



HR in the East Midlands

July 2021

This month saw developments with national pay negotiations and all the information is available in the National news section of the bulletin, along with other national updates. Thank you for providing responses to the absence survey – the results so far are on this page. The LA Challenge is an event that always receives excellent feedback and we are running it virtually this year, following the success of using this format in the South West – see our L&D page for all the details. Darren Newman’s article examines a case involving a dismissal for use of offensive language in a “safe space”.

Kickstart Support Sessions

EMC delivered the first of a series of employability support sessions for the young people benefitting from the Kickstart Scheme and their employing local authorities. Focusing on how to make the most out of their placement and what it takes to be an effective employee, the individuals attending were highly engaged and motivated to learn and make a difference.

Further sessions of support will focus on teamwork and communications and preparing for future work.

Your council can still join EMC’s gateway to offer placements and can access the employability and personal development offered by EMC. For more information please contact Suzanne Boulby – Suzanne.boulby@emcouncils.gov.uk

Regional Sickness Absence Survey 2020-21 Results

Thank you for your responses to the absence survey.

The results based on responses so far (covering 75% of councils in the region) are summarised below.

The average number of days lost to sickness absence was 6.6. The average for 2019/20 was 9.4 days.

Compared to the previous year...

- 93% reported overall absence reduced
- 86% saw a decrease in short-term absence
- 10% saw an increase in short-term absence
- 70% found long-term absence decreased
- 20% found an increase in long-term absence

We will provide an update with the final figures once all responses have been received.

Projects with Local Authorities

In July we have supported councils with: -

- Mediations
- JE training
- Psychometric testing

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

Sam.Maher@emcouncils.gov.uk

Lisa.Butterfill@emcouncils.gov.uk

Learning & Development

East Midlands Virtual Challenge 2021

In last month's bulletin we announced that East Midlands Councils will once again host a regional Challenge event but this time with a virtual twist! The 2021 Challenge will include all the key elements of the previous versions but will take place using an exciting new virtual format. The Challenge will take place on 10 November 2021, with 12 team places available.

The event takes place throughout the day with a high intensity simulation exercise that gives a rare opportunity for aspiring managers to gain exposure to issues outside of their normal working lives and give them a taste of what senior management is like. It is also a brilliant way to hone those team working skills.

What you need to know about the virtual format

Every person taking part in the challenge (both delegates and role players) will do so virtually. All communication between the teams and the people contacting them takes place over Zoom and mobile phones.

The challenge is designed for teams of 6 people from any area of work. Delegates will spend the day as the management team of a fictional Island authority. Teams can be drawn from any level of management where there is an aspiration to develop and grow.

New to the virtual Challenge this year will be the team verbal feedback session provided by the team's assessor at the end of the day. This is a valuable opportunity for the teams to gain insight into their performance on the day.

South West Virtual Challenge - We're not the only region to offer this exciting opportunity and colleagues at East Midlands Councils supported the South West Challenge on 14 July 2021 where Wiltshire County Council took away the top prize. Feedback from participants was excellent with an example below:-

"What I didn't expect was how I would learn from being an assessor. I saw really good team working and thinking on the feet being modelled and it made me re-evaluate some of my working as a chief executive. In seeing the strategic role through the eyes of a Leader it has made me think about how I work and how I could improve on that and how I can improve my relationship with the Leader for the benefit of both of us and the Council as a whole."

The Challenge Needs You!

Just like the face-to-face version, we're looking to recruit volunteers to support the delivery of the day and below are the range of roles available.

Media – In this role you'll get to play the part of a local reporter looking for a juicy story, putting the teams on the spot to see how they respond.

Leader – Each team will have a Leader, who will visit the team at intervals throughout the day. The teams should use this time with you to ask your opinions, gauge some kind of political steer and get some approval from you.

Assessor – An assessor is present with a team throughout (although invisible to the team), we'll ask you to score teams on a range of activities and at the end of the day provide verbal feedback.

Partners – As a key stakeholder you will arrive within their Zoom meeting at specified times. The teams will be unaware of these times and who will be approaching them, forcing them to think on their feet and act quickly when they are offered an opportunity to meet a key partner

If you are interested in registering a team and/or assisting on the day please contact Kirsty at kirsty.lowe@emcouncils.gov.uk

- **Date** – 10 November 2021
- **Time** – 9:00 – 17:30
- **Cost** - £995 plus VAT
- **Pre event team briefing** - There will be a 30 minute briefing on the 3 November.
- **How to book** – Book online via this link here.
- **Team members** – **you can register a team without sharing team member details, final details by 18 October 2021.**
- **Closing date** - Friday 5 October 2021.
- Every person taking part in the challenge will do so virtually via Zoom.

Contact Details

For further information about any of our work please contact the team:-

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Kirsty.Lowe@emcouncils.gov.uk
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In Deep with Darren

This month, Darren Newman looks at a case where an employee was dismissed by a Council for using offensive language as part of a training course

Words are powerful things. Some are so laden with history that even repeating them in a neutral context can cause distress and offence. The 'N word', for example, is generally considered to be about the most offensive word in the English language. It has such power to offend that even spelling it out in full in this article would feel wrong.

But is the use of that word always and in all contexts a matter that the employer is entitled to treat as gross misconduct? In the recent Tribunal case of *Stevenson v London Borough of Redbridge* an employee was dismissed for using the word when asking a question about racism during a training course. He was describing an incident when someone else used the word – he was not directing it at anyone in the room, nor using it to describe someone. Nor was there any suggestion that he used the word with the intention of offending anyone – indeed he apologised straight after using it. He had also been told by the trainer that the course was a 'safe space' where he was encouraged to ask questions. When questioned the trainer herself thought that the question he asked was a reasonable one, but two of the other delegates (who were also council employees) raised complaints – although one of them at least said that they did not want the employee to lose his job.

The dismissal was held to be unfair and the catalogue of things that the employer got wrong in dismissing the employee is quite impressive. The dismissal was based on him showing no remorse despite the fact that he had apologised at the time and brought a written statement to the disciplinary hearing – which he was not allowed to read out – in which he said to the employees who had complained "I wholeheartedly offer you my sincerest apologies for using the word and causing you offence". The decision was also heavily influenced by the fact that for many years he had worked in HR, with the employer believing that he therefore advised others on the council's policies on equality and dignity at work. In fact he was employed in IT support and had worked on the payroll system so could not be

assumed to have any special insight or expertise on the subject of equality. The employer had also assumed that if an investigation showed that he had used a racially offensive term it was bound to take disciplinary action, when its own policies envisaged that such matters could when appropriate be resolved informally.

Having found that the dismissal was, in view of these errors, unfair the Tribunal went on to find that the employee had deliberately used the N word in full when he could have simply referred – as in this article - to the 'N-word'. Finding that 'the N word is an offensive and racially loaded term and is not appropriate for use in the workplace' the Tribunal rejected the employee's application for reinstatement or reengagement and held that his compensation should be reduced by 90 percent to reflect his 'contributory fault'.

So what to make of this? I'm left with mixed feelings. On the face of it the employee has won – but the 90 percent reduction in compensation makes it a rather hollow victory. An employee with more than 30 years unblemished service has lost his job – probably with very little compensation – as a result of a word that he used when asking a sincere question about the use of that word. I think that that is disproportionate. That is not to say that the employee was blameless, he must have known that the use of the word, even in the context he used it, was controversial – that's why he apologised at the time. There were complaints from two employees, so what he said did cause offence. But having been told by the trainer that he was in a 'safe space' he surely could not have realised that his comment was enough to get him dismissed. My general rule of thumb is that an employee should only be dismissed for misconduct when the employer has made it quite clear that that will be the likely outcome of the conduct in question. I don't think this incident passes that test.

The case certainly highlights the danger of throwing vague terms like 'safe space' around. The question that needs to be answered of course is 'safe for who?'.

If you are going to licence behaviour that would not normally be allowed then you surely need to get permission from those who will experience that behaviour. Part of the problem in this case was that the



course the employee was taking part in was part of the Prevent programme – relating to radicalisation. He brought up the issue of race discrimination and so the trainer had not expected that the use of the N word would be under discussion. Had it been a discrimination and equality course it would have been easier to anticipate that racial slurs would be discussed, and clearer ground rules could have been set.

Not that you can take it for granted that employers would get this right. I was reminded of another Tribunal decision from 2019 – Georges v Pobl Group Ltd – when a trainer wrote racially offensive terms on a flip chart (including the fully spelled out version of the N word) which she then invited delegates to discuss. Describing this approach as ‘crude and unnecessary’ the Tribunal quite rightly upheld the harassment claim brought by one of the delegates.

In a wider sense, the Redbridge case highlights the limits of an unfair dismissal claim and the reluctance of Tribunals to take a stand on what does or does not justify dismissal. If the Tribunal had simply said, ‘look this conduct is not sufficiently serious in the circumstances for a dismissal to be a reasonable outcome’, it would have been at risk of substituting its own view for that of a reasonable employer and justifying an appeal to the EAT.

Instead, it focussed – as Tribunals tend to – on the process of dismissal and the way in which the employer went about it.

But I’m not sure it is consistent to criticise an employer for not giving proper consideration to handling the matter informally – which implies that it would be a reasonable option to do so - and then find that the employee is 90 per cent to blame for his dismissal. I think the employer in this case has got off quite lightly.

More information can be found on Twitter:
[@daznewman](https://twitter.com/daznewman)

National Developments

National Pay Negotiations Final Pay Offers – Green Book

The National Employers have made final pay offers to the unions representing the main NJC workforce, Craftworkers, Chief Executives and Chief Officers.

The circular sets out the details [here](#).

National Final Offers – Craft, Chief Executives & Chief Officers

The National Employers have made final offers in respect of council Chief Executives, Chief Officers and Craftworkers. The circulars that provide further information can be found [here](#).

The NJC unions’ initial reaction to the final offer can be accessed here: [response](#) ALACE, representing Chief Executives, have also responded, asking for talks with the Employers.

Soulbury – Consultation on 2021 Pay Claim

Earlier this month, EMC circulated information as part of national consultation on pay for Soulbury Officers, following receipt of their pay claim. The key elements of the claim are:-

- (1) A significant pay increase of at least 7% on all pay points.
- (2) A joint working group to consider the Soulbury pay structure and how the work of Soulbury officers has changed during the pandemic.

EMC is co-ordinating the responses from councils in the region to provide a collated response back to the LGA to inform their response and we have asked councils affected to email their views **by 15th August 2021** to Sam at sam.maher@emcouncils.gov.uk



Guidance for critical workers self-isolation

Recently the Government published guidance relating to its announcement on critical workers self-isolation announcement. The guidance can be found [here](#).

COVID Update Changes from 19th July – Guidance and Joint Circular

As COVID restrictions were removed from Monday 19 July, BEIS have updated [the guidance on working safely](#) to amend the previous 'COVID-secure' workplaces guidance. The LGA guidance has been updated and can be found [here](#).

In July EMC also circulated a new NJC circular (No.14 in the series) that provides joint guidance about working arrangements from 19 July onwards. A copy of this can be found [here](#)

Vaccination as a condition of deployment - beginning of the grace period

Information from the DHSC that the vaccination as a condition of deployment regulations have been signed and therefore the 16-week grace period has begun.

This means that the regulations will come into force on Thursday 11 November. For those beginning their vaccination journey, they must have their first dose by Thursday 16 September to allow the eight-week gap between doses and ensure they are fully vaccinated by Thursday 11 November. A full guidance for care providers will be published in the coming weeks.

MHCLG Consultation on Statutory Guidance on Special Severance Payments

The Government is currently consulting on statutory guidance on the making and disclosure of Special Severance Payments by local authorities. EMC has circulated to councils a copy of the draft response prepared by the LGA which may be of interest if you are considering submitting your own response to the consultation. (Further copies can be requested by emailing Sam.)

If you have any comments about the consultation and response, then please email Sam before **Wednesday 4th August** so that we can feedback your comments to the LGA and take your views into account within

our regional response. If you intend to submit your own response, then it would be useful if you could share it with us for the purposes of informing the regional submission. sam.maher@emcouncils.gov.uk

Workforce Surveys – Review of Data Collection

You will be aware that we have supported the LGA with the collection of workforce data – within the context of COVID.

The collection of data is being reviewed and we would like to know from you what data you think is useful for you to share relating to the workforce.

The collection of workforce data is important in helping us to better understand what support councils need, provide helpful national, regional and local benchmarks, avoid duplication of effort, maximise economies of scale and provide evidence to central government to inform policy and funding decisions.

We will therefore be in contact next week to gather your views.

Apprenticeships

The latest July LGA apprenticeship newsletter can be found [here](#). It covers developments in the world of apprenticeships, including:-

- Pooled PAYE
- Webinars July/August
- Apprenticeships Mapping Tool Updated
- LGA Apprenticeship Surgeries
- National Apprenticeship Awards 2021
- LGA Action Learning Programme: Feedback Surveys
- Apprenticeships for the school workforce
- Education Training Foundation Mentoring Framework
- Quality Alliance Guidance to Support Apprentices Back into Work and Training Post COVID

