had arisen following the work she had done in a previous role assisting the victims of the Grenfell Tower disaster. Her new role was extremely stressful, and she encountered a number of problems – culminating in a panic attack following meetings with senior managers. She went off sick and was dismissed before she could return to work.

The Tribunal found that the employer had not followed its normal procedure for dealing with performance issues in an employee's probation period. They also

found that the employer failed to address a grievance raised by the employee about her treatment. Importantly, they also found that two witnesses for the employer had been untruthful in their evidence in claiming that the employee had been told that her probation period was to be extended before she went off sick. The Tribunal went so far as to find that a letter sent to the employee extending her probation had been backdated to make it look as though it was written before her probation period ended. Her dismissal letter was also backdated, said the Tribunal, to make it look as though it was written before the employer had received her grievance. The Tribunal concluded that the dismissal amounted to direct discrimination. An employee without the employee's disabilities would not have been dismissed in the same circumstances.

The Tribunal's findings on these points were forcefully expressed. It is quite unusual to see such clear findings that senior managers had acted deliberately to mislead not just the employee, but also the Tribunal.

None of that explains them awarding compensation of £4.5 million, however. But nor was that figure plucked out of mid-air. We do not have the full reasoning of the Tribunal's remedy judgement – but we do have a detailed breakdown of what it awarded. Unsurprisingly, a major component of the award is for loss of earnings. The employee was on £125,000 per year and was dismissed in August 2018. It was accepted that her loss of earnings between the dismissal and the initial Tribunal decision in 2021 came to £327,000. Her future loss of earnings were found to amount to almost £900,000 and her pension loss was assessed as £630,000.

Those figures would be difficult to challenge in any appeal, but the Tribunal also made a substantial award for injury to feelings of £60,000 and for psychiatric injury of another £60,000. The injury to feelings award is certainly right at the top of the scale – but this was a case in which the employee was clearly in considerable distress at the way she was treated, and the Tribunal presumably heard detailed medical evidence about the impact of what happened before making its assessment.



Given the finding that the employer's witnesses effectively lied to the Tribunal in the course of their evidence – which must have added to the employee's distress, I was not surprised to see that there was also an award of £20,000 in aggravated damages. I was surprised however to see that there was an award for exemplary damages. These are very rarely awarded in Tribunal cases and are only available where a public authority has behaved in a particularly reprehensible manner and where the award otherwise would not be adequate to reflect that fact. Given the overall size of the award, it seems surprising that an additional sum of £15,000 for exemplary damages was thought to be necessary. Successfully appealing against that assessment would not give the council much comfort however, bearing in mind the overall size of the award.

For me, the most startling aspect of the award is the uplift for failure to follow the Acas Code of Practice on Disciplinary and Grievance Procedures. The Tribunal found that the employer failed to follow its process for dismissing employees for poor performance in the course of their probation period – and also failed to follow its own grievance procedure when the employee complained about her treatment. That allows them to increase the overall compensation payable by between 10 and 25 per cent. Under this heading, the Tribunal therefore awarded £271,479.85.

I am as keen as anyone that employers who fail to follow appropriate procedures should face an appropriate sanction – but being made to pay out more than a quarter of a million pounds for not following the Acas Code seems excessive.

I would expect an appeal on this point to argue that, after making its percentage assessment, the Tribunal should have stepped back and considered whether such a huge sum could be just and equitable, given the nature of the procedural failings they were looking at.

Even a successful appeal, however, will not alter the fact that this was an expensive case for the employer to lose. In part, this is simply because the employee was at the high end of the pay scale. Most compensation is based on loss of earnings, so those who earn the most will inevitably lose the most when they are dismissed.

But the employer did itself no favours in the way in which, according to the Tribunal, it sought to cover

its tracks over the reason for dismissal. It would have been better to address the employee's suitability for the role, given her health issues, and whether steps could have been taken to ease some of the stress she was under. Going down that road would have taken some time but, with hindsight, it would have been by far the cheaper option.

National Developments

Revision to Circular re Amendments to Green Book 4.12 for Term-Time Only Employees

A hawk-eyed colleague in a council spotted a minor typo in the 4 March circular which was issued regarding amendments to Part 4.12 of the Green Book which relates to Term Time Only employees. The original circular should be disregarded and replaced with the version dated 13 March 2024 – you can access a copy here: [Local Government Services \(emcouncils.gov.uk\)](https://emcouncils.gov.uk)

National Recruitment Campaign - Make a difference, work for your local council

You will see in the update from the Regional Employers Board and Joint Council meetings on the front page of this issue that we are looking to support the roll-out of a recruitment campaign for local government that has been piloted in the North East Region, with our counterparts NEREO. An event is taking place virtually on 30th April from 10.30 to 12.00 noon to outline the project and the evaluation results and outline the roll-out to other regions.

Details of the event are available through the following link:

[Make a difference, work for your local council – A national recruitment campaign for local government](#)



Registration Requirement for Building Control Professionals

Colleagues are likely to be aware of the requirement being introduced for Building Control professionals to be registered with the Building Safety Regulator (BSR) by 6th April 2024. To achieve registration, professionals must either complete an assessment of competence or an examination.

Following concerns raised about the requirement and the challenges and barriers faced for organisations to be able to meet this requirement, the Health and Safety Executive has announced a transition phase has been introduced in England, allowing more time for experienced professionals to complete their assessment.

Those registered with the BSR as a Class 1 (Trainee) by 6 April 2024 now have until 6 July 2024 to complete a competence assessment to upgrade their registrations to Classes 2 or 3. During this transition period, registration scope will be extended so individuals will be able to continue to undertake building control work for the class of RBI for which they are undertaking a competency assessment. After 6 July 2024, individuals who are not registered at the appropriate class will no longer be able to work in building control.

Details are available in the HSE's letter to industry, which can be accessed via the following link:

[Letter to industry: Registration of the Building Control Profession - transitional arrangements | HSE Media Centre](#)

EHRC employer guidance: Menopause in the workplace

The Equalities and Human Rights Commission has published [Menopause in the workplace: Guidance for employers](#). It provides an overview of the issues that women may experience in the workplace relating to menopause and the steps that employers can take to support. It includes the legal obligations that employers have in making reasonable adjustments, preventing discrimination and managing the health, safety and wellbeing of workers.



Reminders!

There are a number of employment law changes taking place from 6th April:-

- Employees, regardless of length of service, are entitled to a week's unpaid carer's leave in a rolling 12-month period
- Redundancy protections during pregnancy and after maternity, adoption or shared parental leave;
- New paternity leave and flexible working rights, bring greater flexibility for parents and adopters exercising their rights to two weeks' statutory paternity leave. In particular employees will be able to take their entitlement as either a single two-week block or two separate one-week blocks. Further, they will be able to take it at any time in the 52 weeks after the birth or adoption.
- Flexible working requests are a right from the first day of employment.

The [Employment Rights \(Increase of Limits\) Order 2024](#) comes into force on 6 April 2024. It increases the statutory limit on a week's pay for statutory redundancy pay from £643 to £700 per week and the maximum compensatory award for unfair dismissal from £105,707 to £115,115.

It also increases the compensation for unlawful inducements related to collectively bargained terms and conditions under s.145B of TULRC(A), from £5,128 to £5,584. The increases take effect where the appropriate date is on or after 6 April 2024.

